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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2020–1040; Special Conditions No. 25–800–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Flight Envelope Protection, High-Speed Limiting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

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 design feature is an overspeed protection system in the normal mode, designed to prevent the pilot from inadvertently or intentionally exceeding certain airplane speeds. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. This special conditions document contains 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 24, 2022. Send comments on or before May 9, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2020–1040 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
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- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

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

FOR FURTHER INFORMATION CONTACT: Troy Brown, Performance and Environment Section, AIR–625, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 1801 S Airport Rd., Wichita, KS 67209–2190; telephone and fax 405–666–1050; email *troy.a.brown@faa.gov.*

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

Comments Invited

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

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

Background

On July 1, 2012, Dassault applied for a type certificate for its new Model Falcon 5X airplane. 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 its Model Falcon 5X airplane under new Model Falcon 6X. This airplane is a twin-engine business jet with seating for 19 passengers, and has a maximum takeoff weight of 77,460 pounds.

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 (*e.g.,* 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:

An overspeed protection system in the normal mode, designed to prevent the pilot from inadvertently or intentionally exceeding certain airplane speeds.

Discussion

Current part 25 sections do not relate to a high-speed limiter that might preclude or modify flying qualities assessments in the overspeed region. This high-speed limiter incorporates an overspeed protection system in the normal mode that prevents the pilot from inadvertently or intentionally exceeding a speed approximately equivalent to V_{FC} (maximum speed for stability characteristics) or attaining V_{DF} (demonstrated flight diving speed).

These special conditions establish requirements to ensure operation of the high-speed limiter that might preclude or modify flying qualities assessments in the overspeed region.

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

Applicability

As discussed above, these special conditions are applicable to 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 a certain novel or unusual design feature 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.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 6X airplane.

In addition to the requirements of title 14, Code of Federal Regulations 25.143, the following requirements apply:

Operation of the high-speed limiter during all routine and descent-procedure flight must not impede normal attainment of speeds up to overspeed warning.

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. 2022–06176 Filed 3–23–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–FAA–2021–0630; Special Conditions No. 25–801–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Interaction of Systems and Structures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

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 design feature is installed systems that, directly or as a result of failure or malfunction, affect airplane structural performance. 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 24, 2022. Send comments on or before May 9, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2021–0630 using any of the following methods:

- *Federal eRegulations Portal:* Go to *http://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
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will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

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

Comments Invited

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

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

Background

On February 1, 2018, Dassault applied for a type certificate for their new Model Falcon 6X airplane. This airplane is a twin-engine business jet with seating for 19 passengers and a maximum takeoff weight of 77,460 pounds.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (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 (*e.g.,* 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:

Installed systems that, directly or as a result of failure or malfunction, affect airplane structural performance.

Discussion

The Dassault Model Falcon 6X airplane is equipped with systems that directly, or as a result of failure or malfunction, affect its structural performance. These systems include the digital flight-control system, which includes maneuver-load and gust-load alleviation, and the fuel-management system. Current FAA regulations do not take into account the effects of systems on structural performance, including normal operation and failure conditions. Special conditions are needed to account for these features. These special conditions define criteria to be used in the assessment of the effects of these systems on structures. The general approach of accounting for the effect of system failures on structural performance is extended to include any system in which partial or complete failure, alone or in combination with other system partial or complete failures, would affect structural performance.

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.

These special conditions are similar to those previously applied to other airplane models.

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 a certain novel or unusual design feature 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.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Model Falcon 6X airplane.

For airplanes equipped with systems that affect structural performance, either directly or as a result of a failure or malfunction, the influence of these systems and their failure conditions must be taken into account when showing compliance with the requirements of 14 CFR part 25 subparts C and D.

The following criteria must be used for showing compliance with these special conditions for airplanes equipped with flight-control systems, autopilots, stability-augmentation systems, load-alleviation systems, flutter-control systems, fuel-management systems, and other systems that either directly, or as a result of failure or malfunction, affect structural performance. If these special conditions are used for other systems, it may be necessary to adapt the criteria to the specific system.

1. The criteria defined herein only address the direct structural

consequences of the system responses and performance. They cannot be considered in isolation, but should be included in the overall safety evaluation of the airplane. These criteria may, in some instances, duplicate standards already established for this evaluation. These criteria are only applicable to structure the failure of which could prevent continued safe flight and landing. Specific criteria that define acceptable limits on handling characteristics or stability requirements, when operating in the system degraded or inoperative mode, are not provided in these special conditions.

2. Depending upon the specific characteristics of the airplane, additional studies that go beyond the criteria provided in these special conditions may be required to demonstrate the airplane's capability to meet other realistic conditions, such as alternative gust or maneuver descriptions for an airplane equipped with a load-alleviation system.

3. The following definitions are applicable to these special conditions.

a. *Structural performance:* Capability of the airplane to meet the structural requirements of 14 CFR part 25.

b. *Flight limitations:* Limitations that can be applied to the airplane flight conditions following an in-flight occurrence, and that are included in the airplane flight manual (*e.g.,* speed limitations, avoidance of severe weather conditions, etc.).

c. *Operational limitations:* Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (*e.g.,* fuel, payload and master minimum-equipment list limitations).

d. *Probabilistic terms:* Terms such as probable, improbable, and extremely improbable, as used in these special conditions, are the same as those used in § 25.1309.

e. *Failure condition:* This term is the same as that used in § 25.1309. However, these special conditions apply only to system-failure conditions that affect the structural performance of the airplane (*e.g.,* system-failure conditions that induce loads, change the response of the airplane to inputs such as gusts or pilot actions, or lower flutter margins).

Effects of Systems on Structures

The following criteria will be used in determining the influence of a system and its failure conditions on the airplane structure.

1. *System fully operative.* With the system fully operative, the following apply:

a. Limit loads must be derived in all normal operating configurations of the system from all the limit conditions specified in 14 CFR part 25, subpart C (or defined by special conditions or equivalent level of safety in lieu of those specified in subpart C), taking into account any special behavior of such a system or associated functions, or any effect on the structural performance of the airplane that may occur up to the limit loads. In particular, any significant nonlinearity (rate of displacement of control surface, thresholds, or any other system nonlinearities) must be accounted for in a realistic or conservative way when deriving limit loads from limit conditions.

b. The airplane must meet the strength requirements of 14 CFR part 25 (static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of nonlinearities must be investigated beyond limit conditions to ensure that the behavior of the system presents no anomaly compared to the behavior below limit conditions. However, conditions beyond limit conditions need not be considered when it can be shown that the airplane has design features that will not allow it to exceed those limit conditions.

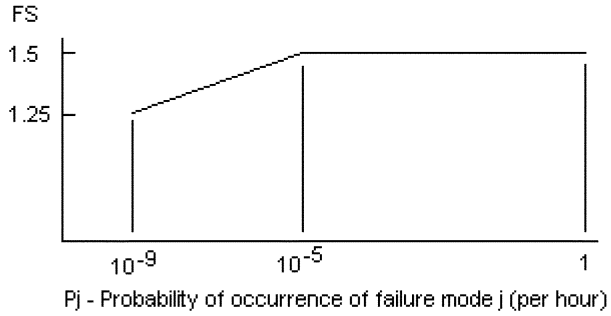
c. The airplane must meet the aeroelastic stability requirements of § 25.629.

2. *System in the failure condition.* For any system-failure condition not shown to be extremely improbable, the following apply:

a. At the time of occurrence. Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure and immediately after the failure.

i. For static-strength substantiation, these loads, multiplied by an appropriate factor of safety that is related to the probability of occurrence of the failure, are ultimate loads to be considered for design. The factor of safety is defined in Figure 1, below.

Figure 1: Factor of safety (FS) at the time of occurrence



ii. For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in special condition 2.a.i above. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

iii. Freedom from aeroelastic instability must be shown up to the speeds defined in § 25.629(b)(2). For failure conditions that result in speeds beyond V_C/M_C, freedom from aeroelastic instability must be shown to increased speeds, so that the margins intended by § 25.629(b)(2) are maintained.

iv. Failures of the system that result in forced structural vibrations (oscillatory failures) must not produce loads that could result in detrimental deformation of primary structure.

b. For the continuation of the flight. For the airplane in the system-failed state, and considering any appropriate reconfiguration and flight limitations, the following apply:

i. The loads derived from the following conditions (or used in lieu of the following conditions) at speeds up to V_C/M_C (or the speed limitation prescribed for the remainder of the flight) must be determined:

1. The limit symmetrical maneuvering conditions specified in §§ 25.331 and 25.345.

2. The limit gust and turbulence conditions specified in §§ 25.341 and 25.345.

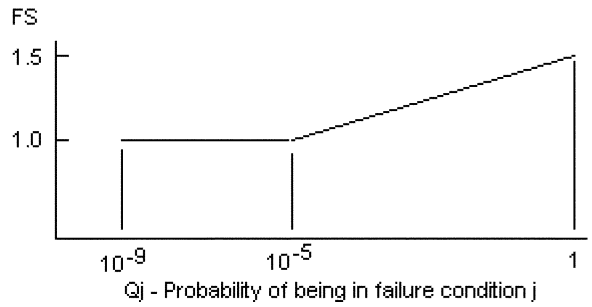
3. The limit rolling conditions specified in § 25.349, and the limit unsymmetrical conditions specified in §§ 25.367, and 25.427(b) and (c).

4. The limit yaw-maneuvering conditions specified in § 25.351.

5. The limit ground-loading conditions specified in §§ 25.473 and 25.491.

ii. For static-strength substantiation, each part of the structure must be able to withstand the loads in special condition 2.b.i., multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety is defined in Figure 2, below.

Figure 2: Factor of safety (FS) for continuation of flight



$Q_j = (T_j)(P_j)$

Where:

Q_j = Probability of being in failure mode j
T_j = Average time spent in failure mode j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

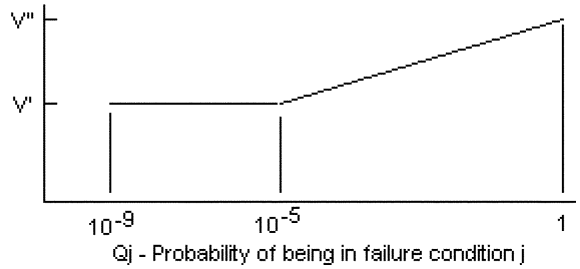
Note: If P_j is greater than 10^{-3} per flight hour, then a 1.5 factor of safety must be applied to all limit load conditions specified in 14 CFR part 25, subpart C.

iii. For residual-strength substantiation, the airplane must be able to withstand two-thirds of the ultimate loads defined in special condition 2.b.ii. For pressurized cabins, these loads must be combined with the normal operating differential pressure.

iv. If the loads induced by the failure condition have a significant effect on fatigue or damage tolerance, then their effects must be taken into account.

v. Freedom from aeroelastic instability must be shown up to a speed determined from Figure 3, below. Flutter clearance speeds V′ and V″ may be based on the speed limitation specified for the remainder of the flight using the margins defined by § 25.629(b).

Figure 3: Clearance speed



V′ = Clearance speed as defined by § 25.629(b)(2).

V″ = Clearance speed as defined by § 25.629(b)(1).

$Q_j = (T_j)(P_j)$

where:

Q_j = Probability of being in failure mode j
T_j = Average time spent in failure mode j (in hours)
P_j = Probability of occurrence of failure mode j (per hour)

Note: If P_j is greater than 10^{-3} per flight hour, then the flutter clearance speed must not be less than V″.

vi. Freedom from aeroelastic instability must also be shown up to V′ in Figure 3, above, for any probable system-failure condition, combined with any damage required or selected for investigation by § 25.571(b).

c. Consideration of certain failure conditions may be required by other sections of 14 CFR part 25 regardless of calculated system reliability. Where analysis shows the probability of these failure conditions to be less than 10^{-9} per flight hour, criteria other than those specified in this paragraph may be used for structural substantiation to show continued safe flight and landing.

3. *Failure indications.* For system-failure detection and indication, the following apply:

a. The system must be checked for failure conditions, not extremely

improbable, that degrade the structural capability below the level required by part 25, or that significantly reduce the reliability of the remaining system. As far as reasonably practicable, the flightcrew must be made aware of these failures before flight. Certain elements of the control system, such as mechanical and hydraulic components, may use special periodic inspections, and electronic components may use daily checks, in lieu of detection and indication systems, to achieve the objective of this requirement. These certification-maintenance requirements must be limited to components that are not readily detectable by normal detection-and-indication systems, and where service history shows that inspections will provide an adequate level of safety.

b. The existence of any failure condition, not extremely improbable, during flight, that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the flightcrew. For example, failure conditions that result in a factor of safety between the airplane strength and the loads of part 25, subpart C, below 1.25, or flutter margins below V'', must be signaled to the crew during flight.

4. *Dispatch with known failure conditions.* If the airplane is to be dispatched in a known system-failure condition that affects structural performance, or that affects the reliability of the remaining system to maintain structural performance, then the provisions of these special conditions must be met, including the provisions of special condition 1, ''System Fully Operative'' for the dispatched condition, and special condition 2, ''System in the Failure Condition'' for subsequent failures. Expected operational limitations may be taken into account in establishing P_j as the probability of failure occurrence for determining the safety margin in Figure 1. Flight limitations and expected operational limitations may be taken into account in establishing Q_j as the combined probability of being in the dispatched failure condition and the subsequent failure condition for the safety margins in Figures 2 and 3. These limitations must be such that the probability of being in this combined failure state, and then subsequently encountering limit load conditions, is extremely improbable. No reduction in these safety margins is allowed if the subsequent system-failure rate is greater than 10^{-3} per flight hour.

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. 2022–06178 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2021–0896; Special Conditions No. 25–812–SC]

Special Conditions: Dassault Aviation Model Falcon 6X Airplane; Electronic-System Security Protection From Unauthorized Internal Access

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for 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 design feature is a digital systems architecture for the installation of a system with wireless and hardwired network and hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on Dassault on March 24, 2022. Send comments on or before May 9, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2021–0896 using any of the following methods:

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

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

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions, contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions. Notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to the Information Contact below. Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for this rulemaking.

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

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

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

Comments Invited

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

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

Background

On July 1, 2012, Dassault Aviation applied for a type certificate for its new Model Falcon 5X airplane. 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 its Model Falcon 5X airplane under new Model Falcon 6X. This airplane is a twin-engine business jet with seating for 19 passengers, and has a maximum takeoff weight of 77,460 pounds.

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 (*e.g.,* 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:

A digital systems architecture for the installation of a system with wireless and hardwired network and hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components.

Discussion

The digital systems architecture for the Aircraft Control Domain and the Airline Information Services Domain by unauthorized persons in the Passenger Services Domain system with wireless network and hosted application functionality on these Dassault Falcon 6X airplanes is a novel or unusual design feature for transport category airplanes because it is composed of several connected wireless and hardwired networks. This proposed network architecture is used for a diverse set of airplane functions, including:

- Flight-safety related control and navigation systems,
- airline business and administrative support, and
- passenger entertainment.

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

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

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

Applicability

As discussed above, these special conditions are applicable to 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 a certain novel or unusual design feature 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.

Authority Citation

The authority citation for these special conditions is as follows:

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

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Dassault Aviation Model Falcon 6X airplane for airplane electronic-system security protection from unauthorized internal access.

1. The applicant must ensure that the design provides isolation from, or airplane electronic-system security protection against, access by unauthorized sources internal to the airplane. The design must prevent

inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, and other assets required for safe flight and operations.

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

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

Patrick R. Mullen,

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

[FR Doc. 2022–06205 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0021; Project Identifier MCAI–2020–01088–R; Amendment 39–21994; AD 2021–03–16R1]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

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

ACTION: Final rule; removal; request for comments.

SUMMARY: The FAA is removing Airworthiness Directive (AD) 2021–03–16, which applied to all Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. AD 2021–03–16 required inspecting each sliding door and replacing the upper rail or front roller or removing the front roller from service if necessary. Since the FAA issued AD 2021–03–16, inspection results and further investigation have confirmed that the in-flight loss of a sliding door, which prompted AD 2021–03–16, was an isolated case resulting from incorrect operation and maintenance error. Therefore, the FAA has determined that no unsafe condition is likely to exist or develop on the sliding doors on other helicopters in the fleet. Accordingly, AD 2021–03–16 is removed.

DATES: This AD becomes effective March 24, 2022.

The FAA must receive comments on this 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:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0021; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Union Aviation Safety Agency (EASA) AD, 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: Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–0021 and Project Identifier MCAI–2020–01088–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0175–CN, dated September 13, 2021 (EASA AD 2020–0175–CN) to cancel EASA AD 2020–0175, dated August 5, 2020 (EASA AD 2020–0175) which was issued to correct an unsafe condition for all serial-numbered Airbus Helicopters Model AS 350 and AS 355 helicopters if equipped with a left-hand (LH) and/or right-hand (RH) sliding door. EASA AD 2020–0175 prompted FAA

AD 2021–03–16, Amendment 39–21419 (86 FR 9433, February 16, 2021) (AD 2021–03–16). AD 2021–03–16 applied to Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with any sliding door installed. AD 2021–03–16 required, within 30 hours time-in-service, inspecting the upper rail of each RH and LH door for parallelism, deformation, corrosion, and cracking and repairing or replacing the upper rail before further flight if necessary; and

with each sliding door removed, inspecting the front roller to determine if it is below the minimum diameter and height, if it has any corrosion or flat spot, and if it is correctly installed. If the front roller was below the minimum diameter, below the minimum height, or had any flat spot or corrosion, AD 2021–03–16 required removing the front roller from service before further flight. If the front roller was not correctly installed, AD 2021–03–16 required reinstalling it correctly before further flight.

Actions Since AD 2021–03–16 Was Issued

Since the FAA issued AD 2021–03–16, reported inspection results and further investigation have confirmed that the in-flight loss of the sliding door, which prompted EASA AD 2020–0175 and AD 2021–03–16, was an isolated case resulting from incorrect operation and maintenance error, and therefore no unsafe condition is likely to exist or develop on the affected helicopters. The FAA is issuing this AD to remove AD 2021–03–16.

Justification for Immediate Adoption and Determination of the Effective Date

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

There are currently 965 helicopters of U.S. registry affected by AD 2021–03–16. However, the FAA notes that AD 2021–03–16 required unnecessary inspections because the identified unsafe condition does not exist on these helicopters. Therefore, it is unlikely that the FAA would receive any adverse comments or useful information about this AD from U.S. operators that would cause a need for public comment prior to adoption. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the foregoing reasons, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

FAA's Conclusions

Upon further consideration, the FAA has determined that AD 2021–03–16 is not necessary. Accordingly, this AD removes AD 2021–03–16. Removal of AD 2021–03–16 does not preclude the FAA from issuing another related action or commit the FAA to any course of action in the future.

Regulatory Flexibility Act

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

Related Costs of Compliance

This AD adds no cost. This AD removes AD 2021–03–16 from 14 CFR part 39; therefore, operators are no longer required to show compliance with that AD.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority.

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866; and

2. Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–03–16, Amendment 39–21419 (86 FR 9433, February 16, 2021), and

■ b. Adding the following new AD:

2021–03–16R1 Airbus Helicopters: Amendment 39–21994; Docket No. FAA–2021–0021; Project Identifier MCAI–2020–01088–R.

(a) Effective Date

This airworthiness directive (AD) becomes effective March 24, 2022.

(b) Affected AD

This AD replaces AD 2021–03–16, Amendment 39–21419 (86 FR 9433, February 16, 2021).

(c) Applicability

This airworthiness directive (AD) applies to Airbus Helicopters Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters, certificated in any category, with any sliding door installed.

(d) Subject

Joint Aircraft System Component (JASC) Code 5210, Passenger/Crew Doors.

(e) Related Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, General Aviation & Rotorcraft Unit, Airworthiness Products Section, Operational Safety Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone 817–222–5110; email *matthew.fuller@faa.gov.*

(2) The subject of this AD is addressed in European Union Aviation Safety Agency (EASA) AD No. 2020–0175–CN, dated September 13, 2021. You may view the EASA AD on the internet at *https://www.regulations.gov* by searching for and locating it in Docket No. FAA–2021–0021.

(f) Material Incorporated by Reference

None.

Issued on March 17, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06043 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 997

[Docket No. 220228–0064]

RIN 0648–BK83

U.S. Integrated Ocean Observing System Office, Legislation; Name Change

AGENCY: U.S. Integrated Ocean Observing System (IOOS), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule, technical amendment.

SUMMARY: The U.S. Integrated Ocean Observing System Office, led by the National Oceanic and Atmospheric Administration (NOAA), issues this final rule to change the name for ''Regional Information Coordination Entities (RICEs)'' to ''Regional Coastal Observing Systems.'' This rule has no substantive effect.

DATES: These regulations are effective on March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Oriana Villar at 240–533–9466 or *Oriana.Villar@noaa.gov*, or at U.S. IOOS Office, 1315 East West Highway, Suite 300, Silver Spring, MD 20910.

SUPPLEMENTARY INFORMATION: The Integrated Coastal and Ocean Observation System (ICOOS) Act of 2009 (Pub. L. 111–11) (ICOOS Act or Act, codified at 33 U.S.C. 3601–3610) and the Coordinated Ocean Observation and Research Act of 2020 (Pub. L. 116–271, Title I) (COORA, amending 33 U.S.C. 3601–3610), directs the President to establish a National Integrated Coastal and Ocean Observation System (System). The System must ''include in situ, remote, and other coastal and ocean observation and modeling capabilities, technologies, data management, communication systems, and product development systems and [be] designed to address regional and national needs for ocean and coastal information, to gather specific data on key coastal, ocean, and Great Lakes variables, and to ensure timely and sustained dissemination and availability of these data.'' 33 U.S.C. 3601(1).

The ICOOS Act and COORA direct the Interagency Ocean Observation Committee (IOOC) to develop contract certification standards and compliance procedures for integrating regional coastal observing systems into the System. 33 U.S.C. 3603(c)(2)(B)(v). The COORA Act, in amending the ICOOS Act, replaces the term Regional Information Coordination Entity (RICE) with the term Regional Coastal Observing System (RCOS). The term '''regional coastal observing system' means an organizational body that is certified or established by contract or memorandum by the lead Federal agency designated in section 12304(c)(3) and coordinates Federal, State, local, tribal, and private interests at a regional level with the responsibility of engaging the private and public sectors in designing, operating, and improving regional coastal observing systems in order to ensure the provision of data and information that meet the needs of user groups from the respective regions.''

NOAA promulgated regulations in 2014 to develop certification criteria and procedures for integrating RICEs into the system. (June 5, 2014; 79 FR 32449). These regulations are found at 15 CFR part 997.

By this final rule, NOAA is officially changing the name of the Regional Information Coordination Entity (RICE) to reflect the new name, Regional Coastal Observing System (RCOS), as defined in the COORA. This change is necessary to implement the new name established by the COORA in the implementing regulations. This name change has no substantive impact.

By this final rule, NOAA is also updating its mailing address in 997.11(b) and changing the name of the ''U.S. IOOS Program Office'' to the ''U.S. IOOS Office'' in 997.20(b), 997.23(f)(5), 997.23(f)(5), and 997.24(a). These changes also do not have substantive impacts.

I. Classifications

A. Administrative Procedures Act

This rule pertains solely to the renaming of ''Regional Information Coordination Entities (RICEs)'' to ''Regional Coastal Observing Systems (RCOSs)'' in an existing rule necessitated by the Coordinated Ocean Observation and Research Act of 2020 (Pub. L. 116–271, Title I). NOAA also is updating its mailing address and updating the name of the IOOS Office. It makes no changes to the substantive legal rights, obligations, or interests of affected parties. This rule therefore is a ''rule of agency organization, procedure or practice'' and is therefore exempt from the notice-and-comment requirements of 5 U.S.C. 553 under 5 U.S.C. 553(b)(A). Nor is a 30-day delay in effective date required under 5 U.S.C. 553(d) due to the non-substantive nature of this technical amendment.

B. Executive Order 12866: Regulatory Impact

This rule has been determined to be not significant within the meaning of Executive Order 12866.

C. Paperwork Reduction Act

This rule does not contain any new or revisions to the existing information collection requirement that was approved by OMB (OMB Control Number 0648–0672, Application to be Certified as a Regional Information Coordination Entity) under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.* 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. Regulatory Flexibility Act

This regulation is exempt from the notice and comment provisions of the Administrative Procedures Act (APA), 5 U.S.C. 553. Therefore, the requirements of the Regulatory Flexibility Act do not apply, 5 U.S.C. 603(a). No other rule requires a regulatory flexibility analysis and none has been prepared.

List of Subjects in 15 CFR Part 997

Science and technology.

Nicole R. LeBoeuf,

Assistant Administrator, for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

Accordingly, for the reasons set forth above, 15 CFR part 997 is amended as follows:

PART 997— REGIONAL COASTAL OBSERVING SYSTEM

■ 1. The authority citation for part 997 is revised to read as follows:

Authority: 33 U.S.C. 3602–3603.

■ 2. In part 997:

■ a. Revise the part heading to read as set forth above.

■ b. Remove the text ''Regional Information Coordination Entity (RICE)'' wherever it appears and add in its place

the text ''Regional Coastal Observing System (RCOS)'';

■ c. Remove the text ''a RICE'' wherever it appears and add in its place the text ''an RCOS'';

■ d. Remove the text ''RICE'' wherever it appears and add in its place the text ''RCOS''; and

■ e. Remove the text ''U.S. IOOS Program Office'' wherever it appears and add in its place the text ''U.S. IOOS Office''.

■ 3. In § 997.11, revise paragraph (b) to read as follows:

§ 997.11 Application process.

* * * * *

(b) Submission shall be made to NOAA at the following address, or to such other address as may be indicated in the future: Director U.S. IOOS Office, NOAA, 1315 East West Hwy., Suite 3000, Silver Spring, MD 20910. Submissions may also be made online at *http://www.ioos.noaa.gov/certification.*

[FR Doc. 2022–06196 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–JE–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1307

[Docket No. CPSC–2014–0033]

Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates

AGENCY: Consumer Product Safety Commission.

ACTION: Request for comments.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is publishing this document following a Federal court opinion remanding the Commission's final phthalates rule to allow the Commission to address two procedural deficiencies found by the court. This document seeks public comment regarding the justification for the phthalates final rule and the staff's cost-benefit analysis for continuing the interim prohibition on DINP.

DATES: Written comments should be submitted by May 9, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2014–0033, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. The CPSC does not accept comments submitted by electronic mail (email), except through *https://www.regulations.gov* and as described below. The CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier Submissions: Submit comments by mail/hand delivery/courier to: Division of the Secretariat, Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7479. Alternatively, as a temporary option during the COVID–19 pandemic, you can email such submissions to: *cpsc-os@cpsc.gov.*

Instructions: All submissions received must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for written submissions.

Docket: For access to the docket to read background documents or comments received, go to: *https://www.regulations.gov,* and insert the docket number, CPSC–2014–0033, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Susan Proper, Directorate for Economic Analysis, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7628; email: *sproper@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 108(b)(3) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) required the Commission to promulgate a final rule addressing children's toys and child care articles containing certain phthalates not later than 180 days after the Commission received a final Chronic Hazard Advisory Panel (CHAP) report.[1] The Commission was required to ''determine, based on such report, whether to continue in effect the [interim] prohibition'' on children's toys that can be placed in a child's mouth and child care articles ''in order to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' 15 U.S.C. 2057c (b)(3)(A). Additionally, the Commission was required to ''evaluate the findings and recommendations of the Chronic Hazard Advisory Panel and declare any children's product containing any phthalates to be a banned hazardous product under section 8 of the Consumer Product Safety Act (15 U.S.C. 2057), as the Commission determines necessary to protect the health of children.'' 15 U.S.C. 2057c (b)(3)(B).

On December 30, 2014, the Commission published a notice of proposed rulemaking (NPRM) in the **Federal Register**. 79 FR 78324. The Commission published a final rule on October 27, 2017, with an effective date of April 25, 2018. 82 FR 49938. The final rule was substantially the same as the proposed rule. The preambles of the NPRM and final rule provide more detailed discussions of the CHAP report and staff's technical analysis and findings in support of the rule.

In December 2017, the Texas Association of Manufacturers and others petitioned the U.S. Court of Appeals for the Fifth Circuit for a review of the CPSC's final phthalates rule. In March 2021, the court remanded without vacating the phthalates final rule to the CPSC to address two procedural deficiencies found by the court. *Tex. Ass'n of Mfrs.* v. *United States Consumer Prod. Safety Comm'n,* 989 F.3d 368 (5th Cir. 2021). As relevant here, the court held that the final rule had failed to: (1) Provide adequate notice and comment regarding a change in the primary justification from the proposed rule to the final rule; and (2) consider the costs and benefits of continuing the interim prohibition on DINP. This document is being published to address these two procedural deficiencies. We note that the court did not vacate the final rule, and thus the rule remains in effect.

II. Request for Comments

A. Phthalates Final Rule Justification

The Fifth Circuit held that the phthalates final rule did not provide adequate notice and comment regarding a change in the primary justification between the proposed rule and the final rule. The court remanded the rule to allow CPSC to seek public comment on the justification for the final rule. The Commission's justification for the proposed rule was based on data demonstrating that 10 percent of pregnant women had a Hazard Index (HI) greater than one, which exceeded the acceptable risk, and that the average

[1] The Commission voted 4–0 to approve this notice.

HI was five at the 95th percentile. *See* 79 FR 78328–32. The Commission's justification for the proposed rule was based on available data showing that a statistically stable, non-zero percentage of the women studied had an HI greater than one and that an HI less than or equal to one is necessary ''to ensure a reasonable certainty of no harm to children, pregnant women, or other susceptible individuals with an adequate margin of safety.'' *See* 79 FR 78334–35.

After publication of the proposed rule, the Commission examined new data using the CHAP's original methodology. Based on the new data, the Commission determined that phthalate exposures had changed over time and that there were too few samples in the study with an HI above one to make a statistically reliable estimate for the population of the number or percentage of women of reproductive age with an HI greater than one. No new data on infants were available, so risk estimates for this population did not change in the updated analysis. Based on the new data for women of reproductive age, the Commission found that the risk of antiandrogenic effects had decreased, and that the HI at the 95th percentile had decreased from five to less than one. 82 FR 49958. Based on the new data, the Commission could not determine exactly what percentage of the women studied had an HI greater than one but did state that ''between two and nine real women from the sample of 538 [women of reproductive age] had an HI greater than one.'' *Id.* The Commission's justification for the final rule was based on the facts that between two and nine individual samples had HI levels greater than one and not the 10 percent of women who had exposures described in the proposed rule, and that no new data on infants were available. For details regarding the respective justifications, potential commenters are directed to the preamble of the respective **Federal Register** notices for the proposed and final rule.

The court of appeals held that the Commission did not provide adequate notice and comment when it changed the justification for the prohibitions in the proposed rule to the final rule. Accordingly, the Commission is publishing this notice to request public comment regarding the justification for the final rule.

B. Request for Comment on Cost-Benefit Analysis of Continuing Interim DINP Prohibition

The Fifth Circuit held that the final phthalates rule was deficient because it did not consider the costs and benefits of continuing the interim prohibition on DINP. Specifically, the court found that the Commission was required at least to consider the cost, as well as the effect on utility and availability of products containing DINP, to determine whether to continue the interim prohibition.

The staff of the Directorate for Economic Analysis has conducted a cost-benefit analysis regarding continuing the interim prohibition on DINP in the final rule. The staff memorandum ''Cost-Benefit Analysis of Continuing the Interim DINP Prohibition in the Final Rule: 16 CFR part 1307 'Prohibition of Children's Toys and Child Care Articles Containing Specified Phthalates' '' can be found here. *https://www.cpsc.gov/s3fs-public/CostBenefitAnalysisDINPinPhthalatesFinalRule.pdf?VersionId=4dQErAhY2cQdvQpf1I8rAqTNCjinie_h.* The Commission requests public comment regarding the cost-benefit analysis of continuing the interim prohibition on DINP in the final rule.

III. Submission of Comments

We request comments on two issues: The rationale for the final rule in section II.A; and the cost-benefit analysis of continuing the DINP interim prohibition discussed in section II.B of this document. Only comments submitted regarding the rationale for the final rule and/or the cost-benefit analysis of continuing the DINP interim prohibition will be considered. Comments submitted on any other issues are out of scope and will not be considered. Finally, untimely submitted comments will not be considered.

Information regarding the court decision is available on the CPSC website or *http://www.regulations.gov,* under Docket No. CPSC–2014–0033, Supporting and Related Materials. Alternatively, interested parties may obtain a copy of the court decision by writing or calling the Division of the Secretariat, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–6833.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–06223 Filed 3–23–22; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF STATE

22 CFR Part 22

[Public Notice: 11649]

RIN 1400–AF48

Schedule of Fees for Consular Services—Elimination of the "Return Check Processing Fee"

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State (the Department) is adjusting the Schedule of Fees for Consular Services (Schedule) by removing Item Number 74, a $25 return check processing fee. Domestically, the Bureau of Consular Affairs, Office of Passport Services (CA/PPT), has charged customers this fee when the instruments they have used to submit payment for a passport application could not be processed due to insufficient funds, closed accounts, stop payments, and altered/fictious checks or money orders. A recent review of the Department's Cost of Service Model (CoSM) established that the costs associated with attempts to recover on non-viable instruments are now captured within the passport application fee. The Department therefore stopped charging this fee on December 13, 2021, and will remove this fee from the Schedule.

DATES: This rule is effective March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Johanna Cruz, Management Analyst, Office of the Comptroller, Bureau of Consular Affairs, Department of State; phone: 202–485–8915, email: *fees@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

This rule makes changes to the Schedule of Fees in 22 CFR 22.1 by removing Item Number 74, the $25 return check processing fee, from the Schedule of Fees. This fee was added to the Schedule in 1991 to recoup the cost of time spent by passport office personnel attempting to recover on bad checks applicants had submitted to the Department. According to the Passport Directorate's research, in FY 1989 there were approximately 8,800 bad checks and money orders, which required an estimated 5,400 staff hours to process. This fee has only been charged domestically; overseas posts do not accept personal checks and have not charged the fee. A recent review of the Department's CoSM established that the costs associated with the return check processing fee are now captured within

a portion of the passport application fee the Department already charges.

What is the authority for this action?

The Department of State's general authority to set and charge fees for consular services it provides derives from the user charges statute, 31 U.S.C. 9701. *See, e.g.,* 31 U.S.C. 9701(b)(2)(A) (''The head of each agency . . . may prescribe regulations establishing the charge for a service or thing of value provided by the agency . . . based on . . . the costs to the government.''). Various statutes permit the Department of State to retain some of the fee revenue it collects (*e.g.,* passport security surcharge, immigrant visa security surcharge, affidavit of support, etc.), but the Department of State lacks statutory authority to retain the return check processing fee. As with many other consular fees, all collections of this fee must be deposited into the general fund of the Treasury pursuant to the Miscellaneous Receipts Statute, 31 U.S.C. 3302(b). The Department likewise does not retain the passport application fee. *See* 22 U.S.C. 214(a) (''There shall be collected and paid into the Treasury of the United States a fee, prescribed by the Secretary of State by regulation, for the filing of each application for a passport . . . .'').

Activity-Based Costing

To set fees in accordance with the general user charges principles set forth in 31 U.S.C. 9701, the Department must calculate the true cost to the U.S. government of providing each consular service. Following guidance provided in ''Managerial Cost Accounting Concepts and Standards for the Federal Government,'' OMB's Statement #4 of Federal Accounting Standards (SFFAS #4), *available at http://www.fasab.gov/pdffiles/sffas-4.pdf,* the Department chose to develop its CoSM using an Activity-Based Costing (ABC) methodology to determine the true cost of each consular service.

The Government Accountability Office (GAO) defines ABC as a ''set of accounting methods used to identify and describe costs and required resources for activities within processes.'' Organizations can use the same staff and resources (computer equipment, production facilities, etc.) to produce multiple products or services; therefore, ABC models seek to identify and assign costs to processes and activities and then to individual products and services through the identification of key cost drivers referred to as ''resource drivers'' and ''activity drivers.'' The goal is to proportionally and accurately distribute costs. ABC models require financial and accounting analysis and modeling skills combined with a detailed understanding of an organization's business processes. SFFAS Statement #4 provides a detailed discussion of the use of cost accounting by the U.S. Government.

The ABC approach focuses on the activities required to produce a particular service or product and uses resource drivers to assign costs through activities and activity drivers to assign costs from activities to services. In the context of the work of the Department's Bureau of Consular Affairs (CA), resource drivers assign costs (resources including materials, supplies, and labor utilized in the production or delivery of services and products) to activities using business rules that reflect the operational reality of CA and the data available from consular systems, surveys, and internal records. Most resource drivers are based on time spent on each activity. Activity drivers assign the cost of consular activities to the services CA provides. Most activity drivers are based on volumes.

Why is the department removing this fee?

Based on feedback from CA/PPT's field offices, the Department evaluated whether there was a need to charge the $25 return check processing fee. Upon review, it was determined that the costs associated with this service are now captured in the CoSM's cashiering activity, which is accounted for in the passport application fee the Department already charges. The Department therefore no longer needs to charge the return check processing fee in order to recover the costs of providing this service.

Regulatory Findings

Administrative Procedure Act

As removal of this fee constitutes a benefit, this rule is published as a final rule under the authority of 5 U.S.C. 553(a)(2). Since the rule is exempt from § 553, this rule is effective upon publication.

Regulatory Flexibility Act

The Department has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities as defined in 5 U.S.C. 601(6).

Unfunded Mandates Act of 1995

This rule will not 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, 2 U.S.C. 1501–1504.

Congressional Review Act

This rule is a not major rule as defined by 5 U.S.C. 804(2).

Executive Order 12866

The Department has reviewed this rule to ensure its consistency with the regulatory philosophy and principles set forth in the Executive Order and affirms that this regulation is consistent with the guidance therein. The Office of Management and Budget has designated this rule not significant for purposes of E.O. 12866.

Details of the changes to the Schedule of Fee are as follows:

TABLE 1—CHANGES TO THE SCHEDULE OF FEES

Item No.	Proposed fee	Current fee	Change in fee	Percentage increase	Projected annual number of applications [1]	Estimated change in annual fees collected [2]	Change in state retained fees	Change in remittance to Treasury
SCHEDULE OF FEES FOR CONSULAR SERVICES								
*	*	*	*	*		*	*	
ADMINISTRATIVE SERVICES								
*	*	*	*	*		*	*	
PPT								

TABLE 1—CHANGES TO THE SCHEDULE OF FEES—Continued

Item No.	Proposed fee	Current fee	Change in fee	Percentage increase	Projected annual number of applications [1]	Estimated change in annual fees collected [2]	Change in state retained fees	Change in remittance to Treasury
* * *			*	*		*	*	
74. Return Check Processing Fee	$0	$25	($25)	(100%)	8,293	($207,325)	$0	($207,325)

[1] Based on estimated FY 2021 workload calculated with 8/1/2021 actual demand.
[2] Using FY 2021 workload to generate collections. This will be a reduction in total annual remittance to Treasury.

Executive Orders 12372 and 13132

This regulation 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 section 6 of Executive Order 13132, it is determined that this rule 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 regulation.

Executive Order 13175

The Department has 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, the requirements of Executive Order 13175 do not apply to this rulemaking.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 22

Consular services, Fees.

Accordingly, for the reasons stated in the preamble, 22 CFR part 22 is amended as follows:

PART 22—SCHEDULE OF FEES FOR CONSULAR SERVICES—DEPARTMENT OF STATE AND FOREIGN SERVICE

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

Authority: 8 U.S.C. 1101 note, 1153 note, 1157 note, 1183a note, 1184(c)(12), 1201(c), 1351, 1351 note, 1713, 1714, 1714 note; 10 U.S.C. 2602(c); 22 U.S.C. 214, 214 note, 1475e, 2504(h), 2651a, 4206, 4215, 4219, 6551; 31 U.S.C. 9701; Exec. Order 10718, 22 FR 4632 (1957); Exec. Order 11295, 31 FR 10603 (1966).

■ 2. Amend § 22.1 by

■ a. Revising the introductory text; and

■ b. In the table, removing and reserving entry 74.

The revision reads as follows:

§ 22.1 Schedule of Fees

The following table sets forth the fees for the following categories listed on the U.S. Department of State's Schedule of Fees for Consular Services:

* * * * *

Rena Bitter,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 2022–06131 Filed 3–23–22; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0750]

RIN 1625–AA00

Safety Zone; Chesapeake Bay, Craighill Channel, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone on certain navigable waters of the Chesapeake Bay. This action is necessary to provide for the safety of persons and the marine environment from the potential safety hazards associated with the damage assessment and salvage of the grounded freight ship EVER FORWARD, through 9 p.m. on April 13, 2022. This rule prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port, Maryland-National Capital Region or a designated representative.

DATES: This rule is effective without actual notice from March 24, 2022 until 9 p.m. on April 13, 2022. For the purposes of enforcement, actual notice will be used from 9 p.m. on March 20, 2022, until March 24, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0750 in the ''SEARCH'' box and click ''SEARCH.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Ron Houck, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2674, email *Ronald.L.Houck@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

On March 14, 2022, the Coast Guard issued a final rule establishing a temporary safety zone on certain navigable waters of the Chesapeake Bay to protect persons and vessels during damage assessment and salvage operations at the grounded 1,102-foot Hong Kong-flagged motor vessel EVER FORWARD. The orignal rule runs through 9 p.m. on March 20, 2022. However, additional time is needed to conduct the damage assessment and salvage operations and, as a result, the Coast Guard needs to extend the safety zone through 9 p.m. on April 13, 2022. The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this extension because it

would be impracticable and contrary to the public interest. The Coast Guard was unable to publish an NPRM and hold a reasonable comment period for this rulemaking due to the emergent nature of the continuing damage assessment and salvage operations and required publication of this extension. Immediate action is needed to continue to protect persons and vessels from the hazards associated with carrying out damage assessment and salvage operations of the motor vessel EVER FORWARD that must occur within the federal navigation channel. It is impracticable and contrary to the public interest to publish an NPRM, because the extension needs to be in place by March 21, 2022.

We are issuing this rule under 5 U.S.C. 553(d)(3), and in accordance with 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest, because immediate action is needed to continue to respond to the potential safety hazards associated with damage assessment and salvage operations of the motor vessel EVER FORWARD being conducted within the federal navigation channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The COTP has determined there are potential hazards associated with damage assessment and salvage operations. The work is a safety concern for anyone transiting the Chesapeake Bay within a 500-yard radius of the motor vessel EVER FORWARD. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the damage assessment and salvage operations are being conducted.

IV. Discussion of the Rule

This rule extends the effective dates of an established safety zone, originally established on March 14, 2022 and effective through 9 p.m. on March 20, 2022, through 9 p.m. on April 13, 2022. The safety zone includes all navigable waters within 500 yards of the motor vessel EVER FORWARD. The extended duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while damage assessment and salvage operations are conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size of the safety zone, which will impact only vessel traffic required to transit certain navigation channels of the Chesapeake Bay for a total of no more than 30 days. Although this waterway supports both commercial and recreational vessel traffic, portions of the federal navigation channel in the Chesapeake Bay will be opened as damage assessment and salvage operations allow. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or

more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone that prohibits entry within 500 yards of the motor vessel EVER FORWARD. It is categorically excluded from further review under paragraph L60(d) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0750 to read as follows:

§ 165.T05–0750 Safety Zone; Chesapeake Bay, Craighill Channel, MD.

(a) *Location.* The following area is a safety zone: All navigable waters of the Chesapeake Bay, within a 500-yard radius of the motor vessel EVER FORWARD during damage assessment and salvage operations.

(b) *Definitions.* As used in this section—

Captain of the Port (COTP) means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

Designated representative means any Coast Guard commissioned, warrant, or petty officer, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone number 410–576–2693 or on Marine Band Radio VHF–FM channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 9 p.m. on March 20, 2022, through 9 p.m. on April 13, 2022.

Dated: March 17, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-NCR.

[FR Doc. 2022–06230 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0487; FRL–8931–03–R3]

Air Plan Approval; West Virginia; 2020 Amendments to West Virginia's Ambient Air Quality Standards; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) issued a final rule on September 23, 2021, entitled ''Air Plan Approval; West Virginia; 2020 Amendments to West Virginia's Ambient Air Quality Standards.'' This current action corrects an inadvertent error in the **DATES** section of the final rule by setting an effective date for the state implementation plan (SIP) revision submitted by the State of West Virginia. West Virginia's revision updated the incorporation by reference of EPA's national ambient air quality standards (NAAQS) and the associated monitoring reference and equivalent methods. This correction does not change West Virginia's previously approved incorporation by reference, only the **DATES** section in the preamble removing the request for comments and replacing it with the effective date assigned to it.

DATES: This correction is effective March 24, 2022, and is applicable beginning October 25, 2021.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R03–OAR–2020–0487. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *https://www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Serena Nichols, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The telephone number is (215) 814–2053. Ms. Nichols can also be reached via electronic mail at *Nichols.Serena@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 23, 2021 (86 FR 52837), EPA published a final rule action announcing our approval of West Virginia's revision updating the incorporation by reference of EPA's NAAQS and the associated monitoring reference and equivalent methods. In the document, we inadvertently opened another comment period instead of setting an effective date for the rule. EPA had previously opened a 30-day public comment period for this action in the notice of proposed rulemaking (NPRM) published on February 9, 2021

(86 FR 8727) and responded to the comments received in response to the NPRM in the September 23rd final rule, so the provision of another comment period was an error in EPA's final action. This document corrects the erroneous language. This document has no impact on West Virginia's incorporation by reference of the NAAQS or the Clean Air Act (CAA) requirements applicable to West Virginia, only the effective date.

Need for Correction

As published, the September 23, 2021 final rule opens another comment period instead of setting an effective date.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without another prior proposal and opportunity for comment because, as explained here and in the explanation above, the change to the rule is a minor correction, it is noncontroversial in nature, and does not substantively change the requirements of West Virginia's incorporation by reference of the NAAQS. Rather, the change sets the necessary effective date of this previously approved SIP revision. Thus, notice and opportunity for public comment are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(B).

Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving a correction to the West Virginia SIP revision incorporating by reference the NAAQS that previously appeared in the **Federal Register** on September 23, 2021 (86 FR 52837), may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Correction

In the **Federal Register** of September 23, 2021, 86 FR 52837, correct the **DATES** to read: **DATES:** This final rule is effective on October 25, 2021.

Dated: March 8, 2022.

Diana Esher,

Acting Regional Administrator, Region III.

[FR Doc. 2022–06127 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 162

RIN 1625–ZA42

[Docket No. USCG–2019–0477]

Final Policy Letter Describing Type-Approval Testing Methods for Ballast Water Management Systems (BWMS) That Render Organisms Nonviable in Ballast Water

AGENCY: Coast Guard, DHS.

ACTION: Final policy; notification.

SUMMARY: The Coast Guard announces the availability of the final policy letter that describes type-approval testing methods, and the acceptance process for such methods, for ballast water management systems (BWMS) that render organisms nonviable in ballast water. At this time, the Coast Guard does not accept any type-approval testing methods for ballast water management systems that render organisms in ballast water nonviable (meaning ''permanently incapable of reproduction''). In consideration of public comments on the draft policy letter, this final policy letter establishes the mechanism for reviewing and integrating viability testing methods into the existing Coast Guard type-approval testing program. The Coast Guard invites submissions of viability testing methods in accordance with the policy letter at any time following publication. The Coast Guard will review any provided information responsive to the policy letter and enclosure. This final policy letter is subject to revision, in coordination with the Environmental Protection Agency, contingent on any Coast Guard determination that a viability testing method is acceptable.

DATES: The final policy letter announced in this notification is issued as of February 28, 2022.

ADDRESSES: To view the final policy letter, as well as comments mentioned in this notice as being available in the docket, go to *https://www.regulations.gov*, type ''USCG–2019–0477,'' and click ''Search.'' To see the final policy letter, click on this notice in the search results, and then click ''View More Documents.'' To see comments, click on the July 2019 Draft Policy Letter notice in the search results, and then click ''View Related Comments.''

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Reudelhuber, Environmental Standards Division, 202–372–1432.

SUPPLEMENTARY INFORMATION:

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I. Abbreviations
II. Background
III. Summary of Changes From the Draft Policy Letter to the Final Policy Letter
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V. Periodic Review of Viability Testing Methods
VI. Environmental Aspect and Impact Considerations
VII. Paperwork Reduction Act
VIII. Public Availability of the Final Policy Letter

I. Abbreviations

BWMS Ballast Water Management System
CFR Code of Federal Regulations
DHS Department of Homeland Security
ETV Environmental Technology Verification Program
FR Federal Register
IL Independent Laboratory
IMO International Maritime Organization
MPN Most Probable Number
NEPA National Environmental Policy Act
U.S.C. United States Code
USCG U.S. Coast Guard
VIDA Vessel Incidental Discharge Act of 2018

II. Background

The Vessel Incidental Discharge Act of 2018 (VIDA) found at Title IX of the Frank LoBiondo Coast Guard Authorization Act of 2018, Public Law 115–282, amended Section 312(p) of the Federal Water Pollution Control Act (33 U.S.C. 1322). Pursuant to 33 U.S.C. 1322(p)(6)(D)(ii), the Coast Guard published a draft policy letter in the **Federal Register** on July 31, 2019 (84 FR 37330), receiving 38 submissions to the docket.

The final policy letter is issued pursuant to 33 U.S.C. 1322(p)(6)(D)(iv))which requires the

Coast Guard [1] to describe type-approval testing methods, if any, for ballast water management systems (BWMS) that render organisms nonviable in ballast water and may be used in addition to the methods established in title 46 Code of Federal Regulations (CFR) subpart 162.060. As more fully discussed below, we do not describe any type-approval testing methods for BWMS that render organisms nonviable in ballast water in this policy letter. Rather, this policy letter establishes the categories of information the Coast Guard deems necessary for the evaluation of viability testing methods on the basis of best available science and describes implementation of any accepted methods. The Coast Guard will take into consideration any method that uses organism grow-out and most probable number statistical analysis to determine the concentration of organisms in ballast water that are capable of reproduction. The Coast Guard will not take into consideration any method that relies on a staining method to measure the concentration of organisms greater than or equal to 10 micrometers and organisms less than or equal to 50 micrometers. The term ''stain'' is undefined in VIDA and is not consistently used in science to describe a specific scientific procedure. A ''stain'' is defined by Merriam Webster's dictionary [2] in relevant part as a dye or mixture of dyes used in microscopy to make visible minute and transparent structures, to differentiate tissue elements or to produce specific chemical reactions. According to this definition, a ''stain'' acts by suffusing with color; coloring by processes affecting chemically or otherwise the material itself. The Coast Guard will assess any evaluated type-approval testing method to determine if it utilizes a stain.

In accordance with 33 U.S.C. 1322(p)(6)(D)(iv), and 46 CFR subpart 162.060, accepted viability testing methods outlined in this policy letter or in future revisions are an alternative to testing procedures in 46 CFR subpart 162.060, including the EPA/600/R–10/146, Environmental Technology Verification (ETV) Program Generic Protocol for the Verification of Ballast Water Treatment Technologies (ETV Protocol).[3]

III. Summary of Changes From the Draft Policy Letter to the Final Policy Letter

A. Summary of Changes

The final policy letter contains a number of changes from the draft policy letter. This section lists all of the changes made to the draft policy letter. Most of the changes discussed below are being made as a direct response to submitted comments. A full discussion of the comments and Coast Guard responses is available at Section IV below.

1. Administrative Process

As discussed in greater detail below, several comments focused on the Coast Guard's administrative process in issuing the draft policy letter. In Section 8 of the final policy letter, titled ''Process for acceptance and use of new protocols,'' the Coast Guard added additional details regarding the specific steps the Coast Guard will undertake in fulfilling the administrative procedural requirements associated with accepting a type-approval testing method.

2. Coast Guard Awareness of Available Testing Methods

As discussed in greater detail below, many comments were directed at the Coast Guard's statement in the draft policy letter that, ''[a]t the time of [publication of the draft policy letter], the Coast Guard does not know of any type-approval testing protocols for BWMS that render organisms nonviable in ballast water that are based on best available science.'' In light of those comments, in the final policy letter the Coast Guard clarifies that it is not that we are unaware of viability testing methods; rather we are unaware of viability testing methods that are *based on best available science.* As more fully explained below, the acceptability of viability testing methods is predicated on these methods being based on best available science, which requires the ability to access and evaluate the supporting scientific information.

3. Acceptance of Facility or Site-Specific Versus Generally Applied Testing Methods

In the draft policy letter, the Coast Guard did not address the potential to accept facility or site-specific viability testing methods. This topic has been added to the final policy letter, along with an explanation below of the circumstances in which information on facility or site-specific viability testing methods would be assessed.

4. Scope and Applicability of ''Permanently''

In the draft policy letter, the Coast Guard described the applicability of an accepted viability testing method within the existing type-approval testing protocol. In this final policy letter, the Coast Guard describes in detail a limitation on the applicability of the term ''permanently'' to those viability testing methods addressed by the final policy letter, not to any testing methods in the existing requirements in 46 CFR subpart 162.060.

5. Opportunity To Submit Viability Testing Methods

The Coast Guard's draft policy letter explained the process for our evaluation of any data and information that we may receive for assessing a type-approval method. However, the draft policy letter focused on establishing the type of information and material that the public and stakeholders should provide to the Coast Guard in the form of proposals for specific viability testing methods. We have revised the final policy letter to clarify that the Coast Guard assumes the burden for assessing information regarding available viability testing methods. In this policy letter, the Coast Guard provides an explanation of the best available science decision-making process. Further details can be found below in the relevant responses to comments, as well as in the final policy letter, and the Enclosure to the final policy letter.

6. Requirement to Consider Most Probable Number (MPN)

The legislative requirement in 33 U.S.C. 1322(p)(6)(D)(v) to consider MPN was not explicitly addressed in the draft policy letter. In the final policy letter, we make clear that the Coast Guard will take MPN-based methods into consideration.

7. Requirement for Minimum Precision and Accuracy

The Coast Guard's initial position in the draft policy letter stated that viability testing methods would need to include statistical data demonstrating a stated minimum for precision and accuracy data. In response to comments, Coast Guard deleted references to such standards in the final policy letter and clarified the requirement to state that information on method risk and uncertainty, including precision and

[1] In DHS delegation 0170.1, the Commandant of the Coast Guard is delegated the authority to carry out the functions in section 312 of the Federal Water Pollution Control Act (33 U.S.C. 1321, *et seq.*) as amended by the Oil Pollution Act of 1990 (August 18, 1990; Pub. L. 101–380; 104 Stat. 484).

[2] Available at *https://www.merriam-webster.com/dictionary/stain?src=search-dict-hed* (last accessed 01/31/2022).

[3] Available at Generic Protocol for the Verification of Ballast Water Treatment Technology | Science Inventory | U.S. EPA (last accessed 03/31/2021).

accuracy, is important to consider as part of the best available science assessment, but that there are no criteria for specific values to be met.

8. Requirement for Specific Number and Locations of Field Tests

The Coast Guard's initial position in the draft policy letter was that viability testing methods would need to include validation data from a specific number of tests from specific locations. In response to comments, we have deleted references to minimum testing requirements in the final policy letter and clarified the basis for requesting information regarding the degree to which methods have been validated over a range of geographic locations and conditions.

9. Definition of Best Available Science

The definition of best available science was not addressed in the draft policy letter. In response to public comments, the Coast Guard added new text to the final policy letter to define the term.

10. Best Available Science Evaluation in Assessing Viability Testing Methods

In the draft policy letter, the Coast Guard did not address the best available science evaluation of available information in assessing viability testing methods. In the final policy letter, the Coast Guard describes the general approach to evaluating information.

12. Equivalency to Existing Organism Enumeration Methods in ETV Protocol as a Requirement for Viability Testing Method

In response to comments, the Coast Guard significantly modified what was written in the draft policy letter regarding equivalency with several testing method parameters in the ETV Protocol. In the draft policy letter, the Coast Guard stated that the existing regulation including the ETV Protocol ''set the standard for rigor, documentation and transparency required of any BWMS type-approval testing protocol submitted to the Coast Guard for acceptance. BWMS type-approval testing for systems that render organisms nonviable will incorporate protocols based on viability and will be subject to the same level of rigor currently used for type-approval.'' The Coast Guard changed the final policy letter to focus on evaluating best available science, not adherence to a standard established by the ETV Protocol. The requirement for equivalency was removed from the final policy letter and the basis for the requested information is further explained in the relevant sections below.

13. Existing Testing Method as Applied to Viability Testing

In the draft policy, the Coast Guard did not describe the use of the existing testing method to test organism viability. However, in response to comments expressing confusion on this issue, in the final policy letter the Coast Guard elaborates on the VIDA provision prohibiting the use of stains to test viability and how that relates to accepting a viability testing method for use within the existing type-approval program.

IV. Response to Comments

A. Overview of Responses

We appreciate the public's comments to the draft policy letter. The draft policy letter remains available on the Coast Guard website at: *https://www.dco.uscg.mil/OES/Viability-Policy-Letter/*. Documents related to the draft policy letter mentioned in this notice and all public comments to the draft policy letter are available in our online docket at *https://www.regulations.gov*, under Docket USCG–2019–0477, and can be viewed by following that website's instructions. For more information about privacy and submissions in response to this document, see DHS's Correspondence System of Records notice (84 FR 48645, September 26, 2018).

The Coast Guard received 39 submissions to the docket, one in duplicate. In the following section, we respond to 38 separate submissions. Each of the 38 submissions contains multiple comments on the draft policy letter. In the discussion below, we distinguish between submissions to the docket and the individual comments contained in those submissions. The comments raised the following issues, addressed below.

B. IMO Alignment

1. General Alignment

The Coast Guard received four comments relating to general alignment between U.S. and International Maritime Organization (IMO) test requirements. One comment asserted that nonconformity between U.S. and IMO test requirements increases both ballast water management system (BWMS) operational complexity and opportunities for noncompliance. One commenter stated that the Coast Guard should accept testing protocols that align with IMO accepted testing protocols because doing so will avoid confusion that could result in wrongful discharges; increase the efficiency of ships by removing a need to operate with increased power; and decrease discharges of Greenhouse gases due to less power being used on ships. Another comment requested that the Coast Guard align testing protocols and type-approval certificate limitations with international standards. One comment stated that the Coast Guard is blocking the intent of VIDA, which the commenter asserts is to adopt international BWMS MPN testing data, as a basis for Coast Guard BWMS type-approval.

The Coast Guard notes that nothing in VIDA nor its legislative history indicates Congressional intent to align domestic BWMS regulations with the IMO Ballast Water Management Convention. When adopting testing protocols, the Coast Guard is required to follow the evaluation criteria and factors for consideration that are articulated in VIDA. Under VIDA, the Coast Guard does not have the authority to accept viability testing methods on any basis other than an evaluation of best available science. Adopting a particular viability testing method on the basis that it would provide greater alignment with IMO or other international standards is not authorized under VIDA. Our interpretation on this issue is more fully addressed in the section immediately below.

2. Coast Guard Alignment With IMO Approach to MPN

The Coast Guard received eight comments relating to Coast Guard alignment with the IMO's approach to the use of MPN statistical analysis-based methods. Two comments questioned why the Coast Guard does not follow IMO by recognizing both the vital stain method and the MPN method for 10–50 um size range. Two comments suggested that the Coast Guard has tacitly accepted the use of MPN by not objecting to or abstaining from the IMO approval process. Three comments stated that the Coast Guard should align domestic BWMS type-approval with IMO type-approval under the Ballast Water Management Convention. One comment noted the objectives of the IMO BWM Convention.

The U.S. is not a signatory to the 2004 IMO Ballast Water Management Convention, and thus the U.S. Coast Guard is not bound by acts taken pursuant to that convention. The Coast Guard cannot elect to adopt a viability testing method simply because it is on the list of methods recognized under the IMO Convention. According to 33 U.S.C. 1322(p)(6)(D)(ii), the Coast Guard must base its decision on the best

available science. Widely adopted methods, including those employed by IMO Member States, can only be adopted by the Coast Guard if they can be determined to be based on the best available science for measuring viable organisms. However, the Coast Guard does not yet have the data and information necessary for making that determination, and therefore has not conducted the relevant evaluation. The Coast Guard will conduct an evaluation of available information, including the information identified and sought in the Enclosure, and make a determination, on the basis of best available science, whether to accept one or more specific methods. The Coast Guard's evaluation of information will be guided by the definition of best available science contained in the final policy letter.

C. Administrative Process

Six comments asserted that the Coast Guard did not follow proper administrative processes by failing to conduct an impact study and by violating the Administrative Procedure Act's (APA) requirement to provide a reasoned basis for its policy letter.

Two commenters stated that the Coast Guard violated the APA by not providing a reasoned basis for its best available science determination. One comment noted that the Coast Guard has not done any impact studies for the VIDA draft policy letter. Two comments stated that the Coast Guard disregarded statutory requirements by not accepting MPN to type-approve UV BWMS. One comment requested that the Coast Guard take environmental impacts and opportunity for noncompliance into account when accepting a testing protocol.

In developing the draft policy letter, the Coast Guard attempted to provide concise guidance, responsive to the statutory directive in VIDA. This guidance sought to anticipate questions and areas of concern. However, some public comments provided the Coast Guard with specific concerns requiring more attention and clarification. The Coast Guard made changes in the final policy letter in consideration and as a direct result of public commentary on the draft policy letter. Our responses to comments provide the underlying reasoning for making specific policy decisions. In specific response, please note the discussion below in section D.1 providing the reasoned basis for the Coast Guard's determination that, at the time of publication, evaluation of best available science was impossible.

The Coast Guard did not engage in a rulemaking, due to a specific mandate from Congress to issue a policy letter, not a rule. The APA requirements for notice and comment do not apply to general statements of policy pursuant to 5 U.S.C. 553(b)(A). Moreover, neither the draft policy letter nor this final policy letter imposes legally binding obligations or prohibitions on regulated parties. This is consistent with statements of policy.

Taking into account that 33. U.S.C. 1322(p)(6)(D) requires the publication of a policy letter, the Coast Guard determined that the action falls under a categorical exclusion (CATEX) pursuant to Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1, which guide the Coast Guard in complying with NEPA (42 U.S.C. 4321 *et seq.*). CATEX A3 applies to the promulgation of rules, issuances of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents that are strictly administrative or procedural in nature or that implement, without substantive change, statutory or regulatory requirements. The action of publishing this policy letter is categorically excluded under NEPA because it involves the publication of a policy that is strictly administrative or procedural and because it implements, without substantive change, statutory or regulatory requirements.[4] Furthermore, there are no extraordinary circumstances present that prevent the application of the CATEX.

Two categories of actions that are not discussed in this letter are: (1) Acceptance of viability testing method(s), and (2) type-approval for proposed BWMS. The Coast Guard will issue subsequent policy letters for the acceptance of viability testing methods pursuant to 33 U.S.C. 1322(p)(6)(D)(iv)(III). The Coast Guard has provided additional information about the basis for its best available science decisionmaking in Section H. The Coast Guard further notes that these administrative actions will require comprehensive environmental review under NEPA, the preparation of a NEPA document such as an Environmental Assessment or an Environmental Impact Statement, and compliance with other environmental laws. For the purposes of NEPA, the USCG may choose to use a programmatic approach, resulting in one initial NEPA document that could assess potential environmental impacts of multiple testing methods and type-approvals. A programmatic NEPA document could alleviate the need for NEPA analyses on individual testing methods and type-approvals, or at a minimum, would narrow the scope of such NEPA reviews. Environmental reviews of actions following development of a programmatic NEPA document would be undertaken to comply with NEPA (42 U.S.C. 4321 *et seq.*), Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1, and all other applicable environmental mandates.

D. Assessment and Acceptance of Viability Testing Methods

1. Coast Guard Awareness of Available Testing Methods

From the 38 submissions to the docket, the Coast Guard received 45 comments concerning its statement that it was unaware of available testing methods. Twenty-two comments interpreted the draft policy letter to mean that the Coast Guard has previously evaluated viability testing methods and determined that there were no acceptable viability testing methods based on best available science. Eight comments noted the availability of specific documentation regarding viability assessment and stated that the Coast Guard is aware (or should be aware) of the information. Eight other comments expressed skepticism about the Coast Guard's evaluation of the available information regarding methods for assessing the viability of organisms in ballast water and associated determination that none are acceptable. One comment stated that the Coast Guard must have assessed and excluded MPN as a testing method and concluded that doing so effectively excludes UV-based BWMS treatment. Three comments asserted that the Coast Guard assessed and rejected MPN. One comment stated that the Coast Guard needs to explain ''why [the Coast Guard] effectively dismissed an otherwise unchallenged body of best available science.'' One comment stated that the Coast Guard disregarded scientific support for MPN and specific MPN protocols that may meet Coast Guard requirements. One comment stated that a U.S. delegation was present at the IMO's Working Group on Ballast Water Management, so the Coast Guard is aware of type-approval testing methods

[4] Environmental Planning Implementing Procedures for CI 5090.1 Environmental Planning Policy, available at *https://media.defense.gov/2020/Aug/18/2002479620/-1/-1/0/EP%20IP%20FINAL_COMBINED.PDF/EP%20IP%20FINAL_COMBINED.PDF* (last accessed 10/07/2021).

and protocols for BWMS that render organisms in ballast water nonviable.

The forty-five comments described above all concluded, for various reasons, that the Coast Guard had already evaluated information and methods, including MPN, and determined that none were acceptable. The draft policy letter apparently gave many readers the misimpression that it is the Coast Guard's position that we have no awareness of viability testing methods, generally. We wish to clear up that misimpression by clarifying that it is not that we are unaware of viability testing methods but that we are unaware of a viability testing method that is *based on best available science.* At the time the draft policy letter was made available for public comment, the Coast Guard did not have the data and information needed for a best available science evaluation. Accordingly, the draft policy letter set out the Coast Guard's approach for collecting and evaluating information and the supporting science during a ''best available science'' evaluation. Thus, in addition to answering the VIDA mandates, one purpose of the draft policy letter was to receive public comment on the proposed process for acceptance and use of new testing methods—an approach that would entail assessing information regarding viability testing methods within a best available science evaluative framework. The Coast Guard could not undertake the described best available science evaluation until we considered and responded to public comment.

In completing the final policy letter, we considered all of the public comments on the best available science evaluation that we proposed in the draft policy letter as well as the specific information that was described in the draft policy letter's Enclosure that would be used in assessing available viability testing methods. A key purpose of the final policy letter, therefore, is to finalize the Coast Guard's best available science evaluative approach.

2. Acceptance of Facility or Site-Specific Versus Generally Applied Testing Methods

The Coast Guard received three comments regarding the acceptance of facility-specific methods versus generally applied testing methods. One comment urged the Coast Guard to consider the pros and cons of standard methods compared to facility-specific procedures. One comment stated that the Coast Guard should adopt an approach to viability testing methods that would allow each test facility to develop its own specific MPN-based method(s). One comment asserted that specific media and culture conditions used in grow-out during viability testing should be left to the discretion of individual test facilities.

The Coast Guard will consider a viability testing method that is intended for facility or site-specific use. In order to consider such methods, the Coast Guard requires information on a viability testing method's risks or uncertainties when used in a facility or site-specific manner, within the global context of type-approval testing. Such risks and uncertainties may possibly be mitigated through facility or site-specific validations during use and adjustment of method details based on facility or site-specific conditions.

E. VIDA Mandates

1. Scope and Applicability of ''Permanently''

The Coast Guard received six comments about the scope and applicability of the term ''permanently.'' One comment touched on the technical aspect of the FDA/CMFDA + motility method in the ETV Protocol and its ability to characterize treated organisms as permanently dead. One comment requested that the Coast Guard explain whether viability assessment methods can be practicably applied to all organisms regulated by BWM regulations. One comment stated that the Coast Guard cannot conduct type-approval testing using the existing stain method because it cannot meet the new statutory definition of ''permanently incapable of reproduction.'' One comment requested that the Coast Guard ensure that the accepted viability-based BWMS testing protocol demonstrate permanent incapability to reproduce. One comment asserted that the Coast Guard should exempt testing methods from VIDA's requirement to demonstrate that organisms have been rendered permanently incapable of reproduction because this VIDA requirement was not applied to methods in the ETV protocol. One commenter explained that a BWMS that merely renders organisms temporarily nonviable is insufficient to ensure the protection of the Great Lakes and, therefore, it is vitally important that a BWMS that is not based on a live/dead standard, must be able to render organisms permanently nonviable.

The Coast Guard notes that ''permanently'' applies to organism reproduction under the 33 U.S.C. 1322(p)(6)(D)(i) definition of ''live'' and ''living.'' As such, the term has not been previously considered in the context of the ballast water discharge standard regulations contained in 46 CFR subpart 162.060. Additionally, the statute defines the term ''render nonviable'' in 33 U.S.C. 1322(p)(1)(U) to mean ''the action of a ballast water management system that renders the organism permanently incapable of reproduction following treatment.'' The Coast Guard recognizes that the new definitions in VIDA could be interpreted to impact the existing type-approval program, but, this is not the case based on the plain meaning of 33 U.S.C. 1322(p)(6)(D)(ii)(II) which states that an approved type-approval testing method that renders organisms nonviable may be used *in addition* to the methods established under 46 CFR subpart 162.060. The Coast Guard will evaluate the scope of any methods considered for acceptance to determine whether the method would be acceptable for enumeration of all organisms in ballast water, or only a specific subset. The Coast Guard will also assess the degree to which any viability testing methods enumerate organisms that have been permanently incapable of reproduction, *i.e.,* are not capable of repair and recovery of reproductive ability. Finally, the Coast Guard is not authorized to ''exempt'' methods from the statutory requirement to enumerate organisms that have been rendered permanently incapable of reproduction.

2. Definition of ''Viable''

The Coast Guard received one comment suggesting a definition for the term ''viable'' to mean an organism that is ''capable of growth and replication and hence survival.'' The Coast Guard notes that VIDA does not define the individual terms ''viable'' or ''nonviable.'' However, VIDA does define the term ''render nonviable'' (in 33 U.S.C. 1322(p)(1)(U)) thus: ''The term 'render nonviable', with respect to an organism in ballast water, means the action of a ballast water management system that renders the organism permanently incapable of reproduction following treatment.'' Accordingly, the Coast Guard determines that the definition of ''viable'' is capable of reproduction.

3. Coast Guard Latitude in Considering Viability Testing Methods

The Coast Guard received four comments speaking to the agency's latitude in considering viability testing methods. One comment stated a preference for the VIDA standard to be based on live/dead status of organisms, not viability. One comment requested that the Coast Guard evaluate risks posed by the introduction of living but nonviable organisms. One comment

asserted that requiring BWMS to kill organisms rather than render them nonviable provides no additional disinfection benefit. One comment requested that the Coast Guard recognize a viability assessment in approving BWMS.

These comments seem to assert that either the Coast Guard should consider a viability standard or not consider it; or at least not consider it until the Coast Guard first evaluates the risks posed by introduction of living but nonviable organisms. The Coast Guard has no discretion in this area. The legislation in 33 U.S.C. 1322(p)(6)(D) requires that we consider viability testing protocols.

4. Opportunity To Submit Viability Testing Methods

The Coast Guard received two Comments regarding the request for the public and stakeholders to submit viability testing methods. One comment stated that, contrary to Congressional intent, the Coast Guard shifted the burden of validating BWMS testing protocols onto manufacturers instead of the agency. One comment interpreted the draft policy letter's proposed procedure to mean that BWMS manufacturers would submit methods as part of type-approval testing.

These comments suggest that the Coast Guard is not fulfilling its Congressional mandate to assess viability testing methods. This is not the case. The statute requires a viability testing method to be *based on best available science.* In order to meet this requirement, we have determined that the most efficient and cost effective method of collecting relevant information on best available science is to first describe that information in detail in the Enclosure to the policy letter. The final policy letter sets forth the mechanism for stakeholders to submit viability testing methods and associated supporting information such as documentation of validation studies, the scientific basis for the method, and assumptions or requirements, as described in the Enclosure to the policy letter. The Coast Guard cannot accept a viability testing method without assessing several critical aspects of information, namely method scope, details, and validation. In evaluating best available science, the Coast Guard may assess publically available information in addition to that submitted, to ensure all aspects of the best available science definition above are fully and accurately described. At the time that a viability testing method is accepted, the Coast Guard will revise the final policy letter in accordance with 33 U.S.C. 1322(p)(6)(D)(iv)(III).

5. Applicability of the Qualifier ''If Any''

The Coast Guard received one comment asserting that the term ''if any'' in 33 U.S.C. 1322 (p)(6)(D)(ii) refers to BWMS, not type-approval testing methods and protocols.

The Coast Guard notes that the statute's location of the qualifier ''if any'' differs between the draft policy letter and the final policy letter. However, based on the plain reading of the statute pertaining to the final policy letter (33 U.S.C. 1322(p)(6)(D)(iv)(I), we believe the ''if any'' language applies to type-approval testing methods. Therefore, the Coast Guard determines that the statute's different location of the qualifying ''if any'' language does not affect the need to evaluate the science supporting a viability testing method within a best available science evaluative framework.

6. Requirements To Issue Policy ''in Coordination With'' the EPA

The Coast Guard received one comment questioning whether the Coast Guard had coordinated with EPA in concluding that no methods were available. We appreciate the question and would again like to emphasize that we did not mean to suggest or imply in the draft policy letter that there are no available viability testing methods, but rather that we have not evaluated the science supporting any viability testing methods within a best available science evaluative framework. We discuss this point in Section D.1.under the paragraph header ''Coast Guard awareness of available testing methods.'' Second, the Coast Guard received EPA's input on the draft policy letter and integrated that input into the draft policy letter prior to its publication in the **Federal Register**.

7. Determination of No Acceptable Viability Testing Methods

The Coast Guard received eight comments on the determination of no acceptable viability testing methods. One comment disagreed with the Coast Guard's determination not to accept any testing method that uses grow-out for organisms greater than or equal to 10 micrometers and less than or equal to 50 micrometers because the existing type-approval testing method for bacteria relies on organism grow-out. Six comments requested that the final policy letter identify one or more accepted methods, and further assert that the Coast Guard does not have discretion to determine that none are acceptable. One comment asserted that Congress's clear intent was for the final policy letter to be a final action incorporating the best MPN or similar method(s), not the starting point for a new method evaluation using a pre-existing regulatory process.

The Coast Guard disagrees with the equivalency between the existing testing method for bacteria and acceptance of a testing method that uses grow-out for organisms greater than or equal to 10 micrometers and less than or equal to 50 micrometers. The Coast Guard notes that utilizing selective media to enumerate specific organisms is fundamentally different from enumerating mixed assemblages of organisms. Further, at the time of the ETV Protocol development, those specific methods for bacteria existed as fully validated standard methods.

In response to comments asserting that the Coast Guard was required to describe in the draft policy letter, one or more viability testing methods, Congress provided the Coast Guard with the discretion to determine ''if any'' type-approval testing methods are acceptable. The Coast Guard disagrees with the assertion that we were required to accept a testing method from those currently available. The statute does not require us to accept currently available viability testing methods but to accept viability testing methods that are based on best available science. As explained above, the Coast Guard's acceptance of viability testing methods must result from assessing information regarding viability testing methods within a best available science evaluative framework.

The Coast Guard disagrees that the final policy letter is required to be a final action with no ongoing assessment of viability testing methods. Nor do we agree that we have made the policy letter ''the starting point for a new method evaluation using a pre-existing regulatory process.'' Under 33 U.S.C. 1322(p)(6)(D)(iv)(III), Congress expressly contemplates an ongoing assessment of viability testing methods by directing the Coast Guard to incorporate accepted viability testing methods into future revisions of the final policy letter. We have determined that a revision of the policy letter will require several steps prior to completing the action of accepting a viability testing method. We must collect relevant information about viability testing methods, assess that information, and comply with any implicated legal authorities such as NEPA. Consequently, any prospective acceptance of a viability testing method will require comprehensive environmental review under NEPA, the preparation of a NEPA document such as an Environmental Assessment or an Environmental Impact Statement, and

compliance with other environmental laws. VIDA did not waive, and we cannot choose to ignore, these requirements. The Coast Guard must adhere to these procedural requirements and, together with the assessment of the information necessary to accept a type-approval testing method, it was not possible to accept a type-approval testing method within the 180 day timeframe that the statute provided with respect to the final policy letter.

The Coast Guard published a draft policy letter that sought public comment on the process for acceptance and use of new protocols. This process, incorporated in the final policy letter, will help the Coast Guard assess viability testing methods based on best available science. At the time that the Coast Guard accepts a viability testing method using the criteria established in the policy letter, we will revise the policy letter to reflect the Coast Guard's acceptance in accordance with 33 U.S.C. 1322(p)(6)(D)(iv)(III).

8. Applicability of ''Best Available Science'' Requirement

The Coast Guard received three comments asserting that the Coast Guard did not base its draft policy letter on best available science.

Of these three comments that generally assert that the draft policy letter was not based on the best available science, one commenter specifically asserted that the Coast Guard misinterpreted the statutory directive because the Coast Guard ''issue[d] a draft policy letter that is not based on best available science [nor did it] discuss what best available science is or what it shows.'' The commenter goes on to say that, ''instead USCG appears to have interpreted the statutory directive to ask USCG to determine whether there are any type-approval methods that are themselves based on best available science.''

With respect to the draft policy letter, 33 U.S.C. 1322(p)(6)(D)(ii), requires the Coast Guard to, ''publish a draft policy letter, *based on the best available science,* describing type-approval testing methods and protocols for BWMS, if any . . .'' (Emphasis added). With respect to the final policy, 33 U.S.C. 1322(p)(6)(D)(iv) requires the Coast Guard to, ''publish a final policy letter describing type-approval testing methods, if any, for ballast water management systems that render nonviable organisms in ballast water . . . [that] shall be evaluated by measuring the concentration of organisms in ballast water that are capable of reproduction *based on the best available science* that may be used in addition to the methods established under subpart 162.060 of title 46, Code of Federal Regulations (or successor regulations).'' (Emphasis added). Though the wording in 33 U.S.C. 1322(p)(6)(D)(ii) and (iv) differs slightly, we interpret their meaning to be the same—the Coast Guard's acceptance of viability testing methods must result from assessing information regarding viability testing methods within a best available science evaluative framework. Consequently, one purpose of the draft policy letter was to receive public comment on the proposed process for acceptance and use of new testing methods—an approach that would entail assessing information regarding viability testing methods within a best available science evaluative framework.

9. Requirements To Consider MPN

The Coast Guard received eight comments regarding the requirement to consider MPN. Four comments asserted that VIDA requires the Coast Guard to adopt the MPN method. Two comments asserted that VIDA requires the Coast Guard to consider MPN in the draft policy letter. One comment stated that Coast Guard must accept a culture-based viability testing protocol because that is the only way to determine if an organism is permanently incapable of reproduction. One comment stated that the ''MPN method'' is intended to be added to the Coast Guard BWMS type-approval testing requirements.

VIDA requires that, in developing the final policy letter, the Coast Guard ''take into consideration a testing method that uses organism grow-out and most probable number statistical analysis.'' The Coast Guard's final policy letter reflects the requirement to consider such testing methods. We note that the requirement to consider organism grow-out and most probable number statistical analysis were not included in the VIDA mandate for the draft policy letter; consequently, we did not address it.

The Coast Guard does not consider the term ''MPN'' to refer to any specific method intended to determine the concentration of viable organisms in ballast water. MPN is a general procedure that uses serial dilutions and statistical calculations to estimate concentrations of organisms in original samples and the organism grow-out is used to identify viable organisms. There can be many different specific methods that incorporate MPN or grow-out to identify numbers of viable organisms. Different methods may target specific organisms or broad assemblages of organisms depending on the selection of growth media and conditions. The Coast Guard is required to assess the permanency of an organism's inability to reproduce and will do so under a best available science evaluative framework.

F. Equivalency to ETV Protocol as a Requirement for Viability Testing Method

1. Requirement for Minimum Precision and Accuracy

The Coast Guard received two comments directed at the requirement in the draft policy letter enclosure for the precision and accuracy of viability testing methods to be at least equivalent to the precision and accuracy of methods accepted in existing regulations. The first comment points out that because VIDA does not require an equivalent level of precision and accuracy, the Coast Guard should remove this requirement. We agree that the ETV Protocol's precision and accuracy are not benchmarks for a viability testing method. However, we must assess the precision and accuracy for two reasons. First, we must evaluate the scientific information supporting a testing method in a manner that maximizes the quality, objectivity, and integrity of information, including statistical information. Second, we must evaluate the scientific information that supports a testing method in a manner that clearly documents and communicates risks and uncertainties in the scientific basis. Therefore, we are considering those categories of information.

The other comment noted that lesser precision and accuracy of best available methods for evaluating nonviable organisms, compared to existing methods for dead organisms, should not disqualify a proposed method.

We acknowledge that the existing testing method under 46 CFR subpart 162.060 was never evaluated on the basis of best available science. However, VIDA included a best available science criteria relating to viability testing methods. As stated above, we have determined that a best available science evaluation requires the Coast Guard to collect information, including that regarding precision, accuracy and associated statistical calculations for any potential viability testing method.

2. Requirement for Specific Number and Locations of Field Tests

The Coast Guard received one comment disagreeing with requirements in the draft policy letter's enclosure regarding the validation of viability testing methods be conducted at a specific number of locations in the U.S.

because organisms in the U.S. are not aquatic nuisance species.

The Coast Guard agrees that there should not be a requirement for a specific number or geographic range of validation locations. Accordingly, in the final policy letter, the Coast Guard changed the requirement such that the focus is on demonstrating the viability testing method's capability to effectively quantify organisms over the geographic range of its intended use, not on meeting a specific number of test locations.

3. Requirement for General Consistency With the Existing Testing Method

The Coast Guard received eight comments relating to the requirement for consistency with the ETV Protocol when it comes to viability testing methods. Three comments disagreed with requirements specified in the draft policy letter's enclosure as being inconsistent with or exceeding the ETV Protocol's requirements. Another comment stated that the ETV Protocol cannot be used as the standard for scientific rigor in assessing viability testing methods. One comment requested the Coast Guard describe the level of scientific rigor applied in accepting the existing testing method. One comment asserted that the Coast Guard's acceptance of the existing testing method created the comparative level of scientific rigor that must be considered when assessing viability testing methods. One comment stated that a significant flaw in the existing type-approval testing method is that it does not incorporate an incubation period and therefore does not test the ability of organisms to repair after a measurement of dead status. One comment stated that the use of a vital stain is not an accurate assessment of living organisms.

The Coast Guard agrees with the commenters' statements that the ETV Protocol should not establish the standard for acceptance of type-approval testing protocols. The Coast Guard acknowledges that the ETV Protocol is not ''perfect science'' and that the acceptance of testing methods under that protocol does not set a requirement for acceptance under VIDA. In establishing a best available science evaluative framework, we have determined that the categories and types of information described in the Enclosure to the policy letter are appropriate and necessary in assessing viability testing methods.

G. Identification of BWMS That Are Type-Approved on the Basis of Viability

The Coast Guard received three comments on the requirement that BWMS type-approval certificates be annotated to differentiate between BWMSs approved on the basis of viability and those that are approved based on rendering organisms dead.

In response to these comments, the Coast Guard refers to 33 U.S.C. 1322(p)(6)(D)(ii)(II)(bb) which includes the explanation that a testing method is used ''to certify the performance of each ballast water management system [that renders organisms nonviable in ballast water].'' To carry out this requirement, the Coast Guard determined that BWMS tested to a viability standard must be certified as such. Consequently, the final policy letter retains the requirement to annotate a BWMS type-approval certificate to reflect the basis for approval. The Coast Guard notes that in addition to Congressional direction regarding certification of viability-based BWMS, annotation is necessary to help avoid confusion regarding the intended effect of a specific BWMS model. Under 46 CFR 162.060–10(g), the approval certificate will list conditions of approval applicable to the BWMS. We believe that an annotation to the type-approval certificate is the easiest method of avoiding confusion.

H. Best Available Science

1. Definition of Best Available Science

The Coast Guard received twenty-one comments about the definition of best available science. Ten of these comments assert that the Coast Guard should adopt an MPN method as representing the best available science because it is accepted for use under the IMO Ballast Water Management Convention. Three comments assert that the Coast Guard's interpretation of best available science improperly requires ''perfect science.'' Five comments requested that the Coast Guard provide its reason for not following guidance from the legal and scientific community on interpreting the term ''best available science.'' Three comments asserted that submissions to the docket in response to the draft policy letter provide a best available science basis for accepting the MPN method. In response to these comments, we point out that VIDA does not define ''best available science.'' Therefore, the Coast Guard must use its discretion in determining what constitutes ''best available science.'' The Coast Guard notes a cogent definition for the term is found in the immediately preceding section of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. 1321(a)(27) which states: ''the term 'best available science' means science that—maximizes the quality, objectivity, and integrity of information, including statistical information; uses peer-reviewed and publicly available data; and clearly documents and communicates risks and uncertainties in the scientific basis for such projects.'' Although not intended to apply to other sections of the FWPCA, the Coast Guard notes that the definition in section 1321 aligns with our general understanding of other working definitions for the term ''best available science'' when used in federal legislation. The definition in section 1321 is concise and informative, providing three elements that can be generically applied to the evaluation of scientific information. This definition is a congressionally defined term within the same Act as the legislative requirements we are required to implement in 33 U.S.C. 1322. The Coast Guard notes that while applying this definition to the evaluation of type-approval testing methods is different from the way that the definition is applied in Section 1321, the definition speaks to the general concept of assessing scientific information, independent of the topic of that science.

2. Best Available Science Evaluation in Assessing Viability Testing Methods

The Coast Guard received eight comments about the best available science evaluation for assessing viability testing methods. One comment stated that the draft policy letter does not establish any specific process by which a viability-based methodology could be approved. One comment stated that it is critical that a best available science determination be based on an up-to-date understanding of the relevant science. Three comments asserted that the Coast Guard must describe a detailed process for evaluating viability testing methods, taking into consideration the best available science—including one comment seeking details on the determination of whether organisms are ''permanently non-viable.'' Two comments asserted that the Coast Guard should research best available science before developing a process. One comment requested that the Coast Guard work with various stakeholders in developing and accepting viability-based BWMS type-approval protocols.

The Coast Guard will assess the most current data and information available that supports viability testing methods on the basis of best available science pursuant to the approach outlined in the final policy letter. The Coast Guard has not yet conducted an assessment of supporting information and data for

viability testing methods for the reasons discussed in Section D. 1. Once we complete this assessment and make a determination on acceptability, we will describe the basis for our acceptance, recognizing that the best available science evaluation itself does not result in a conclusory determination of acceptability.

I. Existing Type-Approval Testing Requirements

1. Existing Type-Approval Program Maintained in Effect

The Coast Guard received five comments about the existing type-approval program remaining in effect. One comment agreed with the Coast Guard's conclusion that accepted viability methods would be used as part of the ETV protocol process. One comment noted that the existing type-approval testing method will remain in place until Coast Guard accepts a viability-based type-approval testing method. One comment supported a type-approval testing protocol that combined live/dead and viability assays. One comment agreed with the Coast Guard decision to add viability testing methods to the existing type-approval testing methods. One comment asserted that the final viability policy letter should not address how viability testing methods would be incorporated into the type-approval testing procedures specified in regulation.

Any accepted method will be used in addition to existing type-approval testing methods per 33 U.S.C. 1322 (p)(6)(D)(iv)(II). At the time that one or more viability testing methods are accepted, viability testing methods will only be added to the discrete sections of the type-approval test requirements for which the specific viability testing method applies. Sections 5.4.6.4 and .5 of the ETV Protocol address enumeration of organisms in ballast water. Accepted viability testing methods for organisms greater than 50 um in size would be accepted for use under Section 5.4.6.4, and viability testing methods for organisms in the 10–50 um size group would be accepted for use under 5.4.6.5. An accepted viability testing method may describe alternative procedures relating to aspects of the ETV Protocol beyond those described above. The specifications for such alternatives will then be described in a revision to the final policy letter and must directly relate to measuring the concentration of organisms in ballast water that are capable of reproduction. Under VIDA, the Coast Guard will not assess any method that enumerates living organisms (*i.e.,* not dead). If no viability testing methods are accepted for a specific size class or type of organism for which testing is required, then existing test methods identified in the ETV Protocol remain in effect and must be used.

2. Existing Testing Method as Applied to Viability Testing

The Coast Guard received five comments about the existing testing method as applied to viability testing. One comment states that the ETV Protocol utilizes vital stain to determine organism viability. Three comments noted that vital stain does not assess viability. Another comment claimed that testing organisms with MPN gives a better viability result than vital stains.

The existing testing method specified in the ETV Protocol does not assess organism viability, meaning the ability to reproduce, and will not be used for that purpose. Additionally, 33 U.S.C. 1322(p)(6)(D)(v)(II) prohibits the Coast Guard from considering a testing method that relies on a staining method to measure the concentration of organisms greater than or equal to 10 micrometers and less than or equal to 50 micrometers. The term ''stain'' is undefined in VIDA and is not consistently used in science to describe a specific scientific procedure. A ''stain'' is defined by Merriam Webster's dictionary [5] in relevant part as a dye or mixture of dyes used in microscopy to make visible minute and transparent structures, to differentiate tissue elements or to produce specific chemical reactions. According to this definition, a ''stain'' acts by suffusing with color; coloring by processes affecting chemically or otherwise the material itself. The Coast Guard will assess any submitted type-approval testing method information to determine if it utilizes a stain.

J. Topics Outside the Scope of the Draft Policy Letter

1. Information Provided in Support of a General or Specific Method

Seventy-five comments offered support for viability testing methods. Fifty comments expressed support, either generally or for one or more specific viability testing methods. Eighteen comments cited to specific supporting information for one or more specific viability testing methods. Seven comments noted scientific information supporting MPN usage in water treatment.

The Coast Guard did not solicit information regarding potential viability testing methods in the **Federal Register** notice requesting comments on the draft policy letter. Therefore, comments proposing or supporting the acceptance of specific methods are outside the scope of the draft policy letter. Going forward, submissions in response to the final policy letter or its enclosure may include, by reference, information previously submitted to the docket in response to the draft policy letter, to avoid duplication of effort, if desired. However, the Coast Guard cautions that, when submitting information responsive to the final policy letter or its enclosure, care should be taken to ensure that any submitted viability testing method and associated scientific information and data responds to the specific categories of information identified in the final policy letter or its enclosure.

2. General Support for VIDA

The Coast Guard received five comments offering general support for VIDA. One comment agreed with VIDA's definition of ''live'' and ''living.'' Two comments generally supported the use of viability-based BWMS type-approval testing. One comment stated support for the discharge of nonviable organisms in ballast water as effective in preventing the spread of invasive species. One comment supported the use of best available science in assessing ballast water treatment options. One comment noted the importance of determining permanent nonviability.

While the Coast Guard appreciates these commenters' concern regarding ballast water treatment, we consider these six comments to be outside the scope of the draft policy letter. As discussed above, the draft policy letter sought public comment on the process for accepting type-approval testing methods and protocols for BWMS, if any, that render organisms nonviable in ballast water and may be used in addition to the existing testing methods.

3. 2012 BWDS Rule Requirements

The Coast Guard received ten comments relating to the 2012 BWDS rule. One comment noted that in the 2012 BWDS rulemaking, the Coast Guard noted differences in the Coast Guard's 2012 BWDS and the IMO BWM convention. One comment claimed that existing regulations are designed to ensure ballast water sterilization. One comment claimed that Coast Guard regulations do not address the technical aspects of quantifying organisms in ballast water and that Coast Guard

[5] Available at *https://www.merriam-webster.com/dictionary/stain?src=search-dict-hed* (last accessed 01/31/2022).

regulations do not touch on the methods available to treat BW to reach the thresholds (discharge standards). Six comments recommended changes to the 2012 BWDS rule, including amending BWM requirements, the BWDS, the type-approval testing protocol incorporated by reference, and adoption of emerging technologies. One comment stated that in the preamble discussion of the 2012 BWDS rule, the Coast Guard proposed to align with IMO regarding the use of viability testing methods for BWMS approvals.

While the Coast Guard appreciates these commenters' concern regarding ballast water treatment, we consider these ten comments outside the scope of the draft policy letter. As discussed above, the draft policy letter sought public comment on the process for accepting type-approval testing methods and protocols for BWMS, if any, that render organisms in ballast water nonviable and that may be used addition to the existing testing methods.

4. BWMS Protocols for the Great Lakes

The Coast Guard received one comment requesting that the Coast Guard require the use of BWMS on all ships traversing the Great Lakes, whether land based or onboard.

This comment is out of scope as it relates to use of BWMS for vessels on the Great Lakes, instead of the testing method that could be used to test BWMS. The Coast Guard acknowledges the comment and notes that VIDA addresses applicability of ballast water regulation in the Great Lakes under other provisions.

5. Agency Decisions Made Prior to VIDA Enactment

The Coast Guard received five comments discussing Coast Guard decisions made prior to the enactment of VIDA. One comment asserted that the Coast Guard made multiple scientific errors in 2016 when the Coast Guard denied an appeal to an earlier Coast Guard decision that rejected the use of MPN. One comment stated that the Coast Guard switched rationales for not accepting MPN, asserting that the USCG rejected MPN in 2015 because it did not meet the BWDS established in the 2012 rule. Now, the commenter asserts we are rejecting MPN on the basis that MPN is not based on the best available science. One comment questioned why the Coast Guard allows culture-based methods for bacteria but not for 10–50 um organisms. Two comments objected to the Coast Guard's rejection of the MPN method for enumeration of viable microorganisms that was published in the 2015 Maritime Commons.

Prior to the enactment of VIDA, the Coast Guard made decisions under other legal authorities. Under VIDA, the Coast Guard is required to evaluate the acceptability of viability testing methods, on the basis of best available science, giving consideration to any MPN-based methods. Consequently, comments pertaining to assessment of VIDA requirements through the lens of other authorities are not relevant to the evaluation of type-approval testing method on the basis of best available science required under VIDA.

6. Factors for Consideration in Assessing BWMS Technology Type

The Coast Guard received fourteen comments relating to factors that Coast Guard would consider in assessing viability testing methods based on the impacts of BWMS technology type. One comment provided an opinion on the associated environmental benefits or drawbacks of particular BWM technologies. One comment requested that the Coast Guard evaluate environmental risks of technologies designed to render organisms living but nonviable. One comment mentioned that a filter and UV based BWMS requires more than three times the power consumption if designed according to results from CMFDA testing. The comment further noted that such design will not be optimal, and sometimes impossible to retrofit on-board ships in our main target market segments. The comment requested the Coast Guard consider energy usage in assessing acceptable viability-based type-approval testing methods. One comment provided an opinion on water quality impacts of UVC radiation versus other BWM treatment technologies. One comment stated that the Coast Guard's BWMS testing requirements result in UV based system having to be significantly overpowered, causing the systems to have larger footprints and consume more energy than necessary to be effective. Two comments claimed that the Coast Guard, in not accepting viability assays, is not allowing the use of UV technology. One comment stated that the Coast Guard is biased against UV-based BWMS technologies and that the Coast Guard's rejection of low-energy UV BWMS that render certain microorganisms is contrary to the National Invasive Species Act (NISA) and international norms. One comment asserted that the Coast Guard should recognize low-dose UV as a preferred BWMS technology because it is an effective and economical treatment option for the maritime industry. One comment supported type-approval testing methods that are tailored to specific treatment technologies. One commenter recommends grow-out methods for measuring the response of all treatments because both inactivated and killed cells will not grow out. One comment supported the use of appropriate viability testing methods for type-approving UV BWMS. One comment noted there are limitations of UV-based treatment that, in some situations, will make UV-based processes not the process of choice. One comment asserts that the Coast Guard is concerned that UV-based methods may not render organisms permanently nonviable.

Our response to these comments is that we interpret VIDA to be ''technology neutral'' when it comes to the acceptance of type-approval protocols. The Coast Guard determines that Congress did not express an intent to either disadvantage or create preference for any specific BWMS technologies. In other words, VIDA does not address BWMS treatment technology types beyond the general qualification that they render organisms nonviable, and the acceptance of viability testing methods is based on best available science.

V. Review of Viability Testing Methods

The Coast Guard will revise the final policy letter once any viability testing methods are accepted. The Coast Guard invites voluntary submission of viability testing methods and associated scientific information and data responsive to the specific categories of information identified in the final policy letter or its enclosure. Upon receipt of a submission, the Coast Guard will evaluate the submitted viability testing method, and associated scientific information and data, on the basis of best available science. Afterwards, the Coast Guard will conduct NEPA-compliant environmental analysis on any potentially acceptable viability testing methods, to include any required public involvement. If, pursuant to these analyses, the Coast Guard determines that a viability testing method is acceptable, we will publish a revision of the final viability policy letter to include any accepted viability testing methods.

Revisions to the final policy letter, if any, may also occur during the 5 year review of standards of performance, pursuant to 33 U.S.C. 1322(p)(D)(iv)(III). Reviewing testing methods, immediately following any changes to standards of performance and associated type-approval requirements, will allow the Coast Guard to expedite the inclusion of changes to the type-approval regulations, including methods

for testing viability, responsive to any new standards of performance.

We are mindful of the potential pitfalls associated with reviewing proposed methods submitted at any time. We note that significant resources are required to conduct the best available science evaluation of viability testing methods. Once the Coast Guard initiates review of a viability testing method, subsequent submissions will be reviewed in the order received.

In addition to participating in the revision process described above, states may petition for changes to the policy establishing the review and acceptance process, pursuant to 33 U.S.C. 1322(p)(7). Such changes would pertain to the substance of the policy letter, which establishes the process for accepting and implementing viability testing methods, and would not be for the purpose of revising the policy letter to accept a specific viability testing method. This is due to the phrasing of 33 U.S.C. 1322(p)(7), which allows for petitions to review a policy if there exists new information that could reasonably result in a change to the standard of performance, regulation, or policy or to a determination on which the policy was based.

VI. Environmental Aspect and Impact Considerations

a. The development of the final policy letter and the general policies contained within it have been thoroughly reviewed by the Coast Guard. Pursuant to NEPA (42 U.S.C. 4321 *et seq.*), Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1, we have determined that publishing the final policy letter, which does not accept a testing method, is categorically excluded under CATEX A3 listed in Appendix A, Table 1 of the Department of Homeland Security Instruction 023–01–001–01, Rev. 1.[6] We have also determined that no extraordinary circumstances exist which prevent the application of the CATEX.

CATEX A3 pertains to the promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents, such as ''those of a strictly administrative or procedural nature,'' or ''those [implementing], without substantive change, statutory or regulatory requirements.''

b. The final policy letter will not have any of the following: Significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policy in the final policy letter must be individually evaluated for compliance with NEPA (42 U.S.C. 4321 *et seq.*), Department of Homeland Security Management Directive 023–01, Rev. 1 and associated implementing instructions, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1, Executive Order 12114 Environmental Effects Abroad of Major Federal Actions, and compliance with all other applicable environmental mandates.

[6] *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

VII. Paperwork Reduction Act

The Coast Guard determines the final policy does not require a new collection of information under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501.

VIII. Public Availability of the Final Policy Letter

The Coast Guard developed the final policy letter in coordination with the EPA pursuant to 33 U.S.C. 1322(p)(6)(D)(iv). The final policy letter is available in the docket and on the following USCG website: *https://www.dco.uscg.mil/OES/Viability-Policy-Letter/.* All comments received are also posted without change to *https://www.regulations.gov.* For instructions on locating the docket, see the **ADDRESSES** portion of this **Federal Register** document.

Dated: March 15, 2022.

Jeffrey G. Lantz,

Director of Commercial Regulations and Standards, Office of the Commandant, U.S. Coast Guard.

[FR Doc. 2022–06201 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 87, No. 57
Thursday, March 24, 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–2022–0286; Project Identifier AD–2021–01081–R]

RIN 2120–AA64

Airworthiness Directives; Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters with a certain part-numbered main rotor (M/R) blade installed under Supplemental Type Certificate (STC) SR02684LA. This proposed AD was prompted by delamination of M/R blades. This proposed AD would require a repetitive inspection for delamination, and depending on the results, removing the M/R blade from service and reporting certain information. 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 Van Horn Aviation, L.L.C., ATTN: Dean Rosenlof, 1510 West Drake Drive, Tempe, AZ 85283; telephone (480) 483–4202; email *dean@vanhornaviation.com.* 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–2022–0286; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Peter Jarzomb, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5234; email *peter.jarzomb@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–2022–0286; Project Identifier AD–2021–01081–R'' 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 Peter Jarzomb, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5234; email *peter.jarzomb@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA proposes to adopt a new AD for Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters with a certain serial-numbered M/R blade part number (P/N) 20633000–101 installed under STC SR02684LA. Testing by Van Horn Aviation, L.L.C., revealed the potential for delamination in M/R blade P/N 20633000–101. Delaminations were then confirmed by inspection of in-service M/R blades. Testing by Van Horn Aviation, L.L.C., has confirmed that the 90° plies fail in spanwise tension (normal to the fiber direction) at the inboard end of the weight receptacle near M/R blade station 186.0. Delamination then propagates outboard from M/R blade station 186.0 at the interface between the 0° and 90° plies. According to Van Horn Aviation, L.L.C., fatigue testing has shown that the

delamination initiates almost immediately and progresses slowly. Thereafter, the delamination grows more slowly in a stable, predictable manner. The delamination has been found to develop first on the lower surface and grow outboard from the inboard end of the weight receptacle and forward of the balance weight pocket. After approximately 4 to 6 inches growth of the delamination on the lower surface, a similar delamination becomes detectable on the M/R blade upper surface. Should the delaminations continue to grow to the point of static overload, the receptacle could depart the M/R blade.

Accordingly, this proposed AD would require a repetitive inspection for delamination, and depending on the results, removing the M/R blade from service and reporting certain information. This condition, if not addressed, could result in reduced structural integrity of the M/R blade, excessive vibration, and subsequent loss of control of the helicopter.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Van Horn Aviation, L.L.C., Service Bulletin Notice No. 33000–4R3, dated November 8, 2021 (SB 33000–4R3). This service information specifies procedures to identify ''Zone 1'' and ''Zone 2'' inspection areas, accomplish repetitive visual and tap inspections of the zones to detect and monitor the growth of any delamination, and depending on the results, removing the M/R blade from service and contacting Van Horn Aviation, L.L.C.

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**.

Proposed AD Requirements in This NPRM

This proposed AD would require, at specified intervals, removing the affected M/R blade, drawing rectangular inspection areas ''Zone 1'' and ''Zone 2'' with a permanent marker, tap inspecting the inspection areas for delamination, marking and measuring the length of any delamination, and depending on the results, removing the M/R blade from service. This proposed AD would also require reporting certain information to Van Horn Aviation, L.L.C.

Differences Between This Proposed AD and the Service Information

This proposed AD would apply to additional M/R blades, serial numbers A007, A008, and A009, that are not identified in SB 33000–4R3 as the FAA has determined that those serial-numbered blades are subject to the same unsafe condition. The proposed AD would require using certain part-numbered composite tap hammers, whereas SB 33000–4R3 does not. SB 33000–4R3 specifies procedures to visually inspect the M/R blade, whereas this proposed AD would not. If there is any delamination in the upper surface inspection zone (''Zone 1''), this proposed AD would require removing the M/R blade from service, whereas SB 33000–4R3 does not specify procedures for this condition.

Interim Action

The FAA considers that this proposed AD could be an interim action. The inspection reports that would be required by this AD will enable the FAA to obtain better insight into the unsafe condition. If final action is later identified, the FAA might consider further rulemaking.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 23 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 proposed AD.

Removing, tap inspecting, and re-installing an M/R blade would take about 4.5 work-hours for an estimated cost of $383 per M/R blade, per inspection cycle and up to $8,809 for the U.S. fleet per M/R blade, per inspection cycle. Replacing an M/R blade would take about 4 work-hours and parts would cost about $71,500 per M/R blade for a total of $71,840 per M/R blade. Reporting information to Van Horn Aviation, L.L.C., would take about 1 work-hour for an estimated cost of $85 per report.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour 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. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

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:

Bell Textron Canada Limited (Type Certificate Previously Held by Bell Helicopter Textron Canada Limited): Docket No. FAA–2022–0286; Project Identifier AD–2021–01081–R.

(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 Bell Textron Canada Limited (type certificate previously held by Bell Helicopter Textron Canada Limited) Model 206L, 206L–1, 206L–3, and 206L–4 helicopters, certificated in any category, with main rotor (M/R) blade part number (P/N) 20633000–101 with serial number A007, A008, A009, or A012 through A104 inclusive installed under Supplemental Type Certificate SR02684LA.

(d) Subject

Joint Aircraft System Component (JASC) Code: 6210, Main Rotor Blades.

(e) Unsafe Condition

This AD was prompted by reports of delamination of M/R blades. The FAA is issuing this AD to address delamination of an M/R blade initiating in the 90° plies at the lower inboard end of the weight pocket receptacle. The unsafe condition, if not addressed, could result in reduced structural integrity of the M/R blade, excessive vibration, 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) Accomplish the actions required by paragraph (g)(2) of this AD at the following compliance time, whichever occurs later:

(i) Before the M/R blade accumulates 400 total hours time-in-service (TIS) or 2,400 engine starts since initial installation on any helicopter, whichever occurs first; or

(ii) Within 100 hours TIS after the effective date of this AD.

(2) Remove each M/R blade from the helicopter, place it on a flat, stable surface, and accomplish the following:

(i) Use a permanent marker to draw rectangular inspection ''Zone 1'' on the upper surface of the M/R blade at M/R blade stations 186.0 and 191.0, beginning 1.1 inches from the leading edge of the M/R blade to 4.9 inches from the leading edge of the M/R blade. Draw lines from the inboard end to the outboard end to connect each end at 1.1 inches and 4.9 inches. Draw parallel lines from the inboard end of the inspection zone to the outboard end of the inspection zone, with the lines spaced 0.50 inch apart.

Note 1 to paragraph (g)(2)(i): This note applies to paragraphs (g)(2)(i) and (ii) of this AD. Figure 4 of Van Horn Aviation, L.L.C., Service Bulletin Notice No. 33000–4R3, dated November 8, 2021 (SB 33000–4R3) depicts ''Zone 1'' and ''Zone 2.''

(ii) Use a permanent marker to draw rectangular inspection ''Zone 2'' on the lower surface of the M/R blade at M/R blade stations 186.0 and 191.0, beginning from the forward edge of the weight receptacle pocket and extending 1 inch in the direction towards the leading edge of the M/R blade. Draw lines from the inboard end to the outboard end to connect each end at the weight receptacle pocket and 1 inch forward of the weight receptacle pocket. Draw parallel lines from the inboard end of the inspection zone to the outboard end of the inspection zone, with the lines spaced 0.50 inch apart.

(iii) Using composite tap hammer Abaris Training Tap Hammer P/N ABATH, HeatCon Tap Hammer P/N HCS1104–01, Brown Tool Composite Tap Hammer P/N BAT–CTH8, or MATCO Tools Composite Tap Hammer P/N T4BAT–CTH8, tap inspect the areas within ''Zone 1'' and ''Zone 2'' for any delamination by following Tap Inspect Balance Receptacle, paragraph A.(4) of SB 33000–4R3. Where SB 33000–4R3 specifies to mark the location where the delamination starts, use a permanent marker.

(iv) If there are any marks where the delamination starts, connect the marks indicating the delamination location and measure the length at the farthest point from the inboard end of the inspection area.

(v) If there is any delamination in the lower surface inspection zone (''Zone 2'') that is 6.0 or more inches in length or if there is any delamination in the upper surface inspection zone (''Zone 1''), before further flight, remove the M/R blade from service.

(3) Thereafter repeat the actions required by paragraph (g)(2) of this AD at intervals not to exceed 400 hours TIS or 2,400 engine starts, whichever occurs first.

(4) If there is any delamination, within 30 days after accomplishing the actions required by paragraphs (g)(1) or (3) of this AD, report each delamination size and location, and the total hours TIS and total engine starts since initial installation of the M/R blade, to Mr. Dean Rosenlof, Van Horn Aviation, L.L.C., 1510 West Drake Drive, Tempe, AZ 85283, or by email to *info@vanhornaviation.com.*

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or 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. Information may be emailed to: *9-ANM-LAACO-AMOC-REQUESTS@faa.gov.*

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

(i) Related Information

(1) For more information about this AD, contact Peter Jarzomb, Aerospace Engineer, Airframe Section, Los Angeles ACO Branch, Compliance & Airworthiness Division, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5234; email *peter.jarzomb@faa.gov.*

(2) For service information identified in this AD, contact Van Horn Aviation, L.L.C., ATTN: Dean Rosenlof, 1510 West Drake Drive, Tempe, AZ 85283; telephone (480) 483–4202; email *dean@vanhornaviation.com.* 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.

Issued on March 15, 2022.

Derek Morgan,

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

[FR Doc. 2022–05874 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0148; Project Identifier AD–2021–00922–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2015–12–03, which applies to certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2015–12–03 requires repetitive freeplay inspections and lubrication of the right and left

elevators, rudder, and rudder tab, and related investigative and corrective actions if necessary. Since the FAA issued AD 2015–12–03, engineering testing revealed that the force being applied to the elevator to detect excessive freeplay was insufficient. This proposed AD would continue to require certain actions in AD 2015–12–03 for certain airplanes, and would require revising the existing maintenance or inspection program, as applicable, for certain other airplanes, to incorporate a revised or new elevator freeplay maintenance procedure, as applicable. This proposed AD would also add airplanes to the applicability. 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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0148.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0148; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@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–2022–0148; Project Identifier AD–2021–00922–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 proposed AD.

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 Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2015–12–03, Amendment 39–18176 (80 FR 34252, June 16, 2015) (AD 2015–12–03), for certain The Boeing Company Model 777–200, –200LR, –300, and –300ER series airplanes. AD 2015–12–03 was prompted by the manufacturer's determination that the procedure for the rudder freeplay inspection available at the time did not properly detect excessive freeplay in the rudder control load loop. AD 2015–12–03 requires repetitive freeplay inspections and lubrication of the right and left elevators, rudder, and rudder tab, and related investigative and corrective actions if necessary. The agency issued AD 2015–12–03 to detect and correct excessive wear in the load loop components of the control surfaces, which could lead to excessive freeplay of the control surfaces, flutter, and consequent loss of control of the airplane.

AD 2015–12–03 superseded AD 2007–13–05, Amendment 39–15109 (72 FR 33856, June 20, 2007).

Actions Since AD 2015–12–03 Was Issued

Since the FAA issued AD 2015–12–03, engineering testing revealed that the force being applied to the elevator to detect excessive freeplay was insufficient. The original bypass test setup for the power control unit (PCU), which used a hydraulic depressurization method, was found to be unreliable for putting the adjacent PCU into bypass mode, and a new elevator freeplay maintenance procedure is necessary. Model 777F airplanes were not added to the applicability in AD 2015–12–03 because there was a certification maintenance requirement (CMR) task to accomplish the freeplay inspections for those airplanes; therefore, the FAA has determined that it is necessary for operators to revise the maintenance or inspection program to update the elevator freeplay procedures for Model 777F airplanes.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021. This service information specifies procedures for changing the elevator

freeplay instructions by adding changes to the input force, elevator freeplay limit, and PCU bypass test setup.

This proposed AD would also require Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, which the Director of the Federal Register approved for incorporation by reference as of July 21, 2015 (80 FR 34253, June 16, 2015).

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

Proposed AD Requirements in This NPRM

This proposed AD would retain certain requirements of AD 2015–12–03 and require accomplishing the actions specified in accordance with updated service information, including corrective actions, such as repairs, already described for Model 777–200, –200LR, –300, and –300ER airplanes. This proposed AD would also add Model 777F series airplanes to the applicability. For Model 777F series airplanes, this proposed AD would require revising the existing maintenance or inspection program, as applicable, to incorporate a new elevator freeplay maintenance procedure. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0148.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 281 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Required actions	Labor cost	Parts cost	Cost per product	Cost on U.S. operators (218)
Measurement (inspection), elevator.	4 work-hours × $85 per hour = $340 per measurement (inspection) cycle.	$0	$340 per measurement (inspection) cycle.	$74,120 per measurement (inspection) cycle.
Lubrication, elevator	17 work-hours × $85 per hour = $1,445 per lubrication cycle.	0	$1,445 per lubrication cycle.	$315,010 per lubrication cycle.
Measurement (inspection), rudder.	4 work-hours × $85 per hour = $340 per measurement (inspection) cycle.	0	$340 per measurement (inspection) cycle.	$74,230 per measurement (inspection) cycle.
Lubrication, rudder	7 work-hours × $85 per hour = $595 per lubrication cycle.	0	$595 per lubrication cycle	$129,710 per lubrication cycle.
Measurement (inspection), rudder tab.	3 work-hours × $85 per hour = $255 per measurement (inspection) cycle.	0	$255 per measurement (inspection) cycle.	$55,590 per measurement (inspection) cycle.
Lubrication, rudder tab	5 work-hours × $85 per hour = $425 per lubrication cycle.	0	$425 per lubrication cycle	$92,650 per lubrication cycle.

The FAA has received no definitive data that would enable the agency to provide cost estimates for the on-condition corrective actions specified in this proposed AD.

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the average total cost per Model 777F operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has 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 that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2015–12–03, Amendment 39–18176 (80 FR 34252, June 16, 2015), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2022–0148; Project Identifier AD–2021–00922–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by May 9, 2022.

(b) Affected ADs

This AD replaces AD 2015–12–03, Amendment 39–18176 (80 FR 34252, June 16, 2015) (AD 2015–12–03).

(c) Applicability

This AD applies to The Boeing Company airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) All Model 777–200, –200LR, –300, –300ER series airplanes.

(2) Model 777F airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Unsafe Condition

This AD was prompted by the manufacturer's determination that the procedure for the rudder freeplay inspection available at the time did not properly detect excessive freeplay in the rudder control load loop. This AD was also prompted by engineering testing that revealed that the force being applied to the elevator to detect excessive freeplay was insufficient. The FAA is issuing this AD to address excessive wear in the load loop components of the control surfaces, which could lead to excessive freeplay of the control surfaces, flutter, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Retained Repetitive Inspections of Elevators, Rudder, and Rudder Tab, With Revised Service Information

This paragraph restates the requirements of paragraph (g) of AD 2015–12–03, with revised service information. For Model 777–200, –200LR, –300, and –300ER series airplanes: At the applicable times specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, except as provided by paragraph (i)(1) of this AD: Inspect the freeplay of the right and left elevators, rudder, and rudder tab by accomplishing all of the actions specified in Parts 1, 3, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, except as provided by paragraphs (i)(2) through (4) of this AD. Repeat the inspections thereafter at the intervals specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. If, during any inspection required by this paragraph, the freeplay exceeds any applicable measurement specified in Part 1, 3, and 5, as applicable, of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, before further flight, do the applicable corrective actions in accordance with Part 1, 3, and 5 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. After the effective date of this AD use only Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021.

(h) Retained Repetitive Lubrication, With Revised Service Information

This paragraph restates the requirements of paragraph (h) of AD 2015–12–03, with revised service information. For Model 777–200, –200LR, –300, –300ER series airplanes: At the applicable times specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021, except as provided by paragraph (i)(1) of this AD: Lubricate the elevator components, rudder components, and rudder tab components, by accomplishing all of the actions specified in Parts 2, 4, and 6 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. Repeat the lubrication thereafter at the interval specified in tables 1, 2, and 3 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, or Revision 4, dated July 15, 2021. After the effective date of this AD use only Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021.

(i) Retained Exceptions to Service Information Specifications, With Revised Service Information

This paragraph restates the requirements of paragraph (i) of AD 2015–12–03, with revised service information, for Model 777–200, –200LR, –300, –300ER series airplanes.

(1) Where Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, and Revision 4, dated July 15, 2021, specify a compliance time ''after the original issue date on this service bulletin,'' this AD requires compliance within the specified compliance time after July 25, 2007 (the effective date of AD 2007–13–05, Amendment 39–15109 (72 FR 33856, June 20, 2007)). After the effective date of this AD, only Boeing Special Attention Service Bulletin 777–27–0062, Revision 4, dated July 15, 2021, may be used.

(2) Where Appendix B, paragraph 1.f., ''Freeplay Inspection,'' step (8), of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, specifies that the center of the pad must be within 1.0 inch (13 millimeters) of the center line of the rib rivets in the rudder tab, this AD requires that the center of the tab must be within 1.0 inch (25 millimeters) of the center line of the rib rivets in the rudder tab.

(3) Where Appendix C, paragraph 1.e., ''Rudder Tab Surface Freeplay—Inspection,'' step (2) and step (6), of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, specify that the placement of the force gage and pad should be within one inch of the centerline line of the middle rudder PCU rib and at 12 +/−1 inch (305 +/−72 millimeters) forward of the rudder tab trailing edge, this AD requires placement of the force gage and pad within one inch of the centerline line of the middle rudder PCU rib and at 12 +/−1 inch (305 +/−25 millimeters) forward of the rudder tab trailing edge.

(4) Where Appendix C, paragraph 1.e., ''Rudder Tab Surface Freeplay—Inspection,'' step (3), of Boeing Special Attention Service Bulletin 777–27–0062, Revision 2, dated January 27, 2014, specifies to apply a 30 +/−pound (133 +/−14 newton) force, this AD requires applying a 30 +/−3 pound force (133 +/−14 newton) force.

(j) New Maintenance or Inspection Program Revision

For Model 777F airplanes: Within 30 days after the effective date of this AD, revise the 777F elevator freeplay maintenance procedure in the existing maintenance or inspection program, as applicable, by doing the actions specified in paragraphs (j)(1) through (3) of this AD.

(1) Remove the existing hydraulic depressurization PCU test setup procedure step and replace it by incorporating the information specified in figure 1 to paragraph (j) of this AD.

(2) Revise the jack test force used to push the elevator up to 225 +/−10 lb (102.1 +/−4.5 kg).

(3) Revise the elevator freeplay dial indicator limit to 0.34 in. (152 mm) or less.

Figure 1 to paragraph (j): *Circuit breaker elevator freeplay test setup*

Do these steps to prepare for the freeplay inspection:

NOTE: Each PCU can be inspected in any order, as long as the setup for the inspection is performed per the steps below.

a) To inspect the left elevator outboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Power Supply Assembly Center, M24301

Row	Col	Number	Name
A	7	CBA7-C	ELEV PCU

2. Make sure that the left elevator inboard PCU is in bypass mode

b) To inspect the left elevator inboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Power Supply Assembly Left, M24101

Row	Col	Number	Name
A	7	CBA7-L	ELEV PCU

2. Make sure that the left elevator outboard PCU is in bypass mode.

c) To inspect the right elevator inboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Left Power Management Panel, P110

Row	Col	Number	Name
K	27	C27609	ELEV PCU RIB (BLK)/ROB(BYP)

2. Make sure that the right elevator outboard PCU is in bypass mode.

d) To inspect the right elevator outboard PCU, do these steps:

1. Open this circuit breaker and install safety tag:

Power Supply Assembly Right, M24201

Row	Col	Number	Name
A	7	CBA7-R	ELEV PCU

2. Make sure that the right elevator inboard PCU is in bypass mode.

Note 1 to paragraph (j): Refer to AMM task 27–31–09–200–801, dated September 5, 2021, for additional guidance.

(k) No Alternative Actions or Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (m) of this AD.

(l) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraphs (g) and (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Service Bulletin 777–27–0062, Revision 3, dated October 9, 2015.

(m) Alternative Methods of Compliance (AMOCs)

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

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

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

(4) AMOCs approved previously for the freeplay measurements of the right and left rudder tab required by AD 2015–12–03, are approved as AMOCs for the corresponding provisions of this AD.

(5) AMOCs approved previously for the freeplay measurements of the rudder required by AD 2015–12–03, are approved as AMOCs for the corresponding provisions of this AD.

(6) AMOCs approved previously for the repetitive lubrications required by AD 2015–12–03, are approved as AMOCs for the corresponding provisions of this AD.

(n) Related Information

(1) For more information about this AD, contact Luis Cortez-Muniz, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: (206) 231–3958; email: *Luis.A.Cortez-Muniz@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on February 18, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05691 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0292; Project Identifier AD–2021–01297–E]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines, LLC Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain International Aero Engines, LLC (IAE LLC) PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines. This proposed AD was prompted by an analysis of an event involving an International Aero Engines AG (IAE AG) V2533–A5 model turbofan engine, which experienced an uncontained failure of a high-pressure turbine (HPT) 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. This proposed AD would require performance of an ultrasonic inspection (USI) of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. 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 International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 690–9667; email: *help24@pw.utc.com;* website: *http://fleetcare.prattwhitney.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0292; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; email: *Mark.Taylor@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–2022–0292; Project Identifier AD–2021–01297–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

On March 18, 2020, an Airbus Model A321–231 airplane, powered by IAE AG V2533–A5 model turbofan engines, experienced an uncontained HPT 1st-stage disk failure that resulted in high-energy debris penetrating the engine cowling. Based on a preliminary analysis of this event, on March 21, 2020, the FAA issued Emergency AD 2020–07–51 (followed by publication in the **Federal Register** on April 13, 2020, as a Final Rule, Request for Comments (85 FR 20402)), which requires the removal from service of certain HPT 1st-stage disks installed on IAE AG V2522–A5, V2524–A5, V2525–D5, V2527–A5, V2527E–A5, V2527M–A5, V2528–D5, V2530–A5, and V2533–A5 model turbofan engines.

Based on the root cause analysis performed since that March 2020 event, Pratt & Whitney (PW) identified a different population of HPT 1st-stage disks and HPT 2nd-stage disks that are subject to the same unsafe condition identified in AD 2020–07–51. In response, the FAA issued AD 2021–19–10 on September 10, 2021 (86 FR 50610), which requires the removal from service of certain HPT 1st-stage disks and HPT 2nd-stage disks installed on IAE LLC PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines.

Since the FAA issued AD 2021–19–10, PW identified another subpopulation of HPT 1st-stage disks and HPT 2nd-stage disks that require inspection and possible removal from service. Included in this additional subpopulation of HPT 1st-stage disks

and HPT 2nd-stage disks are those installed on the model turbofan engines affected by this proposed AD. This proposed AD would require performance of a USI on the remaining high-risk subpopulation of HPT 1st-stage disks and HPT 2nd-stage disks and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk. This condition, if not addressed, could result in uncontained HPT disk failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed PW Service Bulletin (SB) PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021 (PW SB PW1000G–C–72–00–0188–00A–930A–D). This SB specifies procedures for performing a USI of the HPT 1st-stage disk and the HPT 2nd-stage disk, identified by part number and serial number, installed on IAE LLC PW1124G1–JM, PW1127G–JM, PW1127GA–JM, PW1129G–JM, PW1130G–JM, PW1133G–JM, and PW1133GA–JM model turbofan engines. 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**.

Other Related Service Information

The FAA reviewed PW SB PW1000G–C–72–00–0112–00A–930A–D, Issue No: 005, dated July 22, 2021. This SB describes procedures for replacing the HPT 1st-stage disk, HPT 2nd-stage disk, and rotating hardware. This SB also increases the life limit of the HPT hardware by introducing a new configuration of rotating hardware.

Proposed AD Requirements in This NPRM

This proposed AD would require the performance of a USI of the HPT 1st-stage disk and HPT 2nd-stage disk and, depending on the results of the inspections, replacement of the HPT 1st-stage disk or HPT 2nd-stage disk.

Differences Between This Proposed AD and the Service Information

PW SB PW1000G–C–72–00–0188–00A–930A–D, Applicability, identifies IAE LLC PW1127G–JM, PW1127GA–JM, PW1130G–JM, PW1124G1–JM, PW1129G–JM, PW1133G–JM, and PW1133GA–JM model turbofan engines. The FAA determined that IAE LLC PW1122G–JM, PW1124G–JM, and PW1127G1–JM model turbofan engines are of the same type design and are subject to the same unsafe condition. Therefore, the FAA included IAE LLC PW1122G–JM, PW1124G–JM, and PW1127G1–JM model turbofan engines in the applicability of this proposed AD.

PW SB PW1000G–C–72–00–0188–00A–930A–D uses the term ''hub'' to describe the HPT 1st-stage disk and HPT 2nd-stage disk, while this proposed AD uses the term ''disk.''

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 189 engines installed on airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
USI the HPT 1st-stage disk and HPT 2nd-stage disk (also includes estimated costs for disassembly of the engine and removal of the HPT 1st-stage disk and HPT 2nd-stage disk).	204 work-hours × $85 per hour = $17,340.	$0	$17,340	$3,277,260

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace the HPT 1st-stage disk or HPT 2nd-stage disk	1 work-hour × $85 per hour = $85	$171,430	$171,515

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

International Aero Engines, LLC: Docket No. FAA–2022–0292; Project Identifier AD–2021–01297–E.

(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 International Aero Engines, LLC PW1122G–JM, PW1124G1–JM, PW1124G–JM, PW1127G1–JM, PW1127GA–JM, PW1127G–JM, PW1129G–JM, PW1130G–JM, PW1133GA–JM, and PW1133G–JM model turbofan engines with engine serial numbers P770101 through P772647.

(d) Subject

Joint Aircraft System Component (JASC) Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by an analysis of an event involving an International Aero Engines AG V2533–A5 model turbofan engine, which experienced an uncontained failure of a high-pressure turbine (HPT) 1st-stage disk that resulted in high-energy debris penetrating the engine cowling. The FAA is issuing this AD to prevent failure of the HPT 1st-stage disk and HPT 2nd-stage disk. The unsafe condition, if not addressed, could result in uncontained HPT disk failure, release of high-energy debris, damage to the engine, damage to the airplane, and loss of the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected engines that have not incorporated Pratt & Whitney (PW) Service Bulletin (SB) PW1000G–C–72–00–0112–00A–930A–D, Issue No: 005, dated July 22, 2021 (PW SB PW1000G–C–72–00–0112–00A–930A–D), at the next engine shop visit after the effective date of this AD, perform the following:

(i) Ultrasonic inspection (USI) of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 9.A. or B., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D, Issue No: 001, dated September 13, 2021 (PW SB PW1000G–C–72–00–0188–00A–930A–D); and

(ii) USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 9.C. or D., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D.

(2) For affected engines that have incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D, with an installed HPT 1st-stage disk having a serial number (S/N) identified in the Accomplishment Instructions, Table 2., of PW SB PW1000G–C–72–00–0188–00A–930A–D, at the next engine shop visit after the effective date of this AD, perform a USI of the HPT 1st-stage disk using the Accomplishment Instructions, paragraph 9.A. or B., as applicable, of PW SB PW1000G–C–72–00–0188–00A–930A–D.

(3) For affected engines that have incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D, with an installed HPT 2nd-stage disk having an S/N identified in the Accomplishment Instructions, Table 3., of PW SB PW1000G–C–72–00–0188–00A–930A–D, at the next engine shop visit after the effective date of this AD, perform a USI of the HPT 2nd-stage disk using the Accomplishment Instructions, paragraph 9.C. or D., of PW SB PW1000G–C–72–00–0188–00A–930A–D.

(4) Based on the results of the USIs required by paragraphs (g)(1) through (3) of this AD, if any HPT 1st-stage disk or HPT 2nd-stage disk does not pass the USI, as specified in the Accomplishment Instructions, paragraphs 9.A. through D., of PW SB PW1000G–C–72–00–0188–00A–930A–D, as applicable, before further flight, remove the HPT 1st-stage disk or HPT 2nd-stage disk from service and replace with a part eligible for installation.

Note 1 to paragraph (g): For affected engines that have incorporated PW SB PW1000G–C–72–00–0112–00A–930A–D and do not require an inspection per paragraph (g)(2) or (3) of this AD, no further action is required.

(h) Definitions

(1) For the purpose of this AD, a ''part eligible for installation'' is:

(i) Any HPT 1st-stage disk that passed the USI required by paragraphs (g)(1)(i) and (g)(2) of this AD.

(ii) Any HPT 2nd-stage disk that passed the USI required by paragraphs (g)(1)(ii) and (g)(3) of this AD.

(2) For the purpose for this AD, an ''engine shop visit'' is the induction of an engine into the shop for maintenance involving the separation of the ''M'' flange. Separation of the ''M'' flange solely for the purposes of transportation without subsequent engine maintenance does not constitute an engine shop visit.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Mark Taylor, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7229; email: *Mark.Taylor@faa.gov.*

(2) For service information identified in this AD, contact International Aero Engines, LLC, 400 Main Street, East Hartford, CT 06118; phone: (860) 690–9667; email: *help24@pw.utc.com*; website: *http://fleetcare.prattwhitney.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Issued on March 18, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–06211 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0287; Project Identifier MCAI–2020–01602–T]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain De Havilland Aircraft of Canada Limited Model DHC–8–400 series airplanes. This proposed AD was prompted by reports of broken P-clamps on the pressure relief line and the motive flow line in the fuel tanks, and a subsequent determination that certain service information lacked instructions for maintaining appropriate clearance between certain fuel tubes and their support brackets, and may also have led to incorrect installation of certain Teflon™ sleeves. This proposed AD was also prompted by a determination that new or more restrictive airworthiness limitations are necessary. This proposed AD would require inspecting the motive flow line, vent line, and related parts, and adding support or additional clearance if necessary. This proposed AD would also require inspection, and replacement or relocation if necessary, of affected Teflon™ sleeves on the vent line, and installation of Teflon™ sleeves on the vent line at additional wing stations. This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. 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 De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com*; internet *https://dehavilland.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0287; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

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–2022–0287; Project Identifier MCAI–2020–01602–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Joseph Catanzaro, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7366; email *9-avs-nyaco-cos@faa.gov*. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

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

This proposed AD was prompted by reports of broken P-clamps on the pressure relief line and the motive fuel line in the fuel tanks, as well as fouling conditions between the motive flow line and the collector tank partition wall in both fuel tanks. Later, certain service information designed to mitigate these issues was found to not contain instructions to support the motive flow line and vent line at wing stations –371.019 and 371.019 in the fuel tanks or to maintain appropriate clearance between the fuel tubes and their support brackets at wing stations –371.019 and –209.109 in the left-hand fuel tank and wing stations 371.019 and 209.019 in the right-hand fuel tank. Bombardier issued Modification Summaries (ModSums) to provide instructions for addressing the initial reports of inadequate clearance. Bombardier later issued revised service information to address this inadequate support and clearance on all affected airplanes. Subsequently, the manufacturer determined that certain service information was missing instructions to relocate certain Teflon™ sleeves and certain other service information may have caused Teflon™ sleeves to be incorrectly installed on the vent line. The FAA is proposing this AD to address adverse impacts on the integrity of the electrical bonding paths throughout the fuel line, which could lead to arcing between the vent line and airplane structure, and could result in

possible fuel tank ignition in the event of a lightning strike.

See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

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

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

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

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

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

- (Bombardier) Q400 Dash 8 Temporary Revision (TR) ALI–0192, dated April 24, 2018, to Section 4—28 Fuel System Limitation, of Part 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM), PSM 1–84–7.
- (Bombardier) Q400 Dash 8 TR ALI–0193, dated April 24, 2018, to Section 5—00 Critical Design Configuration Control Limitations, of the Bombardier Q400 Dash 8 MRM, PSM 1–84–7.

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

- (Bombardier) Q400 Dash 8 Airplane Maintenance Manual (AMM) TR 28–145, dated November 21, 2017.
- (Bombardier) Q400 Dash 8 AMM TR 28–146, dated November 21, 2017.
- (Bombardier) Q400 Dash 8 AMM TR 28–147, dated November 21, 2017.
- (Bombardier) Q400 Dash 8 AMM TR 28–148, dated November 24, 2017.
- (Bombardier) Q400 Dash 8 AMM TR 28–149, dated November 27, 2017.
- (Bombardier) Q400 Dash 8 Maintenance Task Card Manual (MTCM) Maintenance Task Card 000–28–520–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (LH), Revision 42, Amendment 0002, dated November 21, 2017.
- (Bombardier) Q400 Dash 8 MTCM Maintenance Task Card 000–28–620–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (RH), Revision 42, Amendment 0002, dated November 21, 2017.

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

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described. This proposed AD would allow using Bombardier Repair Drawing 8/4–28–018 as a method of compliance for the actions required by paragraph (h)(2) of this proposed AD, provided the replacement of the affected single nut plate brackets and standoffs on the motive flow line, vent line, pressure relief line, and scavenge line at LH and RH wing stations Yw ± 209.019, Yw ± 317.019, and Yw ± 371.019, is also done.

This proposed AD would also require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations for fuel tank systems.

This proposed AD would require revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections) and Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this proposed AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (n)(1) of this proposed AD.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 52 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS *

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

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

The FAA has determined that revising the maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

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

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

(d) Subject

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

(e) Unsafe Condition

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

(f) Compliance

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

(g) Definition

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

(h) Modifications

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

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

(3) Accomplishing Bombardier Repair Drawing 8/4–28–018, Issue 1, dated October 30, 2017; Issue 2, dated June 12, 2018; Issue 3, dated June 21, 2018; or Issue 04, dated July 27, 2018, is an alternative method of compliance (AMOC) only for the replacement of the affected single nut plate brackets and standoffs on the motive flow line and vent line at LH and RH wing stations Yw ± 209.019 and Yw ± 317.019 required by paragraph (h)(2) of this AD.

(4) Accomplishing Bombardier Repair Drawing 8/4–28–018, Issue 1, dated October 30, 2017; Issue 2, dated June 12, 2018; Issue 3, dated June 21, 2018; or Issue 04, dated July 27, 2018, prior to the effective date of this AD, along with the replacement of the

affected single nut plate brackets and standoffs on the motive flow line, vent line, pressure relief line, and scavenge line at LH and RH wing stations Yw ± 209.019, Yw ± 317.019, and Yw ± 371.019, is an acceptable method of compliance for the actions required by paragraph (h)(2) of this AD.

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

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

(7) Prior to accomplishment of the actions required by paragraph (h)(6) of this AD, the applicable actions specified in paragraph (h)(2) or (5) of this AD must be done. Accomplishment of Bombardier Modification Summary (ModSum) 4Q113904 on an airplane prior to the effective date of this AD is acceptable for compliance with this paragraph.

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

(9) Prior to accomplishment of the actions required by paragraph (h)(8) of this AD, the applicable actions specified in paragraph (h)(2) or (5) of this AD must be done. Accomplishment of Bombardier ModSum 4Q113904 on an airplane prior to the effective date of this AD is acceptable for compliance with this paragraph.

(i) Verification and Rework for Existing Maintenance Program

(1) For airplanes having S/N 4001 and 4003 through 4575 inclusive, on which the actions required by paragraph (h)(6) or (8) of this AD have been done before the effective date of this AD, or that have complied with paragraph (m)(4) of this AD: Within 60 days after the effective date of this AD, review the airplane maintenance records to confirm if any of the prohibited tasks (defined in paragraph (g) of this AD) were accomplished during or after compliance with paragraph (h)(6) or (8) of this AD or paragraph (m)(4) of this AD.

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

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

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

(j) Maintenance or Inspection Program Revision

For all airplanes: Within 30 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in (Bombardier) Q400 Dash 8 Temporary Revision (TR) ALI–0192 and TR ALI–0193, both dated April 24, 2018, into Section 4—28 Fuel System Limitation, or Section 5—00 Critical Design Configuration Control Limitations, as applicable, of Part 2, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The initial compliance time for doing the tasks in (Bombardier) Q400 Dash 8 TR ALI–0192, dated April 24, 2018, is at the applicable time specified in paragraph (j)(1) or (2) of this AD, whichever occurs later:

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

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

(k) No Alternative Actions, Intervals, or Critical Design Configuration Control Limitations (CDCCLs)

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, and CDCCLs are approved as an AMOC in accordance with the procedures specified in paragraph (n)(1) of this AD.

(l) Maintenance Task Prohibitions

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

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

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

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

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

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

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

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

(i) Bombardier Q400 Dash 8 MTCM Maintenance Task Card 000–28–520–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (LH), with the exception of (Bombardier) Q400 Dash 8 MTCM Maintenance Task Card 000–28–520–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (LH), Revision 42, Amendment 0002, dated November 21, 2017.

(ii) Bombardier Q400 Dash 8 MTCM Maintenance Task Card 000–28–620–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (RH), with the exception of (Bombardier) Q400 Dash 8 MTCM Maintenance Task Card 000–28–620–704 (Config A01), Detailed Inspection of the Teflon™ Sleeve on the Fuel Tank Vent Line (RH), Revision 42, Amendment 0002, dated November 21, 2017.

(m) Credit for Previous Actions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager,

Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(o) Related Information

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

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

(3) For service information identified in this AD, contact De Havilland Aircraft of Canada Limited, Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd@dehavilland.com;* internet *https://dehavilland.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on March 15, 2022.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–05964 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0216; Airspace Docket No. 19–AAL–63]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–230; St. Paul Island, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–230 in the vicinity of St. Paul Island, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0216; Airspace Docket No. 19–AAL–63 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0216; Airspace Docket No. 19–AAL–63) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0216; Airspace Docket No. 19–AAL–63.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. Chinook, AK, (AUB) NDB is one of the many NDBs that has been scheduled for decommissioning. RNAV route T–230 currently utilizes AUB as an end point in the route. In order to ensure continuous use of T–230, the FAA proposes to replace AUB in the legal description with King Salmon, AK, (AKN) VHF Omnidirectional Radar and Tactical Air Navigational System (VORTAC). Additionally, there is currently a Fix along the route, GARRS, AK, Fix that will be affected by the pending decommissioning of Cape Newenham, AK (EHM) NDB. This proposal would identify GARRS as a waypoint (WP) and include it in the legal description, since it is a turn point along the route. Finally, the latitude and longitude contained in the FAA Order JO 7400.11F legal description for St. Paul Island, AK (SPY) NDB is inaccurate and this proposal would correct the error.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–230 in the vicinity of St. Paul Island, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed amendment is described below.

T–230: The FAA proposes to update the legal description contained in FAA Order JO 7400.11 by replacing the Chinook, AK, (AUB) NDB with the King Salmon, AK, VORTAC due to the pending decommissioning of AUB. Additionally, the proposal would identify GARRS Fix as GARRS, AK, WP due to the pending decommissioning of EHM and include it in the legal description, since it is a turn point along the route. Finally, this proposal would correct the latitude and longitude for SPY in the amended legal description. The rest of the route would remain unchanged.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–230 St. Paul Island, AK (SPY) to King Salmon, AK (AKN) [Amended]

St. Paul Island, AK (SPY)	NDB	(Lat. 57°09′25.20″ N, long. 170°13′58.77″ W)
GARRS, AK	WP	(Lat. 58°19′05.80″ N, long. 161°20′31.74″ W)
King Salmon, AK (AKN)	VORTAC	(Lat. 58°43′28.97″ N, long. 156°45′08.45″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06059 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0231; Airspace Docket No. 19–AAL–46]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–377; Sitka, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–377 in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0231; Airspace Docket No. 19–AAL–46 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

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SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0231; Airspace Docket No. 19–AAL–46) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0231; Airspace Docket No. 19–AAL–46.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,*

overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The Sitka, AK, (SIT) and the Nichols, AK, (ICK) NDBs are on the schedule to be decommissioned. Colored Federal airways Amber 1 (A–1) and Blue 28 (B–28) are dependent upon these two NDBs and will be rendered unusable once they are decommissioned. In order to mitigate the loss of these airways, the FAA proposes to establish a new T-route, T–377, in the area that would provide a generally lower GNSS MEA as well as continuous two-way VHF voice communications. The proposed route would also provide connectivity to RNAV route T–241 at the FOROP, AK, waypoint (WP) that would allow pilots to navigate to the northeast of that area toward Level Island, AK and points beyond.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–377 in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed route is described below.

T–377: The FAA proposes to establish RNAV route T–377 from the Annette Island, AK, (ANN) VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME) to the Biorka Island, AK, (BKA) VOR and Tactical Air Navigational System (VORTAC) in anticipation of the decommissioning of SIT and ICK. The proposed route would provide alternate navigation options for Colored Federal airways A–1 and B–28.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–377 Annette Island, AK (ANN) to Biorka Island, AK (BKA) [New]

Annette Island, AK (ANN)	VOR/DME	(Lat. 55°03′37.47″ N, long. 131°34′42.24″ W)
INEPE, AK	WP	(Lat. 55°35′25.84″ N, long. 133°24′52.15″ W)
FOROP, AK	WP	(Lat. 56°05′08.84″ N, long. 134°21′39.59″ W)
Biorka Island, AK (BKA)	VORTAC	(Lat. 56°51′33.87″ N, long. 135°33′04.72″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06061 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0244; Airspace Docket No. 19–AAL–48]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation Route T–379; Discovery, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–379 in the vicinity of Discovery, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0244; Airspace Docket No 19–AAL–48 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0244; Airspace Docket No. 19–AAL–48) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0244; Airspace Docket No. 19–AAL–48.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The primary purpose of this proposal is to establish a route that provides adequate separation from special use airspace (SUA) in the area that would also provide connectivity to other RNAV routes in the area. The current route structure provides navigation for pilots with adequate separation from Stoney Military Operations Area (MOA) and Naknek MOA, but forces pilots to navigate between VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAIDs) and prolongs the flight time to their destination. The proposed route provide a shorter route around the SUA and ensure connectivity to RNAV routes T–269 and T–222, as well as a future route, T–373, that is in the planning phase.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–379 in the vicinity of Discovery, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed route is described below.

T–379: The FAA proposes to establish RNAV route T–379 from a newly established waypoint (WP), MAYHW, southeast of Bethel, AK to the UTICE WP, southwest of McGrath, AK.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes.

* * * * *

T–379 MAYHW, AK to UTICE, AK [New]

MAYHW, AK	WP	(Lat. 59°48′11.94″ N, long. 159°16′08.97″ W)
MUPVE, AK	WP	(Lat. 60°05′25.37″ N, long. 159°08′14.30″ W)
HIBNA, AK	WP	(Lat. 60°24′56.24″ N, long. 159°17′15.44″ W)
JEKBO, AK	WP	(Lat. 60°40′19.55″ N, long. 159°01′38.87″ W)
JEBDA, AK	WP	(Lat. 61°20′23.35″ N, long. 158°40′34.12″ W)
AMEDE, AK	WP	(Lat. 61°34′17.31″ N, long. 158°25′46.86″ W)
ZARUM, AK	WP	(Lat. 61°41′59.81″ N, long. 158°20′27.59″ W)
TIRIE, AK	WP	(Lat. 61°54′19.63″ N, long. 158°14′19.53″ W)
UTICE, AK	WP	(Lat. 62°18′35.36″ N, long. 157°37′56.78″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06063 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0265; Airspace Docket No. 19–AAL–55]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–386; Fairbanks, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–386 in the vicinity of Fairbanks, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0265; Airspace Docket No. 19–AAL–55 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC, 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0265; Airspace Docket No. 19–AAL–55) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0265; Airspace Docket No. 19–AAL–55.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. This proposal would establish a new RNAV route in an area with no current routing available. The proposed route would allow for navigation over mountainous terrain with the lowest possible GNSS MEA's and continuous two-way VHF communications while also providing access for the Central Airport (PACE), Alaska. The proposed route would also provide connectivity to RNAV route T–226 for navigation to other areas in Alaska.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–386 in the vicinity of Fairbanks, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–386: The FAA proposes to establish RNAV route T–386 from the Fairbanks, AK, (FAI) VHF Omnidirectional Range and Tactical Air Navigation (VORTAC) to a newly established waypoint (WP), WEXIK, AK, WP, over Circle City Airport, Alaska. See ''The Proposed Amendment'' section for full details on the proposed route.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory

evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–386 Fairbanks, AK (FAI) to WEXIK, AK [New]

Fairbanks, AK (FAI)	VORTAC	(Lat. 64°48′00.25″ N, long. 148°00′43.11″ W)
DEYEP, AK	WP	(Lat. 65°12′15.59″ N, long. 145°31′19.80″ W)
WUTGA, AK	WP	(Lat. 65°21′19.16″ N, long. 145°29′46.87″ W)
FIXEG, AK	WP	(Lat. 65°34′22.46″ N, long. 144°47′14.83″ W)
JEGPA, AK	WP	(Lat. 65°36′37.54″ N, long. 144°25′23.87″ W)
WEXIK, AK	WP	(Lat. 65°49′39.86″ N, long. 144°04′50.79″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06057 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0266; Airspace Docket No. 19–AAL–56]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–388; Port Heiden, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–388 in the vicinity of Port Heiden, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0266; Airspace Docket No. 19–AAL–56 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0266; Airspace Docket No. 19–AAL–56) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0266; Airspace Docket No. 19–AAL–56.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The

proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. Port Heiden, AK, (PDN) and Woody Island, AK, (RWO) NDBs are on the list of to be decommissioned in the near future. Colored Federal airway Green 10 (G–10) is dependent upon both of these NAVAIDs and would be rendered unusable upon decommissioning. In order to mitigate the loss of G–10, this proposal would create a new RNAV route, T–388, to replace the portion between these two NDBs. The segment of G–10 that navigates from PDN to Cold Bay, AK is not included in this proposal since there are already mitigating factors in place.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–388 in the vicinity of Port Heiden, AK in support of a large and comprehensive T-route modernization project for the state of Alaska. The proposed route is described below.

T–388: The FAA proposes to establish RNAV route T–388 from a newly established waypoint (WP) WIXER, AK, WP over PDN to the BAILY, AK, WP to the northwest of Kodiak Airport, Alaska. Full details of the proposed route are included in ''The Proposed Amendment'' section.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–388 WIXER, AK to BAILY, AK [New]

WIXER, AK	WP	(Lat. 56°54′29.00″ N, long. 158°36′10.00″ W)
ZOPAB, AK	WP	(Lat. 57°09′28.12″ N, long. 157°48′14.87″ W)
HEBMI, AK	WP	(Lat. 57°24′13.13″ N, long. 156°51′24.77″ W)
ZEMIR, AK	WP	(Lat. 57°51′13.88″ N, long. 154°02′28.16″ W)
BAILY, AK	WP	(Lat. 57°54′33.79″ N, long. 152°54′36.97″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06058 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0230; Airspace Docket No. 19–AAL–40]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–371; Kodiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–371 in the vicinity of Kodiak, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0230; Airspace Docket No. 19–AAL–40 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0230; Airspace Docket No. 19–AAL–40) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0230; Airspace Docket No. 19–AAL–40.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to

manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The Kachemak, AK, (ACE) and the Woody Island, AK, (RWO) NDBs are on the schedule to be decommissioned in the near future. Colored Federal airway Green 10 (G–10) is dependent upon these NAVAIDs and will be rendered unusable when this occurs. In order to mitigate the loss of G–10, the FAA is proposing to develop RNAV route T–371 in its place. The proposed route would also provide instrument approach procedure connectivity to the Homer Airport (PAHO), Alaska, while providing a lower GNSS MEA with continuous two-way VHF voice communications along the route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–371 in the vicinity of Kodiak, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed route is described below.

T–371: The FAA proposes to establish T–371 from the Kodiak, AK (ODK) VHF Omnidirectional Radar/Distance Measuring Equipment (VOR/DME) to the AMOTT, AK, waypoint (WP), in order to provide an alternate to Colored Federal airway G–10. The route would also provide navigation to PAHO and Kodiak Airport (PADQ), Alaska.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–371 Kodiak, AK (ODK) to AMOTT, AK [New]

Kodiak, AK (ODK)	VOR/DME	(Lat. 57°46′30.13″ N, long. 152°20′23.42″ W)
JEKEX, AK	WP	(Lat. 59°23′25.46″ N, long. 151°48′10.08″ W)
AMOTT, AK	WP	(Lat. 60°52′26.59″ N, long. 151°22′23.60″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06060 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0232; Airspace Docket No. 19–AAL–47]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–378; Fort Yukon, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–378 in the vicinity of Fort Yukon, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0232; Airspace Docket No. 19–AAL–47 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0232; Airspace Docket No. 19–AAL–47) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0232; Airspace Docket No. 19–AAL–47.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated

with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. The Fort Yukon, AK, (FTO) NDB is on the schedule to be decommissioned in the near future. Colored Federal airway Blue 4 (B–4) currently navigates from the Utopia Creek, AK, (UTO) to FTO. The decommissioning of FTO would render B–4 unusable from the Evansville, AK (EAV) NDB to FTO. This proposal would provide a newly established RNAV route T–378 as an alternative that would avoid mountainous terrain while also providing continuous two-way voice communications. Additionally, the proposal would establish connectivity with RNAV route T–227 at the JIFFS waypoint (WP).

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–377 in the vicinity of Fort Yukon, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed route is described below.

T–378: The FAA proposes to establish RNAV route T–378 from the BRION, AK, WP, southeast of the Bettles Airport to the Fort Yukon, AK (FYU) VHF Omnidirectional Range and Tactical Air Navigation System (VORTAC).

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–378 BRION, AK to Fort Yukon, AK (FYU) [New]

BRION, AK	WP	(Lat. 66°09′38.95″ N, long. 150°12′25.77″ W)
ZUSPA, AK	WP	(Lat. 66°18′20.43″ N, long. 147°51′04.14″ W)
DUTKE, AK	WP	(Lat. 66°25′02.96″ N, long. 146°57′36.10″ W)
Fort Yukon, AK (FYU)	VORTAC	(Lat. 66°34′27.31″ N, long. 145°16′35.97″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06062 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0245; Airspace Docket No. 19–AAL–49]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–380; Emmonak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–380 in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0245; Airspace Docket No. 19–AAL–49

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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0245; Airspace Docket No. 19–AAL–49) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0245; Airspace Docket No. 19–AAL–49.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 *ADDRESSES* section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. St. Marys, AK (SMA), Aniak, AK (ANI), and Cairn Mountain, AK (CRN) NDBs are all included on the schedule to be decommissioned. Colored Federal airway Green 6 (G–6) is dependent upon SMA and ANI for navigation and the decommissioning would render it unusable. To mitigate the loss of G–6, this proposal would establish RNAV route T–380 that would overlay the current G–6. Additionally, in order to provide an alternative to VHF Omnidirectional Radar (VOR) Federal airway V–508, this proposal would allow for a lower GNSS MEA and still provide the appropriate separation along the southwest portion of Stony MOA from Aniak, AK to Sparrevohn, AK. Finally, the proposal would provide RNAV route connectivity with T–225 to the southeast of Emmonak, AK at a newly established waypoint (WP) HUMLA.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–380 in the vicinity of Emmonak, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed route is described below.

T–380: The FAA proposes to establish RNAV route T–380 from the Emmonak, AK, (ENM) VOR/Distance Measuring Equipment (VOR/DME) to the Sparrevohn, AK, (SQA) VOR/DME, due to the decommissioning of SMA, ANI, and CRN NDBs.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes

* * * * *

T–380 Emmonak, AK (ENM) to Sparrevohn, AK (SQA) [New]

Emmonak, AK (ENM)	VOR/DME	(Lat. 62°47′04.52″ N, long. 164°29′15.12″ W)
HUROP, AK	WP	(Lat. 62°05′37.50″ N, long. 163°41′00.03″ W)
JOPES, AK	WP	(Lat. 62°03′33.30″ N, long. 163°17′07.68″ W)
CIBUP, AK	WP	(Lat. 61°34′53.76″ N, long. 159°32′34.95″ W)
AMEDE, AK	WP	(Lat. 61°34′17.31″ N, long. 158°25′46.86″ W)
CERTU, AK	WP	(Lat. 61°25′08.81″ N, long. 157°15′46.63″ W)
FABGI, AK	WP	(Lat. 61°13′51.69″ N, long. 156°14′37.32″ W)
Sparrevohn, AK (SQA)	VOR/DME	(Lat. 61°05′54.89″ N, long. 155°38′04.49″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06055 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0249; Airspace Docket No. 19–AAL–52]

RIN 2120–AA66

Proposed Establishment of United States Area Navigation (RNAV) Route T–383; Sitka, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish United States Area Navigation (RNAV) route T–383 in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0249; Airspace Docket No. 19–AAL–52 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A,

Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0249; Airspace Docket No. 19–AAL–52) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0249; Airspace Docket No.19–AAL–52.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. Haines, AK, (HNS); Elephant, AK, (EEF); and Sitka, AK, (SIT) NDBs are on the schedule to be decommissioned. Colored Federal airways Amber 15 (A–15) and Blue 38 (B–38) are dependent upon one, or more of these NDBs and would be rendered unusable upon their decommissioning. Additionally, this proposal would provide alternate navigation for VHF Omnidirectional Radar (VOR) Federal airways V–428 and V–593, while also establishing connectivity to instrument approach procedures at surrounding airports and other RNAV routes.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to establish RNAV route T–383 in the vicinity of Sitka, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed route is described below.

T–383: The FAA proposes to establish RNAV route T–383 from the Biorka Island, AK, VOR and Tactical Air Navigation (VORTAC) to the MAGNM, AK, waypoint (WP), northwest of Haines Airport, Alaska on the United States/Canada border.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not

warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes.

* * * * *

T–383 Biorka Island, AK (BKA) to MAGNM, AK [New]

Biorka Island, AK (BKA)	VORTAC	(Lat. 56°51′33.87″ N, long. 135°33′04.72″ W)
LYRIC, AK	Fix	(Lat. 57°39′58.71″ N, long. 135°40′58.96″ W)
Sisters Island, AK (SSR)	VORTAC	(Lat. 58°10′39.58″ N, long. 135°15′31.91″ W)
BAVKE, AK	WP	(Lat. 59°12′43.71″ N, long. 135°25′39.26″ W)
MAGNM, AK	WP	(Lat. 59°38′21.18″ N, long. 136°05′44.25″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06056 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0220; Airspace Docket No. 19–AAL–67]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–242; Utqiagvik, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–242 in the vicinity of Utqiagvik, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0220; Airspace Docket No. 19–AAL–67 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0220; Airspace Docket No. 19–AAL–67) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0220; Airspace DocketNo. 19–AAL–67.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may

be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. Due to a review of RNAV route T–242, the FAA is proposing to create connectivity with a future proposed route T–381 at waypoints (WPs) HUMUB and WEGNO. The addition of these WPs will also provide a lower GNSS MEA along the route in this area, deviating the route slightly west of the original. The WEGNO, AK, WP is not a turn point, so it will not be included in the proposed legal description, but would be depicted on the sectional chart. Additionally, the FAA found that WPs KUTDE and LACIL, which are in the current legal description, are not turn points, and this proposal would remove them from the legal description. Finally, the FAA determined that the current legal description is improperly formatted in accordance with FAA Order JO 7400.2N. This proposal would correct the format indicating a west to east legal description in FAA Order JO 7400.11.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–242 in the vicinity of Utqiagvik, AK in support of a large and comprehensive T-rout modernization project in the state of Alaska. The proposed amendment is described below.

T–242: The FAA proposes to amend RNAV route T–242 by changing the format of the legal description contained in the FAA Order JO 7400.11 to a west to east description in order to conform to FAA Order JO 7400.2N. Additionally, this proposal would remove WPs KUTDE, AK and LACIL, AK from the legal description, since they are on a straight segment of the route and not considered a turn point. Finally, the FAA proposes to add an additional WP, HUMUB, AK, WP in order to provide connectivity to a future proposed RNAV route.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes.

* * * * *

T–242 Barrow, AK (BRW) to Talkeetna, AK (TKA) [Amended]

Barrow, AK (BRW)	VOR/DME	(Lat. 71°16′24.33″ N, long. 156°47′17.22″ W)
JOKAP, AK	WP	(Lat. 63°54′46.48″ N, long. 150°58′29.25″ W)
HUMUB, AK	WP	(Lat. 62°25′20.31″ N, long. 150°13′49.23″ W)
Talkeetna, AK (TKA)	VOR/DME	(Lat. 62°17′54.16″ N, long. 150°06′18.90″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06064 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0221; Airspace Docket No. 19–AAL–77]

RIN 2120–AA66

Proposed Amendment of United States Area Navigation (RNAV) Route T–282; Ruby, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend United States Area Navigation (RNAV) route T–282 in the vicinity of Ruby, AK in support of a large and comprehensive T-route modernization project for the state of Alaska.

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; telephone: (800) 647–5527, or (202) 366–9826. You must identify FAA Docket No. FAA–2022–0221; Airspace Docket No. 19–AAL–77 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 Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would expand the availability of RNAV in Alaska and improve the efficient flow of air traffic within the National Airspace System (NAS) by lessoning the dependency on ground based navigation.

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2022–0221; Airspace Docket No. 19–AAL–77) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at *https://www.regulations.gov.*

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to FAA Docket No. FAA–2022–0221; Airspace Docket No. 19–AAL–77.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

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 **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Western Service Center, Operations Support Group, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

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.

Background

In 2003, Congress enacted the Vision 100—Century of Aviation Reauthorization Act (Pub. L. 108–176), which established a joint planning and development office in the FAA to manage the work related to the Next Generation Air Transportation System (NextGen). Today, NextGen is an ongoing FAA-led modernization of the nation's air transportation system to make flying safer, more efficient, and more predictable.

In support of NextGen, this proposal is part of a larger and comprehensive T-route modernization project in the state of Alaska. The project mission statement states: ''To modernize Alaska's Air Traffic Service route structure using satellite based navigation Development of new T-routes and optimization of existing T-routes will enhance safety, increase efficiency and access, and will provide enroute continuity that is not subject to the restrictions associated with ground based airway navigation.'' As part of this project, the FAA evaluated the existing Colored airway structure for: (a) Direct replacement (*i.e.,* overlay) with a T-route that offers a similar or lower Minimum Enroute Altitude (MEA) or Global Navigation Satellite System Minimum Enroute Altitude (GNSS MEA); (b) the replacement of the Colored airway with a T-route in an optimized but similar geographic area, while retaining similar or lower MEA; or (c) removal with no route structure (T-route) restored in that area because the value was determined to be insignificant.

The aviation industry/users have indicated a desire for the FAA to transition the Alaskan en route navigation structure away from dependency on Non-Directional Beacons (NDB), and move to develop and improve the RNAV route structure. During an evaluation of RNAV route T–282, the FAA determined that a slight deviation north would allow for a lower GNSS MEA between the Fix AKTIE and waypoint (WP) ROSII. This proposal would include two newly established WPs the FUZES, AK, WP and the ENVOI, AK, WP to the legal description. Additionally, the proposal would remove the HORSI, AK, Fix from the legal description, since it would no longer be a point along the route.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend RNAV route T–282 in the vicinity of Ruby, AK in support of a large and comprehensive T-route modernization project in the state of Alaska. The proposed amendment is described below.

T–282: T–282 currently navigates between the VENCE, AK, Fix south of the Nulato Airport, Alaska, to the Fairbanks, AK, (FAI) VHF Omnidirectional Radar and Tactical Air Navigational System (VORTAC). The FAA proposes to amend the segment of the route between the AKTIE, AK, Fix and the ROSII, AK, WP by adding two newly established WPs the FUZES, AK, WP and the ENVOI, AK, WP and removing the HORSI, AK, Fix. These amendments would allow for a lower GNSS MEA on this segment of the route. The rest of the route would remain unchanged.

United States Area Navigation Routes are published in paragraph 6011 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 RNAV route listed in this document would be published subsequently in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 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 6011 United States Area Navigation Routes.

* * * * *

T–282 VENCE, AK to Fairbanks, AK (FAI) [Amended]

VENCE, AK	WP	(Lat. 64°29′22.65″ N, long. 158°00′06.11″ W)
AKTIE, AK	WP	(Lat. 64°40′00.00″ N, long. 155°30′00.00″ W)
FUZES, AK	WP	(Lat. 64°45′46.09″ N, long. 154°43′56.31″ W)
ENVOI, AK	WP	(Lat. 64°53′20.45″ N, long. 153°45′51.62″ W)
ROSII, AK	WP	(Lat. 64°57′45.74″ N, long. 153°14′36.51″ W)
PERZO, AK	WP	(Lat. 64°40′22.99″ N, long. 148°07′20.15″ W)
Fairbanks, AK (FAI)	VORTAC	(Lat. 64°48′00.25″ N, long. 148°00′43.11″ W)

* * * * *

Issued in Washington, DC, on March 17, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–06065 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 904

[Docket No. 220114–0015]

RIN 0648–BI72

Civil Procedures in Civil Administrative Enforcement Proceedings

AGENCY: Office of General Counsel (OGC), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NOAA proposes to amend procedures governing its civil administrative enforcement proceedings. The principal changes would include updates to statutory references, clarifications regarding the Administrator's discretionary review, revised directions for appealing a written warning, revised requirements for denying a request for admission, and revised directions for electronic service related to certain appeals and petitions. Other changes would remove the requirement for NOAA to challenge late hearing requests, simplify the use of electronic signatures, rename discovery filings, allow depositions by videoconference, require discovery filings to state when a witness is expected to speak in a language other than the English language in order to arrange interpretation, clarify when failing to pay can be a basis for permit sanctions, incorporate Civil Asset Forfeiture Reform Act deadlines into administrative forfeiture proceedings, and allow NOAA to publish a Notice of Proposed Forfeiture on an official government website. In addition, minor changes would update titles and addresses and correct clerical errors.

DATES: Comments and information must be received no later than 5 p.m. Eastern Time on April 25, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–HQ–2022–0016, by any of the following methods:

- *Electronic submission:* Submit electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter [NOAA–HQ–2022–0016] in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to: Office of General Counsel Enforcement Section (GCES), 1315 East-West Highway, SSMC–3—Room 15862, Silver Spring, MD 20910, Attn: Patrick Carroll.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NOAA. Comments submitted in response to this notice are a matter of public record. Before including an address, phone number, email address, or other personal identifying information in a comment, please be aware that comments—including any personal identifying information—can and will be made publicly available. While a request can be made to withhold personal identifying information from public review, NOAA cannot ensure that it will be able to do so.

Comments received electronically will generally be posted to *www.regulations.gov* without change. For posted comments, all personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NOAA will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Patrick Carroll or Meggan Engelke-Ros, GCES, (301) 427–2202.

SUPPLEMENTARY INFORMATION:

I. Background

NOAA is proposing to amend the civil procedure regulations that apply to its administrative proceedings (15 CFR part 904), as described below. This includes proposed changes to update the statutory references subject to the application of this chapter of the Code of Federal Regulations, the titles and addresses for various offices of NOAA, the procedures for collection of civil monetary payments, the process for appealing written warnings issued by an authorized officer, and references to the office of Administrative Law Judges. This action would also provide clarifications to NOAA's filing requirements, requirements for an answering party to deny a request for admissions, deadlines in an administrative forfeiture proceeding, the availability of a NOAA email address to electronically submit appeals of written warnings, petitions to the Administrator, petitions for relief from forfeiture, the process to identify witnesses that are expected to testify in a foreign language, and the criteria the Administrator may rely on to determine whether or not to grant discretionary review. Furthermore, this action would add provisions to the forfeiture section to authorize the posting of notices online, and would correct erroneous cross-references, grammatical issues, internal inconsistencies, typos, and other clerical errors that have resulted from the passage of time or were inadvertently left unaddressed in the last major revision to the regulations and have since been identified.

II. Proposed Revisions

Subpart A—General

Purpose and Scope

Section 904.1: Paragraph (c) would be amended to update the list of statutes enforced by NOAA pursuant to the procedures set forth in 15 CFR part 904. Specifically, the proposed amendments would remove references to statutes that have been repealed and statutes that are not enforced by NOAA. References to statutes enacted, or amended to include civil administrative enforcement provisions, since 15 CFR part 904 was last amended, would be added.

Definitions and Acronyms

Section 904.2: This section would be amended to reflect that the Administrative Law Judges currently hearing NOAA enforcement cases do not have a docketing center; to clarify that when U.S. Coast Guard (USCG) personnel are accompanying or acting under the direction of any authorized officer, those USCG personnel are authorized officers; to clarify that it is the Secretary of Commerce that may enter into agreements with Federal and state agencies to enforce statutes administered by NOAA; to clarify that a written warning may be a final administrative decision; and to rename initial discovery filings.

Filing and Service

Section 904.3: The heading of this section would be simplified to reflect that its provisions pertain to the service of any documents rather than specific filings, such as filings with the Office of Administrative Law Judges. Paragraph (a) would be amended to clarify that the requirements related to service apply to Initial Decisions as well as to notices and Written Warnings, and conforming amendments would be made to

paragraphs (b), (c), and (d). Paragraphs (a) and (b) would also be amended to remove service by facsimile, given the diminished prevalence of this form of communication and the current use of electronic transmission.

Computation of Time Periods

Section 904.4: The first line of this section would be amended to correct a typographical error.

Subpart B—Civil Penalties

Notice of Violation and Assessment (NOVA)

Section 904.101: Introductory paragraph (a) would be amended to correct a typographical error.

Procedures Upon Receipt of a NOVA

Section 904.102: Paragraphs (c) and (d) of this section would be amended to correct typographical errors.

Hearing

Section 904.103: This section would be removed and reserved. This is not a substantive change because the existing language merely reiterates requirements more clearly articulated in other provisions of NOAA's civil procedures regulations. This revision proposes to delete the redundant text.

Payment of Final Civil Penalty

Section 904.105: Paragraph (a) would be amended by replacing the instructions for payment of civil penalties with language reflecting current practices. Instructions related to the form of payment are no longer included in the Notice of Violation and Assessment of civil penalty (NOVA) or settlement agreement, but are instead provided by NOAA in an initial bill.

Joint and Several Respondents

Section 904.107: The last sentence of paragraph (b) would be amended to ensure consistent and correct use of terms.

Factors Considered in Assessing Civil Penalties

Section 904.108: The last sentence of paragraph (e) and first sentence of paragraph (h) would be amended to reflect the fact that the Administrative Law Judge is assessing a penalty as a matter of first impression rather than reviewing a final agency action.

Subpart C—Hearing and Appeal Processes

Scope and Applicability

Section 904.200: Paragraph (a) would be amended to clarify that this subpart also pertains to violations of other laws or authorities administered by NOAA to mirror the scope of § 904.1.

Hearing Requests and Case Docketing

Section 904.201: Paragraph (a) would be amended to require hearing requests to conform to the service requirements in § 904.3. Paragraph (b) would be inserted to clarify that a request for a hearing must contain current contact information, including an active telephone number and email address (if available), and that NOAA and the Office of Administrative Law Judges must be promptly notified of any changes to that information. Accordingly, paragraphs (b) and (c) would be renamed paragraphs (c) and (d), respectively. Paragraphs (a), (c) and (d), as renumbered, would be amended to reflect that the Administrative Law Judges currently hearing NOAA enforcement cases do not have a docketing center. Paragraph (c), as renumbered, would be amended to ensure consistent and correct use of terms.

Filing of Documents

Section 904.202: Paragraph (a) would be amended to reflect that the Administrative Law Judges currently hearing NOAA enforcement cases do not have a docketing center, and to incorporate the filing requirements specified at § 904.3.

Duties and Powers of Judge

Section 904.204: Paragraph (a) would be amended to reference § 904.201(c) rather than § 904.201(b) to reflect the change in the numbering of § 904.201.

Pleadings, Motions, and Service

Section 904.206: Paragraph (a) would be amended to reflect that the Administrative Law Judges currently hearing NOAA enforcement cases do not have a docketing center. Paragraph (b) would be amended to allow pleadings to be signed in any manner to allow flexibility in electronic filing.

Expedited Administrative Proceedings

Section 904.209: This section would be amended to correct a typographical error.

Stipulations

Section 904.214: This section would be amended to correct a typographical error.

Prehearing Conferences

Section 904.216: Introductory paragraph (a) of this section would be amended to correct a typographical error.

Discovery Generally

Section 904.240: Throughout this section, initial discovery filings would be renamed for clarity and to more accurately describe the purpose of these filings in NOAA's administrative proceedings. Conforming changes would be made throughout 15 CFR part 904 for consistency. Paragraph (a) would be amended to clarify that the Administrative Law Judge will set the deadline for the parties to submit their initial discovery filings. Paragraph (a)(2) would be amended to clarify who must sign the initial discovery filings, and that those filings must be served in conformance with § 904.3. Paragraph (b) would be amended to allow for service of discovery requests regarding ability to pay in conformance with § 904.3. Paragraph (f) would be amended to clarify that the provisions regarding the failure to comply with discovery obligations also apply to initial discovery filings.

Depositions

Section 904.241: Paragraph (a) would be amended to require the written notice of deposition to also provide the phone number and email address (if available) of the person before whom the deposition would be taken. Paragraph (c) would be amended to allow depositions to take place by videoconference. Paragraph (d) would be amended to clarify that the admissibility of depositions is determined under this part rather than the Federal Rules of Evidence, consistent with § 904.251, which states the formal rules of evidence do not necessarily apply.

Interrogatories

Section 904.242: Paragraphs (a) and (b) would be amended to clarify that service of interrogatories must be in conformance with § 904.3. Paragraph (a) would also be amended to move the requirement that answers to interrogatories be used in the same manner as depositions into new paragraph (d) to match the organization of other sections.

Admissions

Section 904.243: Paragraphs (a) and (b) would be amended to clarify that service of admission requests and responses must be in conformance with § 904.3. Paragraph (b) would be amended to require a denial to fairly respond to the substance of the matter and specify which part of an answer is denied. Paragraph (b) would also be amended to require a party failing to admit or deny an admission to state that it has made reasonable inquiry and

assert that the information known or readily obtainable is insufficient to admit or deny. The proposed language mirrors requirements in Rule 36 of the Federal Rules of Civil Procedures.

Hearings

Section 904.250: Paragraph (a) would be amended to correct the internal reference to paragraph (d) of the same section regarding the scheduling of expedited proceedings.

Evidence

Section 904.251: Paragraph (a)(3) would be amended to clarify that evidence may still be presented to establish matters of aggravation or mitigation where the respondent admits an allegation. Existing paragraph (i) would be separated into two paragraphs, so that new paragraph (i) would address foreign law and new paragraph (j) would address foreign language exhibits. This is an organizational change with no amendments to the content of the rules.

Witnesses

Section 904.252: Paragraph (a) would be amended to state that certain witnesses are eligible to receive fees rather than required to receive fees; this change would cover circumstances where the witness declines to receive payment. Paragraph (f) would be amended to require a party to state in its initial discovery filings if a witness the party sponsors is expected to testify in a language other than the English language and removes the requirement for the party sponsoring the witness to provide for the services. The proposed change would provide more notice than the current requirement of advising opposing counsel 10 days prior to a hearing and would create more flexibility to successfully arrange for the use of a certified interpreter.

Recordation of Hearing

Section 904.260: Paragraph (b) would be amended to reflect that the Administrative Law Judges currently hearing NOAA enforcement cases do not have a docketing center.

Record of Decision

Section 904.270: Paragraph (b) would be amended to reflect that the Administrative Law Judges currently hearing NOAA enforcement cases do not have a docketing center.

Initial Decision

Section 904.271: The title and contents of this section would be amended to ensure correct capitalization. Conforming changes would be made throughout this part. Paragraphs (a) and (c) would be amended to clarify that this section applies to the Administrative Law Judge's Initial Decision upon the case. Paragraph (c) would be revised to reflect the current title of the Chief of the Enforcement Section of NOAA's Office of General Counsel. Paragraph (c) would also be amended to remove the reference to § 904.3 because § 904.3(a) already explicitly references Initial Decisions.

Petition for Reconsideration

Section 904.272: This section would be amended to correct typographical errors.

Administrative Review of Decision

Section 904.273: Paragraph (a) would be revised to update the directions for filing petitions for review, including by changing the NOAA Office of General Counsel section that must receive copies of any petitions for review, and providing both mail and electronic transmission options for service. Paragraph (a) would also clarify that service must be made in conformance with § 904.3(b). Paragraph (b) would be revised to clarify that the Administrator may affirm, reverse, modify or remand, in whole or in part, an Administrative Law Judge's Initial Decision. Paragraph (c) would be revised to clarify the factors the Administrator will consider in determining whether to grant discretionary review. Paragraph (d) would be amended to ensure correct capitalization, and conforming changes would be made throughout this part for consistency. Paragraphs (i) and (k) would be amended to allow for service consistent with § 904.3. Paragraph (l)(2) would be revised to correct an omission of paragraph (i) as actions constituting final agency action.

Subpart D—Permit Sanctions and Denials

Scope and Applicability

Section 904.300: Paragraph (a) would be amended to define the scope of permit sanctions such as the revocation, suspension, modification, and denial of permits. The scope of permit revocation, suspension, and modification would be moved into this paragraph from § 904.320. The scope of a permit denial would be added to clarify that the term permit sanction includes the denial of issuance of a permit in the future. Paragraph (b) would be amended to exclude the Land Remote Sensing Policy Act of 1992, as amended (Act), from this subpart, as regulations at 15 CFR part 960 apply to license denials under the Act.

Bases for Permit Sanctions

Section 904.301: The title of this section would be amended to reflect that permit denials are a form of permit sanction. Paragraph (a) would be amended to clarify that NOAA cannot sanction a permit in a manner inconsistent with an underlying statute. Paragraph (a)(1) and (a)(2) would be amended to simplify the language. Paragraph (a)(4) would be amended to incorporate statutory language from 16 U.S.C. 1858(g)(1)(C) regarding sanctions for failure to pay any amount in settlement of a civil forfeiture on a vessel or other property. Paragraph (b) would be amended to simplify the language regarding which permits a sanction may apply to. Paragraphs (b)(1) through (b)(3), containing hypotheticals where sanctions may be assessed, would be removed to avoid confusion and eliminate dated hypotheticals. These changes are meant to simplify the language and would not change the substance of the provisions related to imposition of sanctions.

Notice of Permit Sanction

Section 904.302: Paragraph (a) would be amended to remove the cross-reference to § 904.3 to avoid repetition.

Notice of Intent To Deny Permit

Section 904.303: Paragraph (a) would be removed and reserved because the substance of paragraph (a) regarding when NOAA may issue a notice of intent to deny permit is already stated in detail in § 904.301. Paragraph (b) would be amended to remove the cross-reference to § 904.3 to avoid repetition. Paragraph (d) would be amended by removing language referencing §§ 904.310 and 904.320 as redundant given earlier changes.

Opportunity for Hearing

Section 904.304: Paragraph (b) would be amended to simplify the language.

Nature of Permit Sanctions

Section 904.310: This section would be removed and reserved because the content of this section is already explained in § 904.301, which addresses the bases for permit sanctions.

Compliance

Section 904.311: The name of this section would be amended to better reflect the specific action addressed in the regulation. Additionally, language would be added to clarify that this regulates sanctions such as permit suspensions, denials, and modifications.

Nature of Permit Sanctions

Section 904.320: This section would be removed and reserved. The contents of this section provide the scope of three types of permit sanctions and are proposed to be moved to § 904.300 at the beginning of subpart D, which addresses the scope and applicability of permit sanctions.

Subpart E—Written Warnings

Procedures

Section 904.402: Paragraph (a) would be amended to remove the cross-reference to § 904.3 regarding service to avoid repetition. Section 904.3(a) already explicitly references service of written warnings.

Review and Appeal of a Written Warning

Section 904.403: Paragraph (a) would be removed and reserved. Paragraph (b) would be revised to direct all appeals of written warnings to the NOAA Deputy General Counsel. This change would ensure that any person involved in the decision to issue a written warning is not responsible for deciding the appeal. Conforming changes would be made to paragraph (b). Paragraph (b) would be further amended to include the procedures for appealing any written warnings and allow for electronic service.

Subpart F—Seizure and Forfeiture Procedures

Purpose and Scope

Section 904.500: Paragraph (a) would be simplified to remove internal inconsistencies. Paragraphs (a) and (b) would be revised to specify that the seizure and forfeiture regulations apply to any laws cited in paragraph (c) of § 904.1.

Notice of Seizure

Section 904.501: This section would be revised to correct grammatical errors, and would remove repetitive references to § 904.3.

Bonded Release of Seized Property

Section 904.502: Paragraph (c) would be revised to correct a typographical error.

Appraisement

Section 904.503: This section would be revised to make the language regarding appraising seized property permissible rather than mandatory to reflect NOAA's authority to sell perishable property through bids rather than appraisals.

Administrative Forfeiture Proceedings

Section 904.504: Paragraph (a) would be amended to conform with the amendments made to § 904.503. Paragraph (b)(1) would be amended to provide a deadline to publish the Notice of Proposed Forfeiture consistent with the Civil Asset Forfeiture Reform Act. Paragraph (b)(1) will also be amended to enable NOAA to publish a Notice of Proposed Forfeiture on an official government website. Paragraph (b)(1) would also remove a repetitive reference to § 904.3. Paragraph (b)(3)(i) would be amended by removing a confusing cross-reference to paragraph (b)(4).

Summary Sale

Section 904.505: Paragraph (c) would be amended to correct grammatical errors and to remove a redundant reference to § 904.3.

Remission of Forfeiture and Restoration of Proceeds of Sale

Section 904.506: Paragraph (a)(1) would be amended to correct grammatical errors and to mirror paragraph (b) of this section. Paragraph (b)(1) would be revised to reflect the current title of the Chief of the Enforcement Section of NOAA's Office of General Counsel and to allow persons to petition for relief from forfeiture electronically in addition to by mail. Paragraph (b)(1) would also be revised to clarify that property is administratively forfeited under § 904.504 and not § 904.506.

Disposal of Forfeited Property

Section 904.509: Paragraph (g)(2) would be amended to reference the updated Federal Property Management regulations.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Pursuant to the Executive Order on federalism, Executive Order 13132, this proposed rule does not have federalism effects and that a federalism assessment is not required.

There are no reporting, recordkeeping or other compliance requirements in the proposed rule. Nor does this proposed rule contain an information-collection request that would implicate the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.*

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The small businesses, as defined in the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* that this proposed rule may affect include, but are not limited to, vessel owners, vessel operators, fish dealers, individual fishermen, small corporations, and others engaged in commercial and recreational activities regulated by NOAA. However, this proposed rule does not have any compliance costs or associated fees for businesses, large or small. This proposed rule is purely procedural, and merely amends and refines NOAA's existing rules of civil procedure.

Because this proposed rule would only modify existing procedural rules, the overall economic impact on small entities, if any, is expected to be nominal. Accordingly, this proposed rule will not have a substantial impact on a significant number of small entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

List of Subjects in 15 CFR Part 904

Administrative practice and procedure, Fisheries, Fishing, Fishing vessels, Penalties, Seizures and forfeitures.

Dated: March 15, 2022.

Walker Smith,

General Counsel, National Oceanic and Atmospheric Administration.

For reasons set forth in the preamble, NOAA proposes to amend 15 CFR part 904 to read as follows:

PART 904—CIVIL PROCEDURES

■ 1. The authority citation for part 904 is revised to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 1531 *et seq.,* 16 U.S.C. 1361 *et seq.,* 16 U.S.C. 3371 *et seq.,* 16 U.S.C. 1431 *et seq.,* 16 U.S.C. 6901 *et seq.,* 16 U.S.C. 773 *et seq.,* 16 U.S.C. 951 *et seq.,* 16 U.S.C. 5001 *et seq.,* 16 U.S.C. 3631 *et seq.,* 42 U.S.C. 9101 *et seq.,* 30 U.S.C. 1401 *et seq.,* 16 U.S.C. 971 *et seq.,* 16 U.S.C. 781 *et seq.,* 16 U.S.C. 2431 *et seq.,* 16 U.S.C. 972 *et seq.,* 16 U.S.C. 916 *et seq.,* 16 U.S.C. 1151 *et seq.,* 16 U.S.C. 3601 *et seq.,* 16 U.S.C. 1851 note; 15 U.S.C. 330 *et seq.,* 16 U.S.C. 2461 *et seq.,* 16 U.S.C. 5101 *et seq.,* 16 U.S.C. 1371 *et seq.,* 16 U.S.C. 3601 *et seq.,* 16 U.S.C. 1822 note, 16 U.S.C. 4001 *et seq.,* 16 U.S.C. 5501 *et seq.,* 16 U.S.C. 5601 *et seq.,* 16 U.S.C. 973 *et seq.,* 16 U.S.C. 1827a, 16 U.S.C. 7701 *et seq.,* 16 U.S.C. 7801 *et seq.,* 16 U.S.C. 1826g, 51 U.S.C. 60101 *et seq.,* 16 U.S.C. 7001 *et seq.,* 16 U.S.C. 7401 *et seq.,* 16 U.S.C. 2401 *et seq.,* 16 U.S.C. 1826k note, 1857 note, 22 U.S.C. 1980, Pub. L. 116–340, 134 Stat. 5128.

■ 2. In § 904.1, revise paragraphs (c)(1) through (40) to read as follows:

§ 904.1 Purpose and scope.

* * * * *

(c) * * *

(1) Anadromous Fish Products Act, 16 U.S.C. 1822 note;

(2) Antarctic Conservation Act of 1978, 16 U.S.C. 2401 *et seq.;*

(3) Antarctic Marine Living Resources Convention Act of 1984, 16 U.S.C. 2431 *et seq.;*

(4) Antarctic Mineral Resources Protection Act of 1990, 16 U.S.C. 2461 *et seq.;*

(5) Atlantic Coastal Fisheries Cooperative Management Act, 16 U.S.C. 5101 *et seq.;*

(6) Atlantic Salmon Convention Act of 1982, 16 U.S.C. 3601 *et seq.;*

(7) Atlantic Striped Bass Conservation Act, 16 U.S.C. 1851 note;

(8) Atlantic Tunas Convention Act of 1975, 16 U.S.C. 971 *et seq.;*

(9) Billfish Conservation Act of 2012, 16 U.S.C. 1827a;

(10) DESCEND Act of 2020, Public Law 116–340, 134 Stat. 5128;

(11) Deep Seabed Hard Mineral Resources Act, 30 U.S.C. 1401 *et seq.;*

(12) Dolphin Protection Consumer Information Act, 16 U.S.C. 1371 *et seq.;*

(13) Driftnet Impact Monitoring, Assessment, and Control Act, 16 U.S.C. 1822 note;

(14) Eastern Pacific Tuna Licensing Act of 1984, 16 U.S.C. 972 *et seq.;*

(15) Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.;*

(16) Ensuring Access to Pacific Fisheries Act, 16 U.S.C. 7701 *et seq.* (North Pacific), 16 U.S.C. 7801 *et seq.* (South Pacific);

(17) Fish and Seafood Promotion Act of 1986, 16 U.S.C. 4001 *et seq.;*

(18) Fisherman's Protective Act of 1967, 22 U.S.C. 1980;

(19) Fur Seal Act Amendments of 1983, 16 U.S.C. 1151 *et seq.;*

(20) High Seas Driftnet Fishing Moratorium Protection Act, 16 U.S.C. 1826g;

(21) High Seas Fishing Compliance Act, 16 U.S.C. 5501 *et seq.;*

(22) Lacey Act Amendments of 1981, 16 U.S.C. 3371 *et seq.;*

(23) Land Remote Sensing Policy Act of 1992, as amended, 51 U.S.C. 60101 *et seq.;*

(24) Magnuson–Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.;*

(25) Marine Mammal Protection Act of 1972, 16 U.S.C. 1361 *et seq.;*

(26) National Marine Sanctuaries Act, 16 U.S.C. 1431 *et seq.;*

(27) North Pacific Anadromous Stocks Convention Act of 1992, 16 U.S.C. 5001 *et seq.;*

(28) Northern Pacific Halibut Act of 1982, 16 U.S.C. 773 *et seq.;*

(29) Northwest Atlantic Fisheries Convention Act of 1995, 16 U.S.C. 5601 *et seq.;*

(30) Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. 9101 *et seq.;*

(31) Pacific Salmon Treaty Act of 1985, 16 U.S.C. 3631 *et seq.;*

(32) Pacific Whiting Act of 2006, 16 U.S.C. 7001 *et seq.;*

(33) Port State Measures Agreement Act of 2015, 16 U.S.C. 7401 *et seq.;*

(34) Shark Conservation Act of 2010, 16 U.S.C. 1826k note, 1857 note;

(35) South Pacific Tuna Act of 1988, 16 U.S.C. 973 *et seq.;*

(36) Sponge Act, 16 U.S.C. 781 *et seq.;*

(37) Tuna Conventions Act of 1950, 16 U.S.C. 951 *et seq.*;

(38) Weather Modification Reporting Act, 15 U.S.C. 330 *et seq.*;

(39) Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.*; and

(40) Whaling Convention Act of 1949, 16 U.S.C. 916 *et seq.*

* * * * *

■ 3. In § 904.2:

■ a. Remove the definition of ''ALJ Docketing Center'';

■ b. Revise the definitions of ''Applicable statute'', ''Authorized officer'', and ''Final administrative decision''; and

■ c. Remove the definition of ''PPIP''.

The revisions read as follows:

§ 904.2 Definitions and acronyms.

* * * * *

Applicable statute means a statute cited in § 904.1(c), and any regulations issued by NOAA to implement it.

Authorized officer means:

(1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG);

(2) Any special agent or fishery enforcement officer of NMFS;

(3) Any officer designated by the head of any Federal or state agency that has entered into an agreement with the Secretary of Commerce to enforce the provisions of any statute administered by NOAA; or

(4) Any USCG personnel accompanying and/or acting under the direction of any person described in paragraphs (1), (2), or (3) of this definition.

* * * * *

Final administrative decision means an order or decision of NOAA assessing a civil penalty, permit sanction, or written warning, which is not subject to further Agency review under this part, and which is subject to collection proceedings or judicial review in an appropriate Federal district court as authorized by law.

* * * * *

■ 4. Revise § 904.3 to read as follows:

§ 904.3 Filing and service.

(a) Service of a NOVA (§ 904.101), NOPS (§ 904.302), NIDP (§ 904.303), Notice of Proposed Forfeiture (§ 904.504), Notice of Seizure (§ 904.501), Notice of Summary Sale (§ 904.505), Written Warning (§ 904.402), or Initial Decision (§ 904.271) may be made by certified mail (return receipt requested), electronic transmission, or third party commercial carrier to an addressee's last known address or by personal delivery. Service of a notice under this subpart will be considered effective upon receipt.

(b) Service of documents and papers, other than those described in paragraph (a) of this section, may be made by first class mail (postage prepaid), electronic transmission, or third party commercial carrier, to an addressee's last known address or by personal delivery. Service of documents and papers will be considered effective upon the date of postmark (or as otherwise shown for government-franked mail), delivery to third party commercial carrier, electronic transmission, or upon personal delivery.

(c) Whenever this part requires service of a document or other paper referred to in paragraph (a) or (b) of this section, such service may effectively be made on the agent for service of process, on the attorney for the person to be served, or other representative. Refusal by the person to be served (including an agent, attorney, or representative) of service of a document or other paper will be considered effective service of the document or other paper as of the date of such refusal. In cases where a document or paper described in paragraph (a) of this section is returned unclaimed, service will be considered effective if the U.S. Postal Service provides an affidavit stating that the party was receiving mail at the same address during the period when certified service was attempted.

(d) Any documents and other papers filed or served must be signed:

(1) By the person or persons filing the same;

(2) By an officer thereof if a corporation;

(3) By an officer or authorized employee if a government instrumentality; or

(4) By an attorney or other person having authority to sign.

■ 5. In § 904.4, revise the first sentence to read as follows:

§ 904.4 Computation of time periods.

For a NOVA, NOPS or NIDP, the 30-day response period begins to run on the date the notice is received. * * *

■ 6. In § 904.101, revise paragraph (a) introductory text to read as follows:

§ 904.101 Notice of violation and assessment (NOVA).

(a) A NOVA will be issued by NOAA and served on the respondent(s). The NOVA will contain:

* * * * *

■ 7. In § 904.102, revise paragraphs (c) and (d) to read as follows:

§ 904.102 Procedures upon receipt of a NOVA.

* * * * *

(c) The respondent may, within the 30-day period specified in paragraph (a) of this section, request an extension of time to respond. Agency counsel may grant an extension of up to 30 days unless he or she determines that the requester could, exercising reasonable diligence, respond within the 30-day period. If Agency counsel does not respond to the request within 48 hours of its receipt, the request is granted automatically for the extension requested, up to a maximum of 30 days. A telephonic response to the request within the 48-hour period is considered an effective response, and will be followed by written confirmation.

(d) Agency counsel may, for good cause, grant an additional extension beyond the 30-day period specified in paragraph (c) of this section.

§ 904.103 [Removed and Reserved]

■ 8. Remove and reserve § 904.103.

■ 9. In § 904.105, revise paragraph (a) to read as follows:

§ 904.105 Payment of final civil penalty.

(a) Respondent must make full payment of the civil penalty within 30 days of the date upon which the NOVA becomes effective as the final administrative decision and order of NOAA under § 904.104 or the date of the final administrative decision as provided in subpart C of this part, as directed by NOAA. Payment must be made in accordance with the bill and instructions provided by NOAA.

* * * * *

■ 10. In § 904.107, revise paragraph (b) to read as follows:

§ 904.107 Joint and several respondents.

* * * * *

(b) A hearing request by one joint and several respondent is considered a request by the other joint and several respondent(s). Agency counsel, having received a hearing request from one joint and several respondent, will send a copy of it to the other joint and several respondent(s) in the case. However, if the requesting joint and several respondent settles with the Agency prior to the hearing, upon notification by the Agency, any remaining joint and several respondent(s) must affirmatively request a hearing within the time period specified or the case will be removed from the hearing docket as provided in § 904.213.

* * * * *

■ 11. In § 904.108, revise paragraphs (e), (f), and (h) to read as follows:

§ 904.108 Factors considered in assessing civil penalties.

* * * * *

(e) Financial information regarding respondent's ability to pay should be submitted to Agency counsel as soon as possible after the receipt of the NOVA. If a respondent has requested a hearing on the violation alleged in the NOVA and wants the Initial Decision of the Judge to consider his or her inability to pay, verifiable, complete, and accurate financial information must be submitted to Agency counsel at least 30 days in advance of the hearing, except where the applicable statute expressly provides for a different time period. No information regarding the respondent's ability to pay submitted by the respondent less than 30 days in advance of the hearing will be admitted at the hearing or considered in the Initial Decision of the Judge, unless the Judge rules otherwise. If the Judge decides to admit any information related to the respondent's ability to pay submitted less than 30 days in advance of the hearing, Agency counsel will have 30 days to respond to the submission from the date of admission. In deciding whether to submit such information, the respondent should keep in mind that the Judge may assess a civil penalty either greater or smaller than that assessed in the NOVA.

(f) Issues regarding ability to pay will not be considered in an administrative review of an Initial Decision if the financial information was not previously presented by the respondent to the Judge prior to or at the hearing.

* * * * *

(h) Whenever a statute requires NOAA to take into consideration a respondent's ability to pay when assessing a civil penalty and the respondent has requested a hearing on the violation alleged in the NOVA, the Agency must submit information on the respondent's financial condition so that the Judge may consider that information, along with any other factors required to be considered, in the Judge's assessment of a civil penalty. Agency counsel may obtain such financial information through discovery procedures under § 904.240, or otherwise. A respondent's refusal or failure to respond to such discovery requests may serve as the basis for inferring that such information would have been adverse to any claim by respondent of inability to pay the assessed civil penalty, or result in respondent being barred from asserting financial hardship.

* * * * *

■ 12. In § 904.200, revise paragraph (a) to read as follows:

§ 904.200 Scope and applicability.

(a) This subpart sets forth the procedures governing the conduct of hearings and the issuance of initial and final administrative decisions of NOAA involving alleged violations of the laws cited in § 904.1(c) and any other laws or authorities administered by NOAA and regulations implementing these laws, including civil penalty assessments and permit sanctions and denials. By separate regulation, these rules may be applied to other proceedings.

* * * * *

■ 13. Revise § 904.201 to read as follows:

§ 904.201 Hearing requests and case docketing.

(a) If the respondent wishes a hearing on a NOVA, NOPS or NIDP, the request must be dated and in writing, and must be served in conformance with § 904.3 on the Agency counsel specified in the notice. The respondent must either attach a copy of the NOVA, NOPS or NIDP or refer to the relevant NOAA case number. Agency counsel will promptly forward the request for hearing to the Office of Administrative Law Judges.

(b) Any party requesting a hearing under § 904.102(a)(3) must provide current contact information, including a working telephone number and email address (if one is available). The Agency and the Office of Administrative Law Judges must be promptly notified of any changes to this information.

(c) If a written application is made to NOAA after the expiration of the time period established in this part for the required filing of hearing requests, Agency counsel will promptly forward the request for hearing along with documentation of service and any other relevant materials to the Office of Administrative Law Judges for a determination on whether such request shall be considered timely filed. Determinations by the Judge regarding

untimely hearing requests under this section shall be in writing.

(d) Upon its receipt for filing in the Office of Administrative Law Judges, each request for hearing will be promptly assigned a docket number and thereafter the proceeding will be referred to by such number. Written notice of the assignment of hearing to a Judge will promptly be given to the parties.

■ 14. In § 904.202, revise paragraph (a) to read as follows:

§ 904.202 Filing of documents.

(a) Pleadings, papers, and other documents in the proceeding must be filed directly with the Office of Administrative Law Judges, be served on all other parties, and conform with all applicable requirements of § 904.3.

* * * * *

■ 15. In § 904.204, revise paragraphs (a) and (m) to read as follows:

§ 904.204 Duties and powers of Judge.

* * * * *

(a) Rule on timeliness of hearing requests pursuant to § 904.201(c);

* * * * *

(m) Assess a civil penalty or impose a permit sanction, condition, revocation, or denial of permit application, taking into account all of the factors required by applicable law;

* * * * *

■ 16. In § 904.206, revise paragraphs (a), (b), and (d) to read as follows:

§ 904.206 Pleadings, motions, and service.

(a) The original of all pleadings and documents must be filed with the Judge and a copy served on the Office of Administrative Law Judges and each party. All pleadings or documents when submitted for filing must show that service has been made upon all parties. Such service must be made in accordance with § 904.3(b).

(b) Pleadings and documents to be filed may be reproduced by printing or any other process, provided the copies are clear and legible; must be dated, signed; and must show the docket description and title of the proceeding, and the title, if any, address, and telephone number of the signatory. If typewritten, the impression may be on only one side of the paper and must be double spaced, if possible, except that quotations may be single spaced and indented.

* * * * *

(d) Unless otherwise provided, the answer to any written motion, pleading, or petition must be served within 20 days after service of the motion. If a motion states that opposing counsel has no objection, it may be acted upon as soon as practicable, without awaiting the expiration of the 20-day period. Answers must be in writing, unless made in response to an oral motion made at a hearing; must fully and completely advise the parties and the Judge concerning the nature of the opposition; must admit or deny specifically and in detail each material allegation of the pleading answered; and must state clearly and concisely the facts and matters of law relied upon. Any new matter raised in an answer will be deemed controverted.

* * * * *

■ 17. Revise § 904.209 to read as follows:

§ 904.209 Expedited administrative proceedings.

In the interests of justice and administrative efficiency, the Judge, on his or her own initiative or upon the application of any party, may expedite the administrative proceeding. A motion by a party to expedite the administrative proceeding may, at the discretion of the Judge, be made orally or in writing with concurrent actual notice to all parties. Upon granting a motion to expedite the scheduling of an administrative proceeding, the Judge may expedite pleading schedules, prehearing conferences and the hearing, as appropriate. If a motion for an expedited administrative proceeding is granted, a hearing on the merits may not be scheduled with less than 5 business days' notice, unless all parties consent to an earlier hearing.

■ 18. Revise § 904.214 to read as follows:

§ 904.214 Stipulations.

The parties may, by stipulation, agree upon any matters involved in the administrative proceeding and include such stipulations in the record with the consent of the Judge. Written stipulations must be signed and served on all parties.

■ 19. In § 904.216, revise paragraph (a) introductory text to read as follows:

§ 904.216 Prehearing conferences.

(a) Prior to any hearing or at any other time deemed appropriate, the Judge may, upon his or her own initiative, or upon the application of any party, direct the parties to appear for a conference or arrange a telephone conference. The Judge shall provide at least 24 hours' notice of the conference to the parties, and shall record such conference by audio recording or court reporter, to consider:

* * * * *

■ 20. In § 904.240, revise paragraphs (a), (b), and (f) introductory text to read as follows:

§ 904.240 Discovery generally.

(a) *Initial Disclosures.* Prior to hearing, the Judge shall require the parties to submit Initial Disclosures and set a deadline for their submission. Except for information regarding a respondent's ability to pay an assessed civil penalty, these Initial Disclosures will normally obviate the need for further discovery.

(1) The Initial Disclosures shall include the following information: A factual summary of the case; a summary of all factual and legal issues in dispute; a list of all defenses that will be asserted, together with a summary of all factual and legal bases supporting each defense; a list of all potential witnesses, together with a summary of their anticipated testimony; and a list of all potential exhibits.

(2) The Initial Disclosures must be signed by the parties or their attorneys and must be served on all parties in conformance with § 904.3, along with a copy of each potential exhibit listed therein.

(3) A party has the affirmative obligation to supplement their Initial Disclosures as available information or documentation relevant to the stated charges or defenses becomes known to the party.

(b) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence sought, by one or more of the following methods: Deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admission. With respect to information regarding a respondent's ability to pay an assessed civil penalty, the Agency may serve any discovery request (*i.e.,* deposition, interrogatories, admissions, production of documents) directly upon the respondent in conformance with § 904.3 of this part without first seeking an order from the Judge.

* * * * *

(f) *Failure to comply.* If a party fails to comply with any provision of this section, including with respect to their Initial Disclosures, a subpoena, or an order concerning discovery, the Judge may, in the interest of justice:

* * * * *

■ 21. In § 904.241, revise paragraphs (a), (c), and (d)(1) to read as follows:

§ 904.241 Depositions.

(a) *Notice.* If a motion for deposition is granted, and unless otherwise ordered by the Judge, the party taking the deposition of any person must serve on that person and on any other party written notice at least 15 days before the deposition would be taken (or 25 days if the deposition is to be taken outside the United States). The notice must state the name and address of each person to be examined, the time and place where the examination would be held, the name, mailing address, telephone number, and email address (if one is available) of the person before whom the deposition would be taken, and the subject matter about which each person would be examined.

* * * * *

(c) *Alternative deposition methods.* By order of the Judge, the parties may use other methods of deposing parties or witnesses, such as telephonic depositions, depositions through videoconference, or depositions upon written questions. Objections to the form of written questions are waived unless made within 5 days of service of the questions.

(d) * * *

(1) At hearing, part or all of any deposition, so far as admissible under this Part as though the witness were then testifying, may be used against any party who was present or represented at the taking of the deposition or had reasonable notice.

* * * * *

■ 22. In § 904.242, revise paragraphs (a) and (b) and add paragraph (d) to read as follows:

§ 904.242 Interrogatories.

(a) *Service and use.* If ordered by the Judge, any party may serve upon any other party written interrogatories in conformance with § 904.3.

(b) *Answers and objections.* Answers and objections must be made in writing under oath, and reasons for the objections must be stated. Answers must be signed by the person making them and objections must be signed by the party or attorney making them. Unless otherwise ordered, answers and objections must be served on all parties within 20 days after service of the interrogatories in conformance with § 904.3.

* * * * *

(d) *Use of interrogatories at hearing.* Answers may be used at hearing in the same manner as depositions under § 904.241(d).

■ 23. In § 904.243, revise paragraphs (a) and (b) to read as follows:

§ 904.243 Admissions.

(a) *Request.* If ordered by the Judge, any party may serve on any other party a written request for admission of the truth of any relevant matter of fact set forth in the request in conformance with § 904.3, including the genuineness of any relevant document described in the request. Copies of documents must be served with the request. Each matter for which an admission is requested must be separately stated.

(b) *Response.* Each matter is admitted unless a written answer or objection is served within 20 days of service of the request in conformance with § 904.3, or within such other time as the Judge may allow. The answering party must specifically admit or deny each matter, or state the reasons why he or she cannot truthfully admit or deny it. A denial must fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer must specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

* * * * *

■ 24. In § 904.250, revise paragraph (a) to read as follows:

§ 904.250 Notice of time and place of hearing.

(a) The Judge shall be responsible for scheduling the hearing. With due regard for the convenience of the parties, their representatives, or witnesses, the Judge shall fix the time, place and date for the hearing and shall notify all parties of the same. The Judge will promptly serve on the parties notice of the time and place of hearing. The hearing will not be held less than 20 days after service of the notice of hearing unless the hearing is expedited as provided under paragraph (d) of this section.

* * * * *

■ 25. In § 904.251, revise paragraphs (a)(3) and (i) and add paragraph (j) to read as follows:

§ 904.251 Evidence.

(a) * * *

(3) In any case involving a charged violation of law in which the respondent has admitted an allegation, evidence may still be presented to establish matters of aggravation or mitigation.

* * * * *

(i) *Foreign law.* A party who intends to raise an issue concerning the law of a foreign country must give reasonable notice. The Judge, in determining foreign law, may consider any relevant material or source, whether or not submitted by a party.

(j) *Foreign language exhibits.* Exhibits in a foreign language must be translated into English before such exhibits are offered into evidence. Copies of both the untranslated and translated versions of the proposed exhibits, along with the name and qualifications of the translator, must be served on the opposing party at least 10 days prior to the hearing unless the parties otherwise agree.

■ 26. In § 904.252, revise paragraphs (a) and (f) to read as follows:

§ 904.252 Witnesses.

(a) *Fees.* Witnesses, other than employees of a Federal agency, summoned in an administrative proceeding, including discovery, are eligible to receive the same fees and mileage as witnesses in the courts of the United States.

* * * * *

(f) *Testimony in a foreign language.* If a witness is expected to testify in a language other than the English language, the party sponsoring the witness must indicate that in its Initial Disclosures so that an interpreter can be arranged for the hearing. When available, the interpreter should be court certified under 28 U.S.C. 1827.

■ 27. In § 904.260, revise paragraph (b) to read as follows:

§ 904.260 Recordation of hearing.

* * * * *

(b) The official transcript of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, will be filed with the Office of Administrative Law Judges. Transcripts of testimony will be available in any hearing and will be supplied to the parties at the cost of the Agency.

* * * * *

■ 28. In § 904.270, revise paragraph (b) to read as follows:

§ 904.270 Record of decision.

* * * * *

(b) The Judge will arrange for appropriate storage of the records of any administrative proceeding, which place of storage need not necessarily be located physically within the Office of Administrative Law Judges.

■ 29. In § 904.271, revise paragraphs (a) introductory text, (b), (c), and (d) introductory text to read as follows:

§ 904.271 Initial Decision.

(a) After expiration of the period provided in § 904.261 for the filing of reply briefs (unless the parties have waived briefs or presented proposed findings orally at the hearing), the Judge will render an Initial Decision upon the record in the case, setting forth:

* * * * *

(b) If the parties have presented oral proposed findings at the hearing or have waived presentation of proposed findings, the Judge may at the termination of the hearing announce the decision, subject to later issuance of a written Initial Decision under paragraph (a) of this section. In such cases, the Judge may direct the prevailing party to prepare proposed findings, conclusions, and an order.

(c) The Judge will serve the Initial Decision on each of the parties, the Chief of the Enforcement Section of the NOAA Office of General Counsel, and the Administrator. Upon request, the Judge will promptly certify to the Administrator the record, including the original copy of the Initial Decision, as complete and accurate.

(d) An Initial Decision becomes effective as the final administrative decision of NOAA 60 days after service, unless:

* * * * *

■ 30. Revise § 904.272 to read as follows:

§ 904.272 Petition for reconsideration.

Unless an order or Initial Decision of the Judge specifically provides otherwise, any party may file a petition for reconsideration of an order or Initial Decision issued by the Judge. Such petitions must state the matter claimed to have been erroneously decided, and the alleged errors and relief sought must be specified with particularity. Petitions must be filed within 20 days after the service of such order or Initial Decision. The filing of a petition for reconsideration shall operate as a stay of an order or Initial Decision or its effectiveness date unless specifically so ordered by the Judge. Within 15 days after the petition is filed, any party to the administrative proceeding may file an answer in support or in opposition.

■ 31. Revise § 904.273 to read as follows:

§ 904.273 Administrative review of decision.

(a) Subject to the requirements of this section, any party who wishes to seek review of an Initial Decision of a Judge must Petition for Review of the Initial Decision within 30 days after the date the decision is served. The petition must be served on the Administrator in conformance with § 904.3(b) at the following address: Administrator, National Oceanic and Atmospheric Administration, Department of Commerce, Room 5128, 14th Street and Constitution Avenue NW, Washington, DC 20230. Copies of the Petition for Review, and all other documents and materials required in paragraph (d) of this section, must be served in conformance with § 904.3(b) on all parties and to either *administrative.appeals@noaa.gov* or the following address: Chief, Oceans and Coasts Section, NOAA Office of General Counsel, 1305 East-West Highway, SSMC 4, Suite 6111, Silver Spring, MD 20910.

(b) The Administrator may elect to issue an order to review the Initial Decision without petition and may affirm, reverse, modify or remand, in whole or in part, the Judge's Initial Decision. Any such order must be issued within 60 days after the date the Initial Decision is served.

(c) Review by the Administrator of an Initial Decision is discretionary and is not a matter of right. If a party files a timely petition for discretionary review, or review is timely initiated by the Administrator, the effectiveness of the Initial Decision is stayed until further order of the Administrator or until the Initial Decision becomes final pursuant to paragraph (h) of this section. In determining whether or not to grant discretionary review, the Administrator will consider:

(1) Whether the Initial Decision contains significant factual or legal errors that warrant further review by the Administrator; and

(2) Whether fairness or other policy considerations warrant further consideration by the Administrator. Types of cases that fall within these criteria include, but are not limited to, those in which;

(i) The Initial Decision conflicts with one or more other NOAA administrative decisions or federal court decisions on an important issue of federal law;

(ii) The Judge decided an important federal question in a way that conflicts with prior rulings of the Administrator;

(iii) The Judge decided a question of federal law that is so important that the Administrator should pass upon it even absent a conflict; or

(iv) The Judge so far departed from the accepted and usual course of administrative proceedings as to call for an exercise of the Administrator's supervisory power.

(d) A Petition for Review must comply with the following requirements regarding format and content:

(1) The petition must include a concise statement of the case, that contains a statement of facts relevant to the issues submitted for review, and a summary of the argument that contains a succinct, clear and accurate statement of the arguments made in the body of the petition;

(2) The petition must set forth, in detail, specific objections to the Initial Decision, the bases for review, and the relief requested;

(3) Each issue raised in the petition must be separately numbered, concisely stated, and supported by detailed citations to specific pages in the record, and to statutes, regulations, and principal authorities. Petitions may not refer to or incorporate by reference entire documents or transcripts;

(4) A copy of the Judge's Initial Decision must be attached to the petition;

(5) Copies of all cited portions of the record must be attached to the petition;

(6) A petition, exclusive of attachments and authorities, must not exceed 20 pages in length and must be in the form articulated in § 904.206(b); and

(7) Issues of fact or law not argued before the Judge may not be raised in the petition unless such issues were raised for the first time in the Judge's Initial Decision, or could not reasonably have been foreseen and raised by the parties during the hearing. The Administrator will not consider new or additional evidence that is not a part of the record before the Judge.

(e) The Administrator may deny a Petition for Review that is untimely or fails to comply with the format and content requirements in paragraph (d) of this section without further review.

(f) No oral argument on Petitions for Review will be allowed.

(g) Within 30 days after service of a petition for discretionary review, any party may file and serve an answer in support or in opposition. An answer must comport with the format and content requirements in paragraphs (d)(5) through (d)(7) of this section and set forth detailed responses to the specific objections, bases for review and relief requested in the petition. No further replies are allowed, unless requested by the Administrator.

(h) If the Administrator has taken no action in response to the petition within 120 days after the petition is served, said petition shall be deemed denied and the Judge's Initial Decision shall become the final agency decision with an effective date 150 days after the petition is served.

(i) If the Administrator issues an order denying discretionary review, the order

will be served on all parties in conformance with § 904.3, and will specify the date upon which the Judge's Initial Decision will become effective as the final agency decision. The Administrator need not give reasons for denying review.

(j) If the Administrator grants discretionary review or elects to review the Initial Decision without petition, the Administrator will issue an order to that effect. Such order may identify issues to be briefed and a briefing schedule. Such issues may include one or more of the issues raised in the Petition for Review and any other matters the Administrator wishes to review. Only those issues identified in the order may be argued in any briefs permitted under the order. The Administrator may choose to not order any additional briefing, and may instead make a final determination based on any Petitions for Review, any responses and the existing record.

(k) If the Administrator grants or elects to take discretionary review, and after expiration of the period for filing any additional briefs under paragraph (j) of this section, the Administrator will render a written decision on the issues under review. The Administrator will serve the decision on each of the parties in conformance with § 904.3. The Administrator's decision becomes the final administrative decision on the date it is served, unless otherwise provided in the decision, and is a final agency action for purposes of judicial review; except that an Administrator's decision to remand the Initial Decision to the Judge is not final agency action.

(l) An Initial Decision shall not be subject to judicial review unless:

(1) The party seeking judicial review has exhausted its opportunity for administrative review by filing a Petition for Review with the Administrator in compliance with this section, and

(2) The Administrator has issued a final ruling on the petition that constitutes final agency action under paragraph (k) of this section or the Judge's Initial Decision has become the final agency decision under paragraph (h) or (i) of this section.

(m) For purposes of any subsequent judicial review of the agency decision, any issues that are not identified in any Petition for Review, in any answer in support or opposition, by the Administrator, or in any modifications to the Initial Decision are waived.

(n) If an action is filed for judicial review of a final agency decision, and the decision is vacated or remanded by a court, the Administrator shall issue an order addressing further administrative proceedings in the matter. Such order may include a remand to the Chief Administrative Law Judge for further proceedings consistent with the judicial decision, or further briefing before the Administrator on any issues the Administrator deems appropriate.

■ 32. Revise § 904.300 to read as follows:

§ 904.300 Scope and applicability.

(a) This subpart sets forth procedures governing the suspension, revocation, modification, and denial of permits. The bases for sanctioning a permit are set forth in § 904.301.

(1) *Revocation.* A permit may be cancelled, with or without prejudice to issuance of the permit in the future. Additional requirements for issuance of any future permit may be imposed.

(2) *Suspension.* A permit may be suspended either for a specified period of time or until stated requirements are met, or both. If contingent on stated requirements being met, the suspension is with prejudice to issuance of any permit until the requirements are met.

(3) *Modification.* A permit may be modified, as by imposing additional conditions and restrictions. If the permit was issued for a foreign fishing vessel under section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, additional conditions and restrictions may be imposed on the application of the foreign nation involved and on any permits issued under such application.

(4) *Denial.* Issuance of a permit in the future may be denied through imposition of a permit denial.

(b) This subpart does not apply to the Land Remote Sensing Policy Act of 1992, as amended (51 U.S.C. 60101 *et seq.*), or to the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*). Regulations governing denials of licenses issued under the Land Remote Sensing Policy Act of 1992, as amended (51 U.S.C. 60101 *et seq.*), appear at 15 CFR part 960. Regulations governing sanctions and denials of permits issued under the Deep Seabed Hard Mineral Resources Act (30 U.S.C. 1401 *et seq.*) appear at 15 CFR part 970.

■ 33. Revise § 904.301 to read as follows:

§ 904.301 Bases for permit sanctions.

(a) Unless otherwise specified in a settlement agreement, or otherwise provided by statutes or in this subpart, NOAA may sanction any permit issued under the statutes cited in § 904.1(c). The bases for an action to sanction or deny a permit include the following:

(1) Violation of any statute administered by NOAA, including violation of any regulation promulgated or permit condition or restriction prescribed thereunder, by the permit holder/applicant or with the use of a permitted vessel;

(2) The failure to pay a civil penalty imposed under any marine resource law administered by NOAA;

(3) The failure to pay a criminal fine imposed or to satisfy any other liability incurred in a judicial proceeding under any of the statutes administered by NOAA; or

(4) The failure to pay any amount in settlement of a civil forfeiture imposed on a vessel or other property.

(b) A sanction may be applied to a permit involved in the underlying violation, as well as to any permit held or sought by the permit holder/applicant, including permits for other vessels. (See, *e.g.,* 16 U.S.C. 1858(g)(1)(i)).

(c) A permit sanction may not be extinguished by sale or transfer. A vessel's permit sanction is not extinguished by sale or transfer of the vessel, nor by dissolution or reincorporation of a vessel owner corporation, and shall remain with the vessel until lifted by NOAA.

■ 34. In § 904.302, revise paragraph (a) to read as follows:

§ 904.302 Notice of permit sanction (NOPS).

(a) Service of a NOPS against a permit issued to a foreign fishing vessel will be made on the agent authorized to receive and respond to any legal process for vessels of that country.

* * * * *

■ 35. In § 904.303:

■ a. Remove and reserve paragraph (a); and

■ b. Revise paragraphs (b) and (d),

The revisions read as follows:

§ 904.303 Notice of intent to deny permit (NIDP).

* * * * *

(b) The NIDP will set forth the basis for its issuance and any opportunity for a hearing.

* * * * *

(d) A NIDP may be issued in conjunction with or independent of a NOPS.

■ 36. In § 904.304, revise paragraph (b) to read as follows:

§ 904.304 Opportunity for hearing.

* * * * *

(b) There will be no opportunity for a hearing to contest a NOPS or NIDP if the permit holder/applicant had a previous opportunity to participate as a party in an administrative or judicial proceeding with respect to the violation that forms the basis for the NOPS or

NIDP, whether or not the permit holder/applicant did participate, and whether or not such a proceeding was held.

§ 904.310 [Removed and Reserved]

■ 37. Remove and reserve § 904.310.

■ 38. In § 904.311, revise the section heading, introductory text, and paragraph (b) to read as follows:

§ 904.311 Effect of payment on permit sanction.

Where a permit has been sanctioned on one of the bases set forth in § 904.301(a)(2) through (4) and the permit holder/applicant pays the criminal fine, civil penalty, or amount in settlement of a civil forfeiture in full or agrees to terms satisfactory to NOAA for payment:

* * * * *

(b) Any permit suspended under § 904.301(a)(2) through (4) will be reinstated by order of NOAA; or

* * * * *

§ 904.320 [Removed and Reserved]

■ 39. Remove and reserve § 904.320.

■ 40. In § 904.402, revise paragraph (a) to read as follows:

§ 904.402 Procedures.

(a) Any person authorized to enforce the laws listed in § 904.1(c) or Agency counsel may serve a written warning on a respondent.

* * * * *

■ 41. In § 904.403:

■ a. Remove and reserve paragraph (a); and

b. Revise paragraph (b).

The revision reads as follows:

§ 904.403 Review and appeal of a written warning.

* * * * *

(b) The recipient of a written warning may appeal to the NOAA Deputy General Counsel. The appeal must be served in conformance with § 904.3 and submitted to *administrative.appeals@noaa.gov* or the NOAA Office of the General Counsel, Herbert Hoover Office Building, 14th & Constitution Avenue NW, Washington, DC 20230, within 60 days of receipt of the written warning.

(1) An appeal from a written warning must be in writing and must present the facts and circumstances that explain or deny the violation described in the written warning.

(2) [Reserved]

* * * * *

■ 42. Revise § 904.500 to read as follows:

§ 904.500 Purpose and scope.

(a) This subpart sets forth procedures governing the release, abandonment, forfeiture, remission of forfeiture, or return of property seized under any of the laws cited in § 904.1(c).

(b) Except as provided in this subpart, these regulations apply to all seized property subject to forfeiture under any of the laws cited in § 904.1(c). This subpart is in addition to, and not in contradiction of, any special rules regarding seizure, holding or disposition of property seized under these statutes.

■ 43. Revise § 904.501 to read as follows

§ 904.501 Notice of seizure.

Within 60 days from the date of the seizure, NOAA will serve a Notice of Seizure on the owner or consignee, if known or easily ascertainable, or other party that the facts of record indicate has an interest in the seized property. In cases where the property is seized by a state or local law enforcement agency; a Notice of Seizure will be served in the above manner within 90 days from the date of the seizure. The Notice will describe the seized property and state the time, place and reason for the seizure, including the provisions of law alleged to have been violated. The Notice will inform each interested party of his or her right to file a claim to the seized property, and state a date by which a claim must be filed, which may not be less than 35 days after service of the Notice. The Notice may be combined with a Notice of the sale of perishable fish issued under § 904.505. If a claim is filed, the case will be referred promptly to the U.S. Department of Justice for institution of judicial proceedings.

■ 44. In § 904.502, revise paragraph (c) to read as follows:

§ 904.502 Bonded release of seized property.

* * * * *

(c) If NOAA grants the request, the amount paid by the requester will be deposited in a NOAA suspense account. The amount so deposited will for all purposes be considered to represent the property seized and subject to forfeiture, and payment of the amount by requester constitutes a waiver by requester of any claim rising from the seizure and custody of the property. NOAA will maintain the money so deposited pending further order of NOAA, order of a court, or disposition by applicable administrative proceedings.

* * * * *

■ 45. Revise § 904.503 to read as follows:

§ 904.503 Appraisement.

NOAA may appraise seized property to determine its domestic value. Domestic value means the price at which such or similar property is offered for sale at the time and place of appraisement in the ordinary course of trade. If there is no market for the seized property at the place of appraisement, the value in the principal market nearest the place of appraisement may be used. If the seized property may not lawfully be sold in the United States, its domestic value may be determined by other reasonable means.

■ 46. In § 904.504, revise paragraphs (a), (b)(1), and (b)(3)(i) to read as follows:

§ 904.504 Administrative forfeiture proceedings.

(a) *When authorized.* This section applies to property with a value of $500,000 or less, and that is subject to administrative forfeiture under the applicable statute. This section does not apply to conveyances seized in connection with criminal proceedings.

(b) * * *

(1) Within 60 days from the date of the seizure, or within 90 days of the date of the seizure where the property is seized by a state or local law enforcement agency, NOAA will publish a Notice of Proposed Forfeiture once a week for at least three successive weeks in a newspaper of general circulation in the Federal judicial district in which the property was seized or post a notice on an official government forfeiture website for at least 30 consecutive days. However, if the value of the seized property does not exceed $1,000, the Notice may be published by posting for at least three successive weeks in a conspicuous place accessible to the public at the National Marine Fisheries Service Enforcement Office, U.S. District Court, or the U.S. Customs House nearest the place of seizure, with the date of posting indicated on the Notice. In addition, a reasonable effort will be made to serve the Notice on each person whose identity, address and interest in the property are known or easily ascertainable.

* * * * *

(3)(i) Any person claiming the seized property may file a claim with NOAA, at the address indicated in the Notice, within 30 days of the date the final Notice was published or posted. The claim must state the claimant's interest in the property.

* * * * *

■ 47. In § 904.505, revise paragraph (c) to read as follows:

§ 904.505 Summary sale.

* * * * *

(c) NOAA will serve the Notice of the Summary Sale on the owner or consignee, if known or easily

ascertainable, or to any other party that the facts of record indicate has an interest in the seized fish, unless the owner or consignee or other interested party has otherwise been personally notified. Notice will be sent either prior to the sale, or as soon thereafter as practicable.

* * * * *

■ 48. In § 904.506, revise paragraphs (a)(1) and (b)(1) to read as follows:

§ 904.506 Remission of forfeiture and restoration of proceeds of sale.

(a) * * *

(1) This section establishes procedures for filing with NOAA a petition for the return of any property which has been or may be administratively forfeited under the provisions of any statute administered by NOAA that authorizes the remission or mitigation of forfeitures.

* * * * *

(b) * * *

(1) Any person claiming an interest in any property which has been or may be administratively forfeited under the provisions of § 904.504 may, at any time after seizure of the property, but no later than 90 days after the date of forfeiture, petition for a remission or mitigation of the forfeiture and restoration of the proceeds of such sale, or such part thereof as may be claimed by the petitioner by serving the petition in conformance with § 904.3 on *administrative.appeals@noaa.gov* or the Chief of the Enforcement Section of the NOAA Office of General Counsel, 1315 East-West Highway, SSMC 3, Suite 15828, Silver Spring, MD 20910.

* * * * *

■ 49. In § 904.509, revise paragraph (g)(2) to read as follows:

§ 904.509 Disposal of forfeited property.

* * * * *

(g) * * *

(2) Destruction will be accomplished in accordance with the requirements of 41 CFR parts 101–1 through 101–49.

* * * * *

[FR Doc. 2022–05845 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2022–0135]

RIN 1625–AA08

Special Local Regulation: Luminsea Offshore Powerboat Race; Atlantic Ocean, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a special local regulation (SLR) on certain navigable waters of the Atlantic Ocean, offshore of Miami Beach, FL, in connection with the Luminsea Offshore Powerboat Race. The race will include approximately 55 offshore powerboats, ranging from 30 to 50 feet in length. The SLR is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the high-speed powerboat race. The special local regulation establishes a race area where all persons and vessels, except those persons and vessels who are participating in the race, will be prohibited from entering, transiting through, anchoring in, or remaining within unless authorized by the Captain of the Port (COTP) Miami or a designated representative. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before April 8, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2022–0135 using the Federal Decision Making Portal at *https://www.regulations.gov*. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Omar Beceiro, Sector Miami Waterways Management Division, U.S. Coast Guard at 305–535–4317 or *Omar.Beceiro@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background, Purpose, and Legal Basis

On February 15, 2022, Cigarette Racing Team, LLC. notified the Coast Guard they would be sponsoring an offshore powerboat race on May 6, 2022 from 8 a.m. to 6 p.m. and May 7, 2022 from 8 a.m. to 6 p.m. The race would take place in the Atlantic Ocean, offshore of Miami Beach, FL and involve approximately 55 powerboats ranging from 30 to 50 feet in length. Approximately 500 spectator crafts are anticpated to attend the event.

The COTP Miami has determined potential hazards associated with the high-speed boat race would be a safety concern for participants, participant vessels, and general public.

The purpose of this rulemaking is to protect event participants, spectators, and vessels on certain navigable waters of the Atlantic Ocean, offshore of Miami Beach, FL before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

The Coast Guard is issuing this notice of proposed rulemaking (NPRM) with a 15-day prior notice and opportunity to comment pursuant to section (b)(3) of the Administrative Procedure Act (APA) (5 U.S.C. 553). This provision authorizes an agency to publish a rule in less than 30 days before its effective date for ''good cause found and published with the rule.'' Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for publishing this NPRM with a 15-day comment period because the Coast Guard was given short notice from the event sponsor, and this not a recurring event that would be listed in the existing annual marine event table as outlined in 33 CFR 100.702, Table 1. Therefore, it is impracticable to provide a 30-day comment period because we must establish this safety zone by May 6, 2022. A 15-day comment period would allow the Coast Guard to provide for public notice and comment, but also update the proposed regulation soon enough that the length of the notice and comment period does not compromise safety.

III. Discussion of Proposed Rule

The COTP proposes to establish an SLR from 8 a.m. until 6 p.m., on May 6, 2022 and May 7, 2022. The safety zone would cover certain navigable waters of the Atlantic Ocean beginning approximately 0.5 miles north of Government Cut and continuing north approximately 3.5 miles. The SLR extends approximately 2.5 miles offshore.

The duration of the zone is intended to protect personnel, vessels, and the

marine environment in these navigable waters during the event. The proposed regulation would prohibit all persons and vessels, except those persons and vessels participating in the race, from entering, transiting through, anchoring in, or remaining within the area unless authorized by the COTP Miami or a designated representative. Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the race area by contacting the COTP Miami by telephone at (305) 535–4300, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the race area is granted by the COTP Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Miami or a designated representative. The Coast Guard would provide notice of the special local regulation by a Broadcast Notice to Mariners, and on-scene designated representatives.

IV. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the following reasons: (1) The proposed special local regulation will be enforced for only 10 hours per day; a total of 20 hours; (2) although persons and vessels will not be able to enter, transit through, anchor in, or remain within the regulated area, without authorization from the COTP Miami or a designated representative, they may operate in the surrounding area during the enforcement period; (3) persons and vessels may still enter, transit through, anchor in, or remain within the regulated area during the enforcement period if authorized by the COTP Miami or a designated representative; and (4) the Coast Guard will provide advance notification of the special local regulation to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners via VHF–FM.

B. Impact on Small Entities

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

While some owners or operators of vessels intending to transit through the safety zone may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves an SLR lasting approximately 10 hours on two separate days that will prohibit entry of persons or vessels during the Luminsea Offshore Powerboat Race. This action is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions

on locating the docket, see the **ADDRESSES** section of this preamble.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

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

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2022–0135 in the search box and click ''Search.'' Next, look for this document in the ''Search Results'' column, and click on it. Then click on the ''Comment option.'' If you cannot submit your material by using *https://www.regulations.gov,* call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 46 U.S.C. 70041; 33 CFR 1.05–1

■ 2. Add § 100.T799–0135 to read as follows:

§ 100. T799–0135 Special Local Regulation: Luminsea Offshore Powerboat Race; Atlantic Ocean, Miami Beach, FL.

(a) *Location.* The following regulated area is established as a SLR in the Atlantic Ocean; Miami Beach, FL. Coordinates are based on North American Datum 1983.

(1) *Regulated area.* All waters of the Atlantic Ocean encompassed within the following points. Commence at Point A in position 25°46′11″ N, 080°07′06″ W; thence northwest to Point B in position 25°46′56″ N, 080°07′41″ W; thence north-northeast to Point C in position 25°48′44″ N, 080°07′17″ W; thence northeast to Point D in position 25°49′10″ N, 080°05′58″ W; thence southeast to Point E in position 25°48′40″ N, 080°05′04″ W; thence southwest to Point A.

(2) [Reserved]

(b) *Definitions.* (1) The term ''designated representative'' means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and Local officers designated by or assisting the COTP Miami in the enforcement of the regulated areas.

(2) The term ''Patrol Commander'' means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the respective Coast Guard Sector Commander to enforce these regulations.

(3) The term ''spectators'' means all persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) *Regulations.* (1) All non-participant vessels or persons are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Miami by telephone at (305) 535–4472 or a designated representative via VHF–FM radio on channel 16, to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Miami or a designated representative.

(3) The Coast Guard will provide notice of the regulated area through Broadcast Notice to Mariners via VHF–FM channel 16, on-scene designated representatives, and Local Notice to Mariners.

(d) *Enforcement period.* This rule will be enforced from 8 a.m. until 6 p.m., on May 6, 2022 and May 7, 2022.

Dated: March 21, 2022.

J.F. Burdian,

Captain, U.S. Coast Guard, Captain of the Port Miami.

[FR Doc. 2022–06251 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 111

Parcels Prepared in Soft Packaging

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The United States Postal Service (Postal Service) is proposing to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) by adding new subsections to establish parcel selvage standards and to clarify how to measure parcels prepared in soft packaging.

DATES: Submit comments on or before April 25, 2022.

ADDRESSES: Mail or deliver written comments to the Director, Product Classification, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 4446, Washington, DC 20260–5015. If sending comments by email, include the name and address of the commenter and send to *PCFederalRegister@usps.gov,* with a subject line of ''Parcels Prepared in Soft Packaging''. Faxed comments are not accepted.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

You may inspect and photocopy all written comments, by appointment only, at USPS® Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC 20260. These records are available for review on Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906.

FOR FURTHER INFORMATION CONTACT: Karen F. Key at (202) 268–7492 or Garry Rodriguez at (202) 268–7281.

SUPPLEMENTARY INFORMATION: The Postal Service continues to experience operational impacts with parcels not properly prepared in soft packaging (poly, plastic, cloth, padded envelopes, or similar soft packaging). Parcels prepared in soft packaging containing contents that are not right-sized leads to an excess of selvage that can cause damage to the parcel or make the parcel nonmachinable, resulting in the parcel ending up in manual processing which is costly to both the customer and the Postal Service. Parcels that become nonmachinable are not processed through parcel sorting equipment and lose visibility for the customer and the Postal Service.

The Postal Service is proposing to implement a two-inch maximum of selvage on the length and the width of a parcel prepared in soft packaging. The two-inch maximum for the length would be determined by holding the parcel horizontally/landscape and with the contents totally positioned at the bottom of the soft packaging, the selvage must not exceed two inches at the top of the mailpiece. The two-inch maximum for the width would be determined by holding the parcel horizontally/landscape and with the contents totally positioned to the left or to the right side of the soft packaging, the selvage must not exceed two inches on the opposite side of the mailpiece.

In addition, the Postal Service is also proposing to provide a clarification defining how to measure parcels prepared in soft packaging to generally determine the length, width, and height of the mailpiece.

These revisions will not affect the standards for parcels claiming the Priority Mail® Commercial Plus cubic prices.

As a result of the proposed two-inch maximum selvage requirement for parcels prepared in soft packaging, the Postal Service would delete Customer Support Ruling (CSR) PS–340, *Measuring Priority Mail Dimensions to Determine Dimensional Weight.*

The Postal Service is proposing to implement this change effective July 10, 2022.

We believe the proposed revisions will provide customers with a more efficient, consistent, and easier process.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 111.1.

We will publish an appropriate amendment to 39 CFR part 111 to reflect these changes.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

100 Retail Mail Letters, Cards, Flats, and Parcels

101 Physical Standards

* * * * *

3.0 Physical Standards for Parcels

* * * * *

[Add new 3.4 and 3.5 to read as follows:]

3.4 Measuring Parcels Prepared in Soft Packaging

Parcels prepared in soft packaging (poly, plastic, cloth, padded envelopes, or similar soft packaging) are measured to determine the dimensions (length, width, height) as follows:

■ a. Place the piece with its largest side on a flat surface.

■ b. Measure the length, width, and height of the piece as it appears, including any selvage of the soft packaging material. Measure the length, width, and height at each dimension's maximum point.

3.5 Soft Packaging Selvage

3.5.1 General

Selvage is the overhang of the soft packaging material beyond the contents of the mailpiece.

3.5.2 Maximum Selvage

Parcels mailed under 3.0 in soft packaging material must not exceed 2 inches of selvage on either the length or the width of the mailpiece.

3.5.3 Measuring Selvage

Measure selvage on parcels in soft packaging as follows:

■ a. With the parcel held horizontally/landscape and the contents totally positioned at the bottom of the soft packaging, the selvage must not exceed 2 inches at the top of the mailpiece.

■ b. With the parcel held horizontally/landscape and the contents totally positioned to the left or to the right side of the soft packaging, the selvage must not exceed 2 inches on the opposite side of the mailpiece.

* * * * *

200 Commercial Letters, Flats, and Parcels Design Standards

201 Physical Standards

* * * * *

7.0 Physical Standards for Parcels

* * * * *

[Add new 7.8 and 7.9 to read as follows:]

7.8 Measuring Parcels Prepared in Soft Packaging

Except for Priority Mail Commercial Plus Cubic Soft Pack under 223.1.4, parcels prepared in soft packaging (poly, plastic, cloth, padded envelopes, or similar soft packaging) are measured to determine the dimensions (length, width, height) as follows.

■ a. Place the piece with its largest side on a flat surface.

■ b. Measure the length, width, and height, as it appears, including any selvage of the soft packaging material. Measure the length, width, and height at each dimension's maximum point.

7.9 Soft Packaging Selvage

7.9.1 General

Selvage is the overhang of the soft packaging material beyond the contents of the mailpiece.

7.9.2 Maximum Selvage

Parcels mailed under 7.0 in soft packaging material must not exceed 2 inches of selvage on either the length or the width of the mailpiece.

7.9.3 Measuring Selvage

Measure selvage on soft packaging parcels as follows:

■ a. With the parcel held horizontally/landscape and the contents totally positioned at the bottom of the soft packaging, the selvage must not exceed 2 inches at the top of the mailpiece.

■ b. With the parcel held horizontally/landscape and the contents totally positioned to the left or to the right side of the soft packaging, the selvage must not exceed 2 inches on the opposite side of the mailpiece.

* * * * *

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–05600 Filed 3–23–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Periodicals Requester Records Requirements

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: The Postal Service proposes to amend *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM®) to revise verification requirements for authorized audit bureaus.

DATES: Comments must be received on or before April 25, 2022.

ADDRESSES: Comments may be mailed or delivered to Dale Kennedy (Director, Product Classification), United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1101; or submitted to *pcfederalregister@usps.gov.* Faxed comments will not be accepted.

All written comments may be inspected and photocopied, by appointment only, at Postal Service Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor North, Washington, DC. These records will be available for review Monday through Friday, 9 a.m.–4 p.m., by calling 202–268–2906. All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy at (202) 268–6592.

SUPPLEMENTARY INFORMATION: The Postal Service is publishing this notice of proposed rulemaking to enact new procedures for auditing compliance with circulation standards for Periodicals requester publications and standardize existing procedures across Postal Service publications. The Postal Service is also using this opportunity to update its listing of authorized audit bureaus for Periodicals verification and requests each authorized audit bureau notify the Postal Service to confirm its status.

Domestic Mail Manual (DMM) 207.6.4.2a provides that a Periodicals requester publication must have a legitimate list of persons who have requested the publication and 50% or more of the copies must be distributed to persons making such requests. Publishers can use a variety of records to verify each publication sent at the Periodicals rate is distributed to a legitimate list of requesters, including ''Individual and bulk orders for subscriptions and nonsubscriber copies.'' DMM 207.8.1.4b. The Postal Service interprets DMM 207.8.1.4b to encompass written proof in the form of email communications, telephone, or internet. Customer Support Ruling (CSR) PS–054 (207.6.4). The Postal Service now proposes to clarify that it will extend that interpretation to text messages as well, given the growth in text message communication.

If, after public comment, the Postal Service decides to extend the interpretation in such manner, it will update CSR PS–054 to add procedures for the evaluation of text message requests. In addition, the Postal Service will make conforming changes in a new section E–0.4 to Appendix E of DM–204 to notify audit bureaus of its verification requirements for text messages and throughout DM–203 to standardize records retention requirements and to add Text Message requests. Finally, the Postal Service plans to remove a reference to Form 3845 in CSR PS–054, which is no longer in use.

The Postal Service also authorizes audit bureaus to conduct verifications of circulation for applications for Periodicals mailing privileges. DMM 207.8.2.2. The list of audit bureaus authorized to verify circulation of Periodicals publication are listed in CSR PS–054. However, the Postal Service currently has limited visibility into each audit bureau's procedures for verification of publisher records. Because disparate practices between different authorized audit bureaus could lead to inconsistent enforcement of the Postal Service's verification requirements, the Postal Service proposes an update to the DMM explicitly reserving to the Postal Service the right to review each authorized audit bureau's policies and procedures and periodically inspect each bureau for compliance.

The Postal Service also proposes an update to DMM 207.8.1.3 to add record retention requirements for authorized audit bureaus. Publishers are required to keep circulation records for 3 years following the issue date of the publication. DMM 207.8.1.3. The Postal Service's proposed update to DMM 207.8.1.3 would impose a similar requirement on authorized audit bureaus and require publishers to retain records for paid subscribers for 12 months.

If the Postal Service adopts the proposed DMM changes, it will make conforming updates in CSR PS–054 and Handbook DM–204 (Applying for Periodicals Mailing Privilege) to add minimum requirements for acceptance of text (SMS and MMS) messages for the purpose of auditing Periodicals requests. The Postal Service will also publish an appropriate amendment to 39 CFR part 111 to reflect these changes if this proposal is adopted.

Finally, the Postal Service believes that its agreements with authorized independent audit bureaus are out of date and is therefore reviewing those agreements. Once this rulemaking is concluded, the Postal Service will decide whether to renegotiate the agreements to bring them up to date and would then publish a new list of authorized audit bureaus in CSR PS–054.

The Postal Service proposes the following changes to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations.* See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is amended as follows:

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Revise the *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM) as follows:

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

200 Commercial Mail Letters, Flats, and Parcels

* * * * *

207 Periodicals

* * * * *

8.0 Record Keeping Standards for Publishers

* * * * *

8.1 Basic Standards

* * * * *

[Revise 8.1.3 to read as follows:]

8.1.3 Retention

The publisher must keep records for each issue of a publication for 3 years from its issue date, except for circulation records for general or requester publications for which USPS verification of circulation is done by a USPS-authorized audit bureau. In addition, the publisher must retain records for paid subscribers for 12 months following the issue date. A publisher whose records are verified by an authorized audit bureau is not required to keep source records of requests and subscriptions longer than required by the audit bureau, provided, however, the authorized audit bureau shall be required to retain records related to such requests and subscriptions for 3 years following each issue date.

8.2 Verification

* * * * *

[Revise 8.2.2 to read as follows:]

8.2.2 Authorized Verification

USPS employees or an authorized audit bureau may conduct verifications of circulation for an application for Periodicals mailing privileges, reentry application, or other required circulation verification of general or requester publications, provided, however, that the Postal Service will have the authority to review audit procedures upon request. In addition, the Postal Service reserves the right to verify each audit bureau's compliance with such audit procedures. The Postal Service shall have the authority to revoke any audit bureau's authorization to conduct verifications if it finds such audit bureau has failed to follow approved audit procedures.

Joshua J. Hofer,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–05357 Filed 3–23–22; 8:45 am]

BILLING CODE P

Notices

Federal Register

Vol. 87, No. 57

Thursday, March 24, 2022

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

DEPARTMENT OF AGRICULTURE

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Contaminants in Foods

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S. Codex Office is sponsoring a public meeting on April 19, 2022. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions to be discussed at the 15th Session of the Codex Committee on Contaminants in Foods (CCCF) of the Codex Alimentarius Commission (CAC), which will convene virtually, May 9–13, 2022, with report adoption on May 24, 2022. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 15th Session of the CCCF and to address items on the agenda.

DATES: The public meeting is scheduled for April 19, 2022, from 1:00–3:00 p.m. EDT.

ADDRESSES: The public meeting will take place via Video Teleconference only. Documents related to the 15th Session of the CCCF will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCCF&session=15.*

Dr. Lauren Posnick Robin, U.S. Delegate to the 15th Session of the CCCF, invites U.S. interested parties to submit their comments electronically to the following email address: *lauren.robin@fda.hhs.gov.* Emailed comments should state in the title that they relate to activities of the 15th Session of the CCCF.

Registration: Attendees must register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsceGurDkvGLZO3ek3TyOwCO2Mytr_oQE.* After registering, you will receive a confirmation email containing information about joining the meeting.

FOR FURTHER INFORMATION CONTACT:

For Information about the 15th Session of the CCCF, contact U.S. Delegate, Dr. Lauren Posnick Robin, *lauren.robin@fda.hhs.gov,* +1 (240) 402–1639.

For Information about the public meeting, contact: U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone (202) 720–7760, Fax: (202) 720–3157, Email: *uscodex@usda.gov,* or Quynh-Anh Nguyen, *quynh-anh.nguyen@fda.hhs.gov,* Phone (240) 402–2028.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Contaminants in Foods (CCCF) are:

(a) To establish or endorse permitted maximum levels or guidelines levels for contaminants and naturally occurring toxicants in food and feed;

(b) to prepare priority lists of contaminants and naturally occurring toxicants for risk assessment by the Joint FAO/WHO Expert Committee on Food Additives;

(c) to consider methods of analysis and sampling for the determination of contaminants and naturally occurring toxicants in food and feed;

(d) to consider and elaborate standards or codes of practice for related subjects; and

(e) to consider other matters assigned to it by the Commission in relation to contaminants and naturally occurring toxicants in food and feed.

The CCCF is hosted by the Netherlands. The United States attends the CCCF as a member country of Codex.

Issues To Be Discussed at the Public Meeting

The following items from the forthcoming Agenda for the 15th Session of the CCCF will be discussed during the public meeting:

- Matters referred to the Committee by the Codex Alimentarius Commission and/or its subsidiary bodies
- Matters of interest arising from FAO and WHO including the Joint FAO/WHO Expert Committee on Food Additives
- Matters of interest arising from other international organizations
- Maximum level for cadmium in cocoa powder (100% total cocoa solids on a dry matter basis)
- Code of practice for the prevention and reduction of cadmium contamination in cocoa beans
- Maximum levels for lead in certain food categories
- Maximum levels for total aflatoxins in certain cereals and cereal-based products including foods for infants and young children
- Sampling plans and performance criteria for total aflatoxins in certain cereals and cereal-based products including foods for infants and young children
- Maximum level for total aflatoxins in ready-to-eat peanuts and associated sampling plan
- Maximum levels for total aflatoxins and ochratoxin A in nutmeg, dried chili and paprika, ginger, pepper and turmeric and associated sampling plans
- Methylmercury in fish:
  - Maximum levels for methylmercury in orange roughy and pink cusk eel
  - Sampling plan
  - Other risk management measures
- Code of practice for the prevention and reduction of mycotoxins contamination in cassava and cassava-based products
- Guidance on data analysis for development of maximum levels and for improved data collection
- Forward work-plan for CCCF:
  - Review of staple food-contaminant combinations for future work of CCCF
- JECFA evaluations:

- Priority list of contaminants for evaluation by JECFA
- Follow-up work to the outcomes of JECFA evaluations and FAO/WHO expert consultations

Public Meeting

At the April 19, 2022, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Dr. Lauren Posnick Robin, U.S. Delegate for the 15th Session of the CCCF (see **ADDRESSES**). Emailed comments should state in the title that they relate to activities of the 15th Session of the CCCF.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S. Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *https://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscription themselves and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* or write a letter signed by you or your authorized representative. Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, American Sign Language, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on March 21, 2022.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2022–06262 Filed 3–23–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the South Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a business meeting via WebEx at 11:00 a.m. ET on Thursday, April 7, 2022, for the purpose of discussing the Committee's project on Civil Asset Forfeiture in South Carolina.

DATES: The meeting will take place on Thursday, April 7, 2022, at 11:00 a.m. ET.

- To join the meeting, please click the following link: *https://tinyurl.com/yc2df7rc*
- To join by phone only, dial: 1 (800) 360–9505; Access code: 276 235 35920

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or (202) 376–8473.

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

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (310) 464–7102.

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

Agenda

I. Welcome and Roll Call
II. Discussion: Civil Asset Forfeiture in South Carolina
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: March 21, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–06263 Filed 3–23–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

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

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the New York Advisory Committee (Committee) will hold a web meeting via WebEx at 1:00 p.m. ET on Friday, April 15, 2022, for the purpose of discussing civil rights topics for their next project.

DATES: The meeting will be held on Friday, April 15, 2022, at 1:00 p.m. ET.

—To join the meeting, please click the following link: *https://bit.ly/3wdHtai;* Password: USCCR

—To join by phone only, dial: 1–800–360–9505; Access Code: 1993 34 6768#

FOR FURTHER INFORMATION CONTACT: Mallory Trachtenberg, DFO, at *mtrachtenberg@usccr.gov* or 202–809–9618.

SUPPLEMENTARY INFORMATION: Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference operator will ask callers to identify themselves, the organizations they are affiliated with (if any), and an email address prior to placing callers into the conference call. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number. To request additional accommodations, please email *mtrachtenberg@usccr.gov* at least 7 days prior to the meeting for which accommodations are requested.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Mallory Trachtenberg at *mtrachtenberg@usccr.gov* in the Regional Programs Unit Office/Advisory Committee Management Unit. Persons who desire additional information may contact the Regional Programs Unit at 202–809–9618.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at *www.facadatase.gov* under the Commission on Civil Rights, New York Advisory Committee. Persons interested in the work of this Committee are also directed to the Commission's website, *www.usccr.gov;* persons may also contact the Regional Programs Unit office at the above email or phone number.

Agenda

I. Welcome and Roll Call
II. Approval of Minutes
III. Discussion: Civil Rights Topics
IV. Public Comment
V. Next Steps
VI. Adjournment

Dated: March 21, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–06259 Filed 3–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Census Bureau

[Docket Number 220228–0062]

Urban Area Criteria for the 2020 Census—Final Criteria

AGENCY: Census Bureau, Department of Commerce.

ACTION: Notice of final program criteria.

SUMMARY: This notice provides the Census Bureau's final criteria for defining urban areas based on the results of the 2020 Decennial Census. This notice also provides a summary of comments received in response to the proposed criteria published in the **Federal Register** on February 19, 2021, as well as the Census Bureau's responses to those comments. The Census Bureau delineates urban areas after each decennial census by applying specified criteria to decennial census and other data. Since the 1950 Census, the Census Bureau has reviewed and revised these criteria, as necessary, for each decennial census in order to improve the classification of urban areas by taking advantage of newly available data and advancements in geographic information processing technology.

DATES: The Census Bureau will begin implementing the criteria as of March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vincent Osier, Geography Division, U.S. Census Bureau, via email at *geo.urban@census.gov.* Phone: 301–763–1128.

SUPPLEMENTARY INFORMATION: The Census Bureau's urban-rural classification is fundamentally a delineation of geographical areas, identifying individual urban areas as well as the rural portion of the nation. The Census Bureau's urban areas represent densely developed territory, and encompass residential, commercial, and other non-residential urban land uses. The boundaries of this urban footprint have been defined using measures based primarily on population counts and residential population density, and also on criteria that account for non-residential urban land uses, such as commercial, industrial, transportation, and open space that are part of the urban landscape. Since the 1950 Census, when the Census Bureau first defined densely settled urbanized areas of 50,000 or more people, the urban area delineation process has addressed non-residential urban land uses through criteria designed to account for commercial enclaves, special land uses such as airports, and densely developed noncontiguous territory.

In developing criteria for delineating urban areas, the Census Bureau uses an objective approach that is designed to meet the needs of a broad range of analysts and users interested in the definition of and data for urban and rural communities for statistical purposes. The Census Bureau recognizes that some federal and state agencies use the Census Bureau's urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their programs. The agencies that use the classification and data for such nonstatistical uses should be aware that the changes to the urban area criteria also might affect the implementation of their programs.

While the Census Bureau is not responsible for the use of its urban-rural classification in nonstatistical programs, we will work with tribal, federal, state, or local agencies as well as stakeholders, as appropriate, to ensure understanding of our classification. Agencies using the classification for their programs must ensure that the classification is appropriate for their use.

I. Summary of Changes Made to the 2020 Census Urban Area Criteria

The following table compares the final 2020 Census urban area criteria with those that were proposed in the **Federal Register** on February 19, 2021 (86 FR 10237).

Criteria	Proposed 2020 criteria	Final 2020 criteria
Identification of Initial Urban Area Cores	Census block housing unit density of 385. Use of land cover data to identify territory with a high degree of imperviousness.	Aggregation of census blocks with a housing unit density of 425. Use of land cover data to identify territory with a high degree of imperviousness.
Minimum Qualifying Threshold	An area will qualify as urban if it contains at least 4,000 housing units or has a population of at least 10,000.	An area will qualify as urban if it contains at least 2,000 housing units or has a population of at least 5,000.
Types of Urban Areas	Urban areas will no longer be distinguished as either an ''urbanized area'' or an ''urban cluster.'' All qualifying areas will be designated ''urban areas.''.	Urban areas will no longer be distinguished as either an ''urbanized area'' or an ''urban cluster.'' All qualifying areas will be designated ''urban areas.''
Inclusion of Group Quarters	Census blocks containing group quarters adjacent to already qualified blocks will be included.	Census blocks containing group quarters and a population density of at least 500 adjacent to already qualified blocks will be included.
Inclusion of Noncontiguous Territory via Hops and Jumps.	Maximum hop distance 0.5 miles, maximum jump distance 1.5 miles, and no hops after jumps. Intervening, low density blocks are not included in the urban area.	Maximum hop distance 0.5 miles, maximum jump distance 1.5 miles, and no hops after jumps. Intervening, low density blocks are not included in the urban area.
Inclusion of Noncontiguous Territory Separated by Exempted Territory.	Bodies of water and wetlands as identified in land cover data. The intervening, low density blocks of water or wetlands are not included in the urban area.	Bodies of water and wetlands as identified in the land cover data. The intervening, low density blocks of water or wetlands are not included in the urban area.
Low-Density Fill	N/A	Contiguous census blocks added to already qualifying territory with a housing unit density of 200.
Inclusion of Airports	Currently functioning airport within a distance of 0.5 miles to the urban area that is a qualified cargo airport or has an annual enplanement of at least 2,500 passengers.	Currently functioning airport within a distance of 0.5 miles to the urban area that is a qualified cargo airport or has an annual enplanement of at least 2,500 passengers.
Additional Nonresidential Urban Territory	Inclusion of groups of census blocks with a high degree of imperviousness and that are within 0.25 miles of an urban area.	Inclusion of groups of census blocks with a high degree of imperviousness and that are within 0.5 miles of an urban area, and have a total area of at least 0.15 square miles. Inclusion of groups of census blocks with at least 1,000 jobs (per Longitudinal Employer-Household Dynamics Origin-Destination Employment Statistics (LODES) data) and that are within 0.5 miles of an urban area.
Inclusion of Enclaves	Additional census blocks added when surrounded solely by qualifying land territory or by both land that qualified for inclusion in the urban area and water.	Additional census blocks added when surrounded solely by qualifying land territory or by both land that qualified for inclusion in the urban area and water.
Inclusion of Indentations	N/A	3.5 square mile maximum area of the territory within the indentation to be added to the urban area.
Merging Block Aggregations	N/A	Merge qualifying territory from separately defined 2020 Census urban areas that do not contain a high-density nucleus and are within 0.25 miles of a qualifying urban area.
Identification of Agglomerations	N/A	Identify qualifying areas that contain a high-density nucleus with a housing unit density of 1,275 and at least 2,000 housing units or 5,000 persons.
Splitting Large Agglomerations	Potential splits and merges are identified using Longitudinal Employer-Household Dynamics worker flow data between 2010 Census urban area pairs. If necessary, split location is guided by commuter-based communities.	Potential splits and merges are identified using Longitudinal Employer-Household Dynamics worker flow data between 2010 Census urban area pairs. If necessary, split location is guided by commuter-based communities.
Assigning Urban Area Titles	Clear, unambiguous title based on commonly recognized place names derived from incorporated places, census designated places, minor civil divisions, and the Geographic Names Information System.	Clear, unambiguous title based on commonly recognized names of places within the high-density nuclei, derived from incorporated places, census designated places, minor civil divisions, and the Geographic Names Information System.

II. History

Over the course of a century defining urban areas, the Census Bureau has introduced conceptual and methodological changes to ensure that the urban-rural classification keeps pace with changes in settlement patterns and with changes in theoretical and practical approaches to interpreting and

understanding the definition of urban areas. Prior to the 1950 Census, the Census Bureau primarily defined ''urban'' as any population, housing, and territory located within incorporated places with a population of 2,500 or more. That definition was easy and straightforward to implement, requiring no need to calculate population density; to understand and account for actual settlement patterns on the ground in relation to boundaries of legal/administrative units; or to consider densely settled populations existing outside incorporated municipalities. For much of the first half of the twentieth century, that definition was adequate for defining ''urban'' and ''rural'' in the United States, but by 1950 it became clear that it was incomplete.

Increasing suburbanization, particularly outside the boundaries of large incorporated places led the Census Bureau to adopt the urbanized area concept for the 1950 Census. At that time, the Census Bureau formally recognized that densely settled communities outside the boundaries of incorporated municipalities were just as ''urban'' as the densely settled population inside those boundaries. Outside urbanized areas of 50,000 or more people, the Census Bureau continued to recognize urban places with at least 2,500 and less than 50,000 persons. This basic conceptual approach to identifying urban areas remained in effect through the 1990 Census, although with some changes to criteria and delineation methods.

The Census Bureau adopted six substantial changes to its urban area criteria for the 2000 Census:

- Defining urban clusters using the same criteria as urbanized areas.
- Disregarding incorporated place and census designated place (CDP) boundaries when defining urbanized areas and urban clusters.
- Adopting 500 persons per square mile (PPSM) as the minimum density criterion for recognizing some types of urban territory.
- Increasing the maximum jump distance for linking densely developed territory separated from the main body of the urban area by intervening low density territory from 1.5 to 2.5 miles. This recognized the prospect that larger clusters of non-residential urban uses might offset contiguity of densely settled territory.
- Introducing the hop concept to provide an objective basis for recognizing that nonresidential urban uses, such as small commercial areas or parks, create small gaps between densely settled residential territory, but are part of the pattern of urbanization.
- Adopting a zero-based approach to defining urban areas.

For the 2010 Census, the Census Bureau adopted moderate changes and enhancements to the criteria to improve upon the classification of urban and rural areas while continuing to meet the objective of a uniform application of criteria nationwide. These changes were:

- Use of census tracts as analysis units in the initial phase of delineation.
- Use of land use/land cover data from the National Land Cover Database (NLCD) to identify qualifying areas of non-residential urban land uses.
- Qualification of airports for inclusion in urban areas.
- Elimination of the designation of central places within urban areas.[1]
- Requirement for minimum population residing outside institutional group quarters.
- Splitting large urban agglomerations.

The conceptual and criteria changes adopted for both the 2000 and 2010 Censuses, as well as the history of the Census Bureau's urban and rural classification, are discussed in more detail in the document ''A Century of Delineating a Changing Landscape: The Census Bureau's Urban and Rural Classification, 1910 to 2010,'' available at *https://www2.census.gov/geo/pdfs/reference/ua/Century_of_Defining_Urban.pdf.*

III. Summary of Comments Received in Response to Proposed Criteria

The notice published in the **Federal Register** on February 19, 2021 (86 FR 10237) requested comments on proposed criteria for delineating the 2020 Census urban areas. The Census Bureau received 106 responses directly related to the proposed Urban Area Criteria. Responses were received from regional planning and nongovernmental organizations, municipal and county officials, Members of Congress, state governments, federal agencies, and individuals. The criteria in Section V of this document reflect changes made in response to the comments and suggestions received on the proposed criteria for delineating the 2020 Census urban areas.

[1] The central place concept was not necessary for urban area delineation and the resulting list of qualified central places largely duplicated the list of principal cities identified by the Metropolitan and Micropolitan Statistical Area standards. There was no conceptual reason to continue identifying two slightly different lists of cities and other places that were central to their respective regions.

Comments Expressing General Support or Opposition

The Census Bureau received ten comments that expressed general support or general opposition to the proposed criteria without specifying any particular aspect of the criteria. Five commenters expressed general opposition; five commenters offered general support.

Comments Pertaining To Increasing the Minimum Threshold To Qualify

The Census Bureau received twenty-nine comments regarding the proposal to increase the minimum threshold to qualify as urban to 10,000 persons or 4,000 housing units. Twenty-seven commenters expressed concern about the increase, citing loss of statistical continuity for small communities. Two commenters supported increasing the minimum threshold.

Comments Pertaining to Proposed Exclusion of Hop/Jump Corridors From Urban Areas

The Census Bureau received nineteen comments regarding the proposal to exclude hop/jump corridors from an urban area. Seventeen commenters expressed concern, citing issues related to the complex, multipiece urban areas that would result. Two commenters supported excluding the hop/jump corridors.

Comments Pertaining to Proposed Criteria To Cease Distinguishing Types of Urban Areas

The Census Bureau received sixteen comments regarding the proposal to cease distinguishing types of urban areas. Thirteen commenters expressed concern about the loss of distinction between Urban Clusters and Urbanized Areas (though this is only a change in terminology—it still will be possible to distinguish between different sizes of urban areas based on population). Three commenters supported the proposal to cease distinguishing types of urban areas.

Comments Pertaining to Housing Unit Density

The Census Bureau received fifty-five comments regarding the proposed criteria to utilize housing unit density.

Twenty-six commenters expressed concern about using housing unit density instead of population density. Eight commenters supported using housing unit density.

Twenty commenters expressed concern that the minimum housing unit density threshold of 385 housing units per square mile (HPSM) was too high. One commenter supported the

minimum housing unit density of 385 HPSM.

Comments Pertaining to Proposed Criteria for Splitting Large Urban Agglomerations

The Census Bureau received five comments regarding the proposed criteria for splitting large urban area agglomerations or the use of the Longitudinal Employer-Household Dynamics (LEHD) data. Three commenters supported the proposed criteria; two commenters expressed concern.

Comments Pertaining to Proposed Jump Criteria

The Census Bureau received forty-seven comments regarding the proposed jump criteria designed to include noncontiguous, but qualifying territory within an urban area. Of these, six commenters supported lowering the maximum jump distance threshold from 2.5 to 1.5 miles. Forty-one commenters favored no change to the 2.5-mile maximum jump distance threshold. Reasons for retention of the 2.5-mile maximum jump distance provided by these commenters included retaining consistency with the 2010 Census urban area delineation, the ability to account for future urbanization and extended suburbanization, and mitigation of the presence of undevelopable land not identified by the Census Bureau.

Comments Pertaining to Proposed Use of Census Blocks as Building Blocks

The Census Bureau received seven comments regarding the proposed use of the census block as the analysis unit (or geographic building block) during the delineation of the initial urban area core. These commenters expressed concern that the use of census blocks instead of census tracts would lead to the shrinking of the population and geographic area of urban areas.

Comments Pertaining to Proposed Criteria for Indentations

The Census Bureau received ten comments regarding proposed criteria to no longer include low-density territory located within indentations formed during the Urban Area Delineation Process. These commenters opposed the proposed criteria, citing the jagged nature of the urban area boundaries without the smoothing that occurs by including indentations.

Comments Pertaining to Proposed Criteria To Qualify Territory Containing a High Degree of Impervious Surface

The Census Bureau received nine comments regarding the proposed use of the National Land Cover Database (NLCD) to assist in identifying and qualifying as urban, sparsely populated urban-related territory associated with a high degree of impervious surface. These commenters expressed concern about the vintage of the data.

Comments Pertaining to Nonstatistical Uses of Urban Areas

Additional comments expressed concern that the Census Bureau does not acknowledge or consider any nonstatistical uses of urban areas when developing delineation criteria. These commenters also suggested delaying the delineation of urban areas until provisions are adopted that would prevent adverse impacts on programs and funding formulas relating to urban areas as currently defined.

In response to the comments received regarding the nonstatistical uses of Census urban areas, the Census Bureau recognizes that some federal and state agencies use the Census Bureau's urban-rural classification for allocating program funds, setting program standards, and implementing aspects of their programs. The Census Bureau remains committed to an objective, equitable, and consistent nationwide urban area delineation, and thus identifies these areas for the purpose of tabulating and presenting statistical data. This provides data users, analysts, and agencies with a baseline set of areas from which to work, as appropriate. Given the many programmatic and often conflicting or competing uses for Census Bureau-defined urban areas, the Census Bureau cannot attempt to take each such use into account or assess the relative value of any particular use. The Census Bureau is committed to working with stakeholders, as appropriate, to promote understanding of our classification.

Comments Pertaining to Retention of the 2010 Urban Area Criteria

Three commenters specifically requested that territory defined as urban in the 2010 Census continue to be defined as urban for the 2020 Census. Six commenters requested that the 2010 criteria be used to define urban areas for the 2020 Census.

Comments Pertaining to Local Input of Urban Area Boundaries

Eight commenters expressed concern that there are no provisions in the delineation criteria for local input and requested the opportunity to review and comment on the definition of individual urban areas before boundaries become final.

Comments Pertaining to Census Block Boundaries

The Census Bureau received ten comments regarding the block boundaries on the edges of urban development. Commenters expressed concern that these blocks are often a mix of urban and rural characteristics and are often large in scale, potentially leading to their exclusion from an urban area.

Comments Pertaining to the Delineation Process

Commenters also expressed concern about the automated and inflexible nature of the delineation process and suggested that the extent of each urban area should be evaluated individually. The Census Bureau also received comments expressing concern that the proposed delineation criteria do not consider local zoning laws, topography, and municipal boundaries.

The Census Bureau's urban area criteria for the 2020 Census consists of a single set of rules that allow for application of automated processes based on the input of standardized nationwide datasets that yield consistent results. Rather than defining areas through a process of accretion over time, the criteria also provide a better reflection of the distribution of population, housing, and other uses and how they reflect the current state of urbanization.

Comments Pertaining to the Urban Area Program Timeline

The Census Bureau received twenty-six requests for the extension of the public comment period on the proposed urban area delineation criteria to further assess its potential impacts. Additional comments expressed difficulty in predicting results of changes to criteria as published in the **Federal Register** on February 19, 2021 (86 FR 10237) and requested clarification of the proposed urban area delineation criteria.

The delineation and production of urban areas and their associated data are scheduled to begin after the release of the Decennial Census block-level population and housing counts to ensure sufficient time to delineate and review the urban area definitions and prepare geographic information files in time for tabulation and inclusion in statistical data products from both the 2020 Census and the American Community Survey (ACS). Adherence to this schedule prevented any attempts toward a test delineation using all the proposed 2020 urban area criteria for the entire United States, Puerto Rico, and the Island Areas, thus prohibiting

the availability of nation-wide, real-world examples without showing preference to any particular location. Further, this schedule also dictated that the development of the delineation software coincided with the development of the proposed and the final criteria.

IV. Changes to the Proposed Urban Area Criteria for the 2020 Census

This section of the notice provides information about the Census Bureau's decisions on changes that were incorporated into the Urban Area Criteria for the 2020 Census in response to the many comments received. These decisions benefited greatly from public participation as the Census Bureau took into account the comments received in response to the proposed criteria published in the **Federal Register** on February 19, 2021 (86 FR 10237), as well as comments received during webinars, conference presentations, consultations with professional geographers and other social scientists who work with and define urban and rural concepts and classifications, meetings with federal, state, and local officials and other users of data for urban areas, and additional research and investigation conducted by Census Bureau staff.

The changes made to the proposed criteria in Section III of the published in the **Federal Register** on February 19, 2021, ''Urban Areas for the 2020 Census-Proposed Criteria'' (86 FR 10237), are as follows:

1. In Section III, subsection A, the Census Bureau modifies the minimum criteria for an area to qualify as an urban area. The territory must encompass at least 2,000 housing units or at least 5,000 persons, decreased from 4,000 housing units or 10,000 persons as proposed.

2. In Section III, subsection B, the Census Bureau modifies the criteria to utilize multiple housing unit densities: 1,275 housing units per square mile (HPSM), 425 HPSM, and 200 HPSM. In response to comments stating that 385 HPSM was too high for a minimum threshold, and further testing of the impacts of complex multipiece urban areas, the Census Bureau adjusts the delineation criteria to include multiple housing unit density thresholds at different stages of the process. The addition of a high-density threshold of 1,275 HPSM ensures each urban area contains a core. Including a low density fill of 200 HPSM will reduce the number of individual pieces of an urban area while accommodating for the irregular nature of census block size that affects the density calculations.

3. In Section III, subsection B.1, the Census Bureau modifies the criteria to utilize a housing unit density of 425 instead of 385 HPSM.

4. In Section III, subsection B.1, the Census Bureau clarifies the criteria regarding which areas are considered ''Initial Urban Core.'' An Initial Urban Core must contain at least 500 housing units.

5. In Section III, subsection B.2, the Census Bureau removes the section related to the ''Inclusion of Group Quarters.'' Blocks containing group quarters can qualify in multiple steps of the criteria.

6. In Section III, subsection B.3, the Census Bureau removes all references to ''385 housing units or more.''

7. In Section III, subsection B.3, the Census Bureau removes the reference to ''all urban area cores that have a housing unit count of 577 or more.''

8. In Section III, subsection B.4, the Census Bureau clarifies references to the land cover data used in determining exempted territory. The Census Bureau will use the most current land cover data from the National Land Cover Database (NLCD) or Coastal Change Analysis Program (C–CAP) High Resolution Land Cover for any given area to better represent land use/land cover conditions at the time of the delineation.

9. In Section III, subsection B.5, the Census Bureau clarifies when the enclave criteria are applied. Enclaves will be added after development of the Initial Urban Cores and again after the addition of nonresidential territory. This process recognizes that some census blocks that are internal and integral to an urban area may have few or no housing units and little impervious surface, such as census blocks containing urban parkland.

10. In Section III, subsection B.6, the Census Bureau removes the criteria for the ''Inclusion of Airports'' and includes it within subsection B.7, ''Additional Nonresidential Urban Territory.''

11. In Section III, subsection B.7, the Census Bureau adds criteria to include additional nonresidential census blocks that contain at least 1,000 commuter destinations (in a three-year average) and are within 0.5 miles of already qualifying territory.

12. In Section III, subsection B.8, the Census Bureau clarifies and simplified the criteria for splitting large agglomerations.

13. In Section III, subsection B.9, the Census Bureau modifies the criteria to include the most populous place name of the high-density nucleus.

14. In Section III, subsection B.9, the Census Bureau modifies the criteria for secondary names to utilize housing unit counts rather than population counts.

The sections of the proposed criteria referenced above do not appear in the same order in Section V of this final notice due to the reorganization of existing criteria sections and the addition of new criteria sections. The following table provides a crosswalk of the criteria sections that were proposed in the **Federal Register** on February 19, 2021 (86 FR 10237) to the criteria sections of the final criteria in this notice.

Section name	Proposed 2020 criteria	Final 2020 criteria
Identification of Initial Urban Area Cores	Section III, B.1	Section V, B.1
Inclusion of Group Quarters	Section III, B.2	Section V, B.1
Inclusion of Noncontiguous Territory via Hops and Jumps	Section III, B.3	Section V, B.2
Inclusion of Noncontiguous Territory Separated by Exempted Territory	Section III, B.4	Section V, B.3
Low-Density Fill	N/A	Section V, B.4
Inclusion of Airports	Section III, B.6	Section V, B.5
Additional Nonresidential Urban Territory	Section III, B.7	Section V, B.5
Inclusion of Enclaves	Section III, B.5	Section V, B.6
Inclusion of Indentations	N/A	Section V, B.7
Merging of Eligible Block Aggregations	N/A	Section V, B.8
Identification of Urban Area Agglomerations	N/A	Section V, B.9
Splitting Large Agglomerations	Section III, B.8	Section V, B.10
Assigning Urban Area Titles	Section III, B.9	Section V, B.11

V. Urban Area Criteria for the 2020 Census

The criteria outlined herein apply to the United States,[2] Puerto Rico, and the Island Areas of American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands. The Census Bureau will utilize the following criteria and characteristics to identify the areas that will qualify for designation as urban areas for use in tabulating data from the 2020 Census, the American Community Survey (ACS), the Puerto Rico Community Survey, and potentially other Census Bureau censuses and surveys.

A. 2020 Census Urban Area Definitions

For the 2020 Census, an urban area will comprise a densely developed core of census blocks[3] that meet minimum housing unit density requirements, along with adjacent territory containing non-residential urban land uses as well as other lower density territory included to link outlying densely settled territory with the densely settled core. To qualify as an urban area, the territory identified according to the criteria must encompass at least 2,000 housing units or at least 5,000 persons. The term ''rural'' encompasses all population, housing, and territory not included within an urban area.

1. As a result of the urban area delineation process, an incorporated place or census designated place (CDP) may be partly inside and partly outside an urban area. Further, any census geographic areas, with the exception of census blocks, may be partly within and partly outside an urban area.

2. All criteria based on land area, housing unit density, and population, reflect the information contained in the Census Bureau's Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) Database (MTDB) at the time of the delineation. All density calculations include only land; the areas of water contained within census blocks are not used in density calculations. Housing unit, population, and worker flow data used in the urban area delineation process will be those published by the Census Bureau for all public and official uses.

3. The Census Bureau will utilize multiple data sources in the 2020 Urban Area delineation. Worker-flows are calculated from the Longitudinal Employer-Household Dynamics Origin-Destination Employment Statistics (LODES) data. Level of imperviousness is calculated from either the National Land Cover Database (NLCD) or Coastal Change Analysis Program (C–CAP) High Resolution Land Cover. The Census Bureau will utilize the most recent data available from either data source for any given area.

B. Urban Area Delineation Criteria

The Census Bureau defines urban areas primarily based on housing unit density measured at the census block-level of geography. Three housing unit densities are used in the delineation—425 housing units per square mile (HPSM) to identify the initial core of urban block agglomerations and the cores of noncontiguous peripheral urban territory; 200 HPSM to expand the urban block agglomerations into less dense, but structurally connected portions of urban areas; and 1,275 HPSM to identify the presence of higher-density territory representing the urban nucleus.

1. Identification of Initial Urban Core

The Census Bureau will begin the delineation process by identifying and aggregating contiguous census blocks to form Eligible Block Aggregations (EBAs) based on the following criteria:

(a) The census block has a density of at least 425 HPSM; or

(b) At least one-third of the census block consists of territory with an impervious level of at least 20 percent,[4] and the census block is compact in nature as defined by a shape index. A census block is considered compact when the shape index is at least 0.185 using the following formula: $I = 4\pi A/P^2$ where I is the shape index, A is the area of the entity, and P is the perimeter of the entity; or

(c) At least one-third of the census block consists of territory with an impervious level of at least 20 percent and at least 40 percent of its boundary is contiguous with qualifying territory; or

(d) The census block contains a group quarter and has a block-level density of at least 500 persons per square mile (PPSM).

The Census Bureau will apply criteria Steps B.1.a, B.1.b, B.1.c, and B.1.d above until there are no additional blocks to add to the EBA. If an EBA contains at least 500 housing units, it will be considered an Initial Urban Core, to which other qualifying areas may be added in subsequent steps of the criteria. Any ''holes'' (remaining nonqualifying territory surrounded by an Initial Urban Core) that are less than five square miles in area will qualify as urban via the criteria for inclusion of enclaves, as set forth below in Step B.6.a.

2. Inclusion of Noncontiguous Territory via Hops and Jumps

Any EBA created in Step B.1 that contains at least ten housing units or a group quarter in a block with at least 500 PPSM may be added to an Initial Urban Core via a hop or a jump.

Hops connect EBAs separated by no more than 0.5 miles of road connections. Multiple hops can occur along road connections between EBAs leading to an Initial Urban Core. After all hop connections are made, EBAs that contain one or more Initial Cores will be considered Core EBAs.

The Census Bureau will then add additional EBAs via jump connections. Jumps are used to connect densely settled noncontiguous territory separated from the Core EBA by territory with low housing unit density. A jump can occur along a road connection that is greater than 0.5 miles but no more than 1.5 miles. Because it is possible that any given densely developed area could qualify for inclusion in multiple Core EBAs via a jump connection, the identification of jumps in an automated process starts with the Core EBA that has the highest number of housing units and continues in descending order based on the total housing units of each Core EBA. Once a Core EBA is added to another Core EBA via a jump, it becomes ineligible for any other jumps.

The non-qualifying blocks along the road connection are not included in the delineation; therefore, Core EBAs that contain hop or jump connections will be noncontiguous aggregations.

Those remaining EBAs that did not have an Initial Urban Core but contain the following will remain as candidates for inclusion in subsequent steps:

- At least ten housing units, or
- A group quarter and a block-level density of at least 500 PPSM.

3. Inclusion of Noncontiguous Territory Separated by Exempted Territory

The Census Bureau will identify and exempt territory in which residential development is substantially constrained or not possible due to either

[2] For Census Bureau purposes, the United States includes the 50 States and the District of Columbia.

[3] A census block is the smallest geographic area for which the Census Bureau tabulates data and is an area normally bounded by visible features, such as streets, rivers or streams, shorelines, and railroads, and by nonvisible features, such as the boundary of an incorporated place, minor civil division, county, or other 2020 Census tabulation entity.

[4] The Census Bureau has found in testing that territory with an impervious surface level less than 20 percent results in the inclusion of road and structure edges, and not the actual roads or buildings themselves.

topographical or land use conditions. Such exempted territory offsets urban development due to particular land use, land cover, or topographic conditions. For the 2020 Census, the Census Bureau considers the following to be exempted territory:

(a) Bodies of water (as defined by the Census Bureau, or classified as water in the land cover data); and

(b) Wetlands (belonging to any wetlands classifications in the land cover data).

When the hop and jump criteria in Step B.2 are applied, the qualifying hop or jump connections may be extended when the intervening non-qualifying blocks contain exempted territory, provided that:

(c) The road connection across the exempted territory (located on both sides of the road) is no greater than five miles in length; and

(d) The total length of the road connection between the Core EBA and the noncontiguous territory, including the exempt distance and non-exempt hop or jump distances, is also no greater than five miles.

The intervening low housing unit density block or blocks and the block or blocks of water or wetlands are not included in the Core EBA.

4. Low-Density Fill

The Census Bureau will add contiguous territory to the Core EBAs where blocks have a density of at least 200 HPSM. After the low-density fill is added, any EBA with fewer than 50 total housing units will be removed from the Core EBA with which it is associated.

5. Additional Nonresidential Urban Territory (Including Airports)

The Census Bureau will identify additional nonresidential urban territory that is noncontiguous, yet near the Core EBA. The Census Bureau will consider for inclusion all census blocks that:

(a) Qualify as urban via the impervious surface criteria set forth in Steps B.1.b or B.1.c; and

(b) Have a total area of at least 0.15 square miles; [5] and

(c) Are within 0.5 miles of a Core EBA.

The Census Bureau will also include all census blocks that:

(d) Contain a three-year average of at least 1,000 commuter destinations; [6] and

(e) Are within 0.5 miles of a Core EBA.

A final review of these census blocks and surrounding territory [7] will determine whether to include them in an EBA.

The Census Bureau will then add census blocks that approximate the territory of airports, provided at least one of the blocks that represent the airport is within 0.5 miles of the edge of a Core EBA. An airport qualifies for inclusion if it is currently functional and one of the following (per the Federal Aviation Administration (FAA) Air Carrier Activity Information System.[8]):

(a) Is a qualified cargo airport; or

(b) Has an annual passenger enplanement of at least 2,500 in any year between 2011 and 2019.

6. Inclusion of Enclaves

The Census Bureau will add enclaves (nonqualifying area completely surrounded by area already qualified for inclusion) within an EBA or Core EBA, provided:

(a) The area of the enclave is less than five square miles, or

(b) All area of the enclave is more than a straight-line distance of 1.5 miles from a land block that is not part of the already qualified area.

Additional enclaves will be identified and included within the EBA or Core EBA if:

(c) The area of the enclave is less than 5 square miles; and

(d) The enclave is surrounded by both water and land that qualified for inclusion in the EBA or Core EBA; and

(e) The length of the line of adjacency with the water is less than the length of the line of adjacency with the land.

7. Inclusion of Indentations

The Census Bureau will evaluate and include territory that forms an indentation within an urban area.

To determine whether an indentation should be included in the urban area, the Census Bureau will identify a closure line, defined as a straight line no more than one mile in length, that extends from one point along the edge of the urban area across the mouth of the indentation to another point along the edge of the urban area.

A census block located wholly or partially within an indentation will be considered for inclusion in the urban area, if the Census Bureau-defined internal point of the block is inside the closure line. The total aggregated area of these qualifying indentation blocks is compared to the area of a circle, the diameter of which is the length of the closure qualification line. The qualifying indentation block will be included in the urban area if it is at least four times the area of the circle and less than 3.5 square miles.

If the aggregated area of the qualifying indentation blocks does not meet the criteria listed above, the Census Bureau will define successive closure lines within the indentation, starting at its mouth and working inward toward the base of the indentation, until the criteria for inclusion are met or it is determined that no portion of the indentation will qualify for inclusion.

8. Merging of Eligible Block Aggregations

After all criteria have been exhausted and the Core EBAs have been extended to their maximum size, Core EBAs will be merged where the following criteria are met:

(a) The boundaries of two Core EBAs are within 0.25 miles of each other; and

(b) Both Core EBAs have at least 1,000 housing units or 2,500 persons; and

(c) The three-year mean worker-flow [9] between the two Core EBAs is at least 50 percent in at least one direction.

9. Identification of Urban Area Agglomerations (UAA)

After all qualifying EBA merges are completed, Core EBAs will be evaluated for high-density nuclei. A high-density nucleus is defined as a collection of blocks, with at least 500 housing units, where each census block has:

(a) A density of at least 1,275 HPSM; or

(b) At least one-third of the census block consists of territory with an impervious level of at least 20 percent,[4] and the census block is compact in nature as defined by a shape index. A census block is considered compact when the shape index is at least 0.185 using the following formula: $I = 4\pi A/P^2$ where I is the shape index, A is the area of the entity, and P is the perimeter of the entity; or

(c) At least one-third of the census block consists of territory an impervious level of at least 20 percent and at least 40 percent of its boundary is contiguous with qualifying territory.

[5] The Census Bureau found in testing that individual (or groups of) census blocks with a high degree of imperviousness with an area less than 0.15 square miles tend to be more associated with road infrastructure features such as cloverleaf overpasses and multilane highways.

[6] The three most recent years of available LODES data for each state are averaged for each census block.

[7] Additional census blocks within eighty feet of the initial groups also qualifying as impervious, but failing the shape index, are also identified for review.

[8] The annual passenger boarding data only includes primary, non-primary commercial service, and general aviation enplanements as defined and reported by the FAA Air Carrier Activity Information System.

[9] Using the three most recent years of LODES data, mean worker-flow is the percent of all flows in an area of analysis that have their origin or destination in a different area of analysis.

Core EBAs will be considered Urban Area Agglomerations if they contain:

(a) At least one high-density nucleus with at least 500 housing units in blocks with a density of at least 1,275 HPSM; and

(b) At least 2,000 housing units or 5,000 persons.

All other remaining EBAs are removed from qualification.

10. Splitting Large Agglomerations

Population growth and development, coupled with the automated urban area delineation methodology used for the 2020 Census, results in large Urban Area Agglomerations (UAAs) that encompass territory defined as separate urban areas for the 2010 Census. If such results occur, or if multiple Core EBAs were connected in Step B.6 (Low-Density Fill), the Census Bureau will apply split criteria. Due to differences in the availability of data, Steps B.10.a and B.10.b will apply only to the United States. Step B.10.c will apply to Puerto Rico and the Island Areas (American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands).

(a) Eligible UAAs.

UAAs will be evaluated for splitting where the UAA:

1. Encompasses territory defined as separate urban areas for the 2010 Census and those intersecting areas contain:

a. At least 50 percent of the population of each of two or more urban areas for the 2010 Census.

2. Encompasses territory where two or more Core EBAs were connected in Step B.6 (Low-Density Fill):

a. Each of the Core EBAs, prior to Step B.6, meets the high-density nucleus qualification criteria outlined in Step 9; and

b. Each of the Core EBAs, prior to Step B.6, has a mean internal worker-flow of at least 25 percent.

UAAs that meet the criteria above (Steps B.10.a.1 or B.10.a.2) will progress to the Split Boundary Assignment (Step B.10.b). The remaining UAAs will continue as a single urban area.

(b) Split Boundary Assignment.

Community detection is performed on the three most-recently available years of Longitudinal Employer-Household Dynamics Origin-Destination Employment Statistics (LODES) worker-flow data, using unsupervised clustering, specifically the Leiden Algorithm,[10] to identify commuter-based partitions. The Leiden Algorithm is first applied separately on each eligible UAA, then subsequent iterations are run on the resulting partitions to provide greater levels of spatial resolution to allow for relatively smaller areas to be added during UAA split boundary assignment. The resulting partitions of the third iteration are used to carry out the following steps, unless the Census Bureau determines doing so would not provide the best split boundary.

Commuter-based partitions associated with only one intersecting area or one Core EBA meeting the criteria in Step B.10.a.1 or Step B.10.a.2, are grouped together to form component UAAs. Additionally, partitions are grouped or assigned to existing component UAAs if:

1. The partition comprises at least 90 percent of the population of an intersecting area or Core EBA; or

2. At least 90 percent of the population of a partition is located within an intersecting area or Core EBA.

The remaining partitions are:

- Completely outside of 2010 urban territory; or
- Completely within 2020 low-density fill; or
- Within multiple intersecting areas or Core EBAs.

These partitions will be assigned to the component UAA with which they have the greatest worker-flow relationship.

Component UAAs are evaluated to ensure they have at least 25 percent mean internal worker-flow. Those that do not meet this threshold will merge with the component UAA with which they have the greatest worker-flow relationship. This process continues until all component UAAs have at least 25 percent mean internal worker-flow and at least 5,000 persons.

The boundary between two urban areas may be modified to avoid splitting an incorporated place, CDP, or minor civil division (MCD) between two urban areas at the time of delineation or to follow a legal geographic boundary near the commuter-based partition boundary used to split the two urban areas.

(c) Splitting Criteria for Puerto Rico and the Island Areas.

As the LODES data are not available for Puerto Rico and the Island Areas, the Census Bureau will maintain the 2010 split boundaries between qualified urban areas. These boundaries will be adjusted to the appropriate 2020 block boundaries.

11. Assigning Urban Area Titles

A clear, unambiguous title based on commonly recognized place names helps provide context for data users and ensures that the general location and setting of the urban area can be clearly identified and understood. The title of an urban area identifies the place that is the most populated within the high-density nucleus of the urban area. All population and housing unit requirements for places (incorporated places or CDPs) and MCDs apply to the portion of the entity's population that is within the specific urban area being named.

The Census Bureau will use the following criteria to determine the title of an urban area:

Primary Name:

1. The most populous place within the high-density nuclei of an urban area that has a population of 2,500 or more will be listed first in the urban area title.

Secondary Names:

Up to two additional places, in descending order of housing unit count, may be included in the title of an urban area provided that:

2. The place has 90,000 or more housing units; or

3. The place has at least 1,000 housing units and that housing unit count is at least two-thirds of that of the urban portion of the place providing the primary name.

If the high-density nuclei of an urban area do not contain a place of at least 2,500 people, the Census Bureau will consider the name of the incorporated place, CDP, or MCD with the largest total population in the urban area, or a local name recognized for the area by the United States Geological Survey's (USGS) Geographic Names Information System (GNIS), with preference given to names also recognized by the United States Postal Service (USPS). The urban area title will include the USPS abbreviation of the name of each state or statistically equivalent entity in which the urban area is located or extends. The order of the state abbreviations is the same as the order of the related place names in the urban area title.[11]

If a single place or MCD qualifies as the title of more than one urban area, the urban area with the largest population will use the name of the place or MCD. The smaller urban area will have a title consisting of the place or MCD name and the direction (such as

[10] Thomas, I., A. Adam, and A. Verhetsel. Migration and commuting interactions fields: A new geography with community detection algorithm? 2017. Belgeo. [Online], 4. *http://journals.openedition.org/belgeo/20507.* Traag V.A. L. Waltman and N.J. van Eck. From Louvain to Leiden: Guaranteeing well-connected communities. 2019. Scientific Reports. 9:5233.

[11] In situations where an urban area is only associated with one place name but is located in more than one state, the order of the state abbreviations will begin with the state within which the place is located and continue in descending order of population of each state's share of the population of the urban area.

''North'' or ''Southeast'') of the smaller urban area as it relates geographically to the larger urban area with the same place or MCD name.

If any title of an urban area duplicates the title of another urban area within the same state, or uses the name of an incorporated place, CDP, or MCD that is duplicated within a state, the name of the county that has most of the population of the largest place or MCD is appended, in parentheses, after the duplicate place or MCD name for each urban area. If there is no incorporated place, CDP, or MCD name in the urban area title, the name of the county having the largest total population residing in the urban area will be appended to the title.

C. Definitions of Key Terms

Census Block: A geographic area bounded by visible and/or invisible features shown on a map prepared by the Census Bureau. A census block is the smallest geographic entity for which the Census Bureau tabulates decennial census data.

Census Designated Place (CDP): A statistical geographic entity encompassing a concentration of population, housing, and commercial structures that is clearly identifiable by a single name but is not within an incorporated place. CDPs are the statistical counterparts of incorporated places for distinct unincorporated communities.

Census Tract: A small, relatively permanent statistical geographic subdivision of a county or county equivalent defined for the tabulation and publication of Census Bureau data. The primary goal of the census tract program is to provide a set of nationally consistent small, statistical geographic units, with stable boundaries that facilitate analysis of data across time.

Contiguous: A geographic term referring to two or more areas that share either a common boundary or at least one common point.

Core Based Statistical Area (CBSA): A statistical geographic entity defined by the U.S. Office of Management and Budget, consisting of the county or counties or equivalent entities associated with at least one core of at least 10,000 population, plus adjacent counties having a high degree of social and economic integration with the core as measured through commuting ties with the counties containing the core. Metropolitan and micropolitan statistical areas are the two types of core based statistical areas.

Core Eligible Block Aggregation (Core EBA): A type of Eligible Block Aggregation that contains one or more Initial Urban Cores.

Eligible Block Aggregation (EBA): Aggregations of census blocks that are eligible to qualify as urban according to housing unit count, density, group quarters, or degree of impervious surface.

Enclave: A territory not qualifying as urban that is either completely surrounded by qualifying urban territory or surrounded by qualifying urban territory and water.

Exempted Territory: A territory that is exempt from the urban area criteria because its extent is entirely of water or wetlands or an unpopulated road corridor that crosses water or wetlands.

Group Quarters (GQs): A place where people live or stay, in a group living arrangement that is owned or managed by an entity or organization providing housing and/or services for the residents. These services may include custodial or medical care, as well as other types of assistance, and residency is commonly restricted to those receiving these services. This is not a typical household-type living arrangement. People living in GQs are usually not related to each other. GQs include such facilities as college residence halls, residential treatment centers, skilled nursing facilities, group homes, military barracks, correctional facilities, and workers' dormitories.

High-Density Nucleus: An aggregation of blocks with a high housing unit density or impervious level.

Hop: A connection between Eligible Block Aggregations along a road connection of 0.5 miles or less in length.

Impervious Surface: Man-made surfaces, such as rooftops, roads, and parking lots.

Incorporated Place: A type of governmental unit, incorporated under state law as a city, town (except in New England, New York, and Wisconsin), borough (except in Alaska and New York), or village, generally to provide specific governmental services for a concentration of people within legally prescribed boundaries.

Indentation: A recess in the boundary of an urban area produced by settlement patterns and/or water features resulting in a highly irregular urban area shape. The territory is likely to be affected by and integrated with qualifying urban territory.

Initial Urban Core: An Eligible Block Aggregation that contains at least 500 housing units defined at the first stage of delineation.

Jump: A connection from one Core Eligible Block Aggregation to other Eligible Block Aggregations along a road connection that is greater than 0.5 miles, but less than or equal to 1.5 miles in length.

Low-Density Fill: Territory with low housing unit density added to already qualifying area near the end of the delineation process to smooth out the resulting urban areas and mitigate the effects of increased block size in the peripheries of the urban landscape.

MAF/TIGER (MTDB): Database developed by the Census Bureau to support its geocoding, mapping, and other product needs for the decennial census and other Census Bureau programs. The Master Address File (MAF) is an accurate and current inventory of all known living quarters including address and geographic location information. The Topologically Integrated Geographic Encoding and Referencing (TIGER) database defines the location and relationship of boundaries, streets, rivers, railroads, and other features to each other and to the numerous geographic areas for which the Census Bureau tabulates data from its censuses and surveys.

Metropolitan Statistical Area: A core based statistical area associated with at least one urban area that has a population of at least 50,000. The metropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Micropolitan Statistical Area: A core based statistical area associated with at least one urban area that has a population of at least 10,000, but less than 50,000. The micropolitan statistical area comprises the central county or counties or equivalent entities containing the core, plus adjacent outlying counties having a high degree of social and economic integration with the central county or counties as measured through commuting.

Minor Civil Division (MCD): The primary governmental or administrative division of a county or equivalent entity in 29 states and the Island Areas having legal boundaries, names, and descriptions. MCDs represent many different types of legal entities with a wide variety of characteristics, powers, and functions depending on the state and type of MCD. In some states, some or all of the incorporated places also constitute MCDs.

Noncontiguous: A geographic term referring to two or more areas that do not share a common boundary or a common point along their boundaries, such that the areas are separated by intervening territory.

Nonresidential Urban Territory: Census blocks added to Eligible Block Aggregations where the levels of imperviousness, number of jobs, or the presence of an airport indicate they are urban in nature.

Rural: Territory not defined as urban.

Urban: Generally, densely developed territory, encompassing residential, commercial, and other non-residential urban land uses within which social and economic interactions occur.

Urban Area: A statistical geographic entity consisting of a densely settled core created from census blocks and contiguous qualifying territory that together have at least 2,000 housing units or 5,000 persons.

Urban Area Agglomeration (UAA): The resulting urban territory at the completion of the delineation process but prior to the application of split/merge criteria. UAAs may be split or merged if they contain multiple 2010 Urban Areas or multiple EBAs that connected in the process.

Urban Cluster (UC): A retired statistical geographic entity type consisting of a densely settled core created from census tracts or blocks and contiguous qualifying territory that together have at least 2,500 persons but fewer than 50,000 persons. Urban clusters were not identified for the 2020 census.

Urbanized Area (UA): A retired statistical geographic entity type consisting of a densely settled core created from census tracts or blocks and adjacent densely settled territory that together have a minimum population of 50,000 people. Urbanized areas were not identified for the 2020 census.

Robert L. Santos, Director, Census Bureau, approved the publication of this Notice in the **Federal Register**.

Dated: March 18, 2022.

Sheleen Dumas,

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

[FR Doc. 2022–06180 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904; Binational Panel Review: Notice of Completion of Panel Review

AGENCY: United States Section, NAFTA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review.

SUMMARY: In accordance with Rules 78 and 80 of the NAFTA *Rules of Procedure for Article 1904 Binational Panel Reviews,* the Large Residential Washers from Mexico (Secretariat File Number: USA–MEX–2019–1904–04) Panel Review was completed and the panelists were discharged from their duties effective March 21, 2022.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, Acting United States Secretary, NAFTA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of Article 1904 of NAFTA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. For the complete NAFTA *Rules of Procedure for Article 1904 Binational Panel Reviews,* please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/nafta-alena-tlcan/rules-regles-reglas/index.aspx?lang=eng.*

Dated: March 21, 2022.

Vidya Desai,

Acting U.S. Secretary, NAFTA Secretariat.

[FR Doc. 2022–06283 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–824]

Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses From Indonesia: Final Results of Expedited Second 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 certain coated paper suitable for high-quality print graphics using sheet-fed presses (certain coated paper) from Indonesia would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Review'' section of this notice.

DATES: Applicable March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Daniel Alexander, 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) 482–4313.

SUPPLEMENTARY INFORMATION:

Background

On November 17, 2010, Commerce published its CVD order on certain coated paper from Indonesia in the **Federal Register**.[1] On December 1, 2021, Commerce published the notice of initiation of the second sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce received a notice of intent to participate from the domestic interested parties within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] Verso Corporation and Sappi North America, Inc. claimed interested party status under section 771(9)(C) of the Act, as manufacturers of the domestic like product in the United States. The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW) claimed interested party status under section 771(9)(D) of the Act, as a certified or recognized union that represents workers engaged in manufacturing the domestic like product and thus is a domestic interested party.

Commerce received a substantive response from the domestic interested parties[4] within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive response from any other domestic or interested parties in this proceeding, nor was a hearing requested.

On January 20, 2021, Commerce notified the U.S. International Trade Commission (ITC) that it did not receive an adequate substantive response from

[1] *See Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Countervailing Duty Order,* 75 FR 70206 (November 17, 2010) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 68220 (December 1, 2021).

[3] *See* Domestic Interested Parties' Letter, ''Five-Year ('Sunset') Review Of Countervailing Duty Order On Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Notice of Intent to Participate in Sunset Review,'' dated December 15, 2021.

[4] *See* Domestic Interested Parties' Letter, ''Second Five-Year (Sunset) Review of Countervailing Duty Order on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia: Substantive Response to Notice of Initiation,'' dated January 3, 2022.

respondent interested parties.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of this *Order.*

Scope of the Order

The merchandise subject to the *Order* includes coated paper and paperboard (1) in sheets suitable for high quality print graphics using sheet-fed presses; coated on one or both sides with kaolin (China or other clay), calcium carbonate, titanium dioxide, and/or other inorganic substances; with or without a binder; having a GE brightness level of 80 or higher (2); weighing not more than 340 grams per square meter; whether gloss grade, satin grade, matte grade, dull grade, or any other grade of finish; whether or not surface-colored, surface-decorated, printed (except as described below), embossed, or perforated; and irrespective of dimensions.

Imports of the subject merchandise are provided for under the following categories of the Harmonized Tariff Schedule of the United States (HTSUS): 4810.29.1035, 4810.29.7035, 4810.92.1235, 4810.92.1435, 4810.92.6535, 4810.14.11, 4810.14.1900, 4810.14.2010, 4810.14.2090, 4810.14.5000, 4810.14.6000, 4810.14.70, 4810.19.1100, 4810.19.1900, 4810.19.2010, 4810.19.2090, 4810.22.1000, 4810.22.50, 4810.22.6000, 4810.22.70, 4810.29.1000, 4810.29.5000, 4810.29.6000, 4810.29.70, 4810.32.10, 4810.32.30, 4810.32.65, 4810.92.30, 4810.92.65, 4810.39.12, 4810.39.14, 4810.39.30, 4810.39.65, 4810.92.12, and 4810.92.14. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *https://access.trade.gov/public/FRNotices ListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the CVD order on certain coated paper from Indonesia would be likely to lead to continuation or recurrence of countervailable subsidies at the following rates:

Producer/exporter	Net countervailable subsidy (percent)
APP/SMG (PT Pabrik Kertas Tjiwi, Tbk, PT Pindo Deli Pulp and Paper Mills, PT Indah Kiat Pulp and Paper, Tbk)	17.94
All Others	17.94

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. 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 terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the 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. History of the Order
IV. Scope 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 Rates Likely to Prevail
  3. Nature of the Subsidies
VII. Final Results of Sunset Review
VIII. Recommendation

[FR Doc. 2022–06212 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See* Commerce's Letter, ''Sunset Reviews Initiated on December 1, 2021,'' dated January 20, 2022.

[6] *See* Memorandum, ''Decision Memorandum for the Second Expedited Sunset Review of the Countervailing Duty Order on Certain Coated Paper Suitable for High-Quality Print Graphics Using Sheet-Fed Presses from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB883]

Fisheries of the South Atlantic; South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will host a Seminar Series presentation on the Deepwater Marine Protected Areas in the South Atlantic Region via webinar.

DATES: The webinar presentation will be held on Tuesday, April 12, 2022, from 1 p.m. until 2:30 p.m.

ADDRESSES:

Meeting address: The presentation will be provided via webinar. The webinar is open to members of the public. Information, including a link to

webinar registration will be posted on the Council's website at: *https://safmc.net/safmc-meetings/other-meetings/* as it becomes available.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 302–8439 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION: The Council will host a presentation from NOAA Fisheries on research conducted in the Deepwater Marine Protected Areas in the South Atlantic Region. The presentation will describe the impact of the protected areas based on data collected from remotely operated vehicles over the past 17 years by NOAA Fisheries Southeast Fisheries Science Center. During their research scientists were able to document fish abundances before and after implementation of fishing restrictions, comparing protected and unprotected areas. They were also able to examine the effect of lionfish on reef fish community structure along the south Atlantic shelf break and compare natural and artificial habitats to illuminate deep-water grouper hotspots. A question-and-answer session will follow the presentation. Members of the public will have the opportunity to participate in the discussion. The presentation is for informational purposes only and no management actions will be taken.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) (5) days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–06258 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Renewal of the Advisory Committee on Commercial Remote Sensing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, and the General Services Administration (GSA) rule on Federal Advisory Committee Management, and after consultation with GSA, the Secretary of Commerce has determined that the renewal of the Advisory Committee on Commercial Remote Sensing (ACCRES) is in the public interest in connection with the performance of duties imposed on the Department by law. ACCRES was last renewed on March 6, 2020.

FOR FURTHER INFORMATION CONTACT: Alan Robinson, Commercial Remote Sensing Regulatory Affairs Office, NOAA Satellite and Information Services, 1335 East West Highway, Room G101, Silver Spring, Maryland 20910; telephone (240) 997–2475, email *crsra@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Committee was first established in May 2002, to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters relating to the U.S. commercial remote-sensing industry and NOAA's activities to carry out the responsibilities of the Department of Commerce set forth in the National and Commercial Space Programs Act of 2010 (the Act), Title 51 U.S.C. 60101 *et seq* (formerly the Land Remote Sensing Policy Act of 1992, 15 U.S.C. 5621–5625).

ACCRES will have a fairly balanced membership consisting of approximately 10 to 20 members serving in a representative capacity. All members should represent the views of a stakeholder organization in the remote sensing area, and should have expertise in remote sensing, space commerce or a related field. Each candidate member shall be recommended by the Assistant Administrator and shall be appointed by the Under Secretary for a term of two years at the discretion of the Under Secretary.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. Copies of the Committee's revised Charter have been filed with the appropriate committees of the Congress and with the Library of Congress.

Stephen M. Volz,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2022–05875 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB908]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council, NEFMC) will hold a three-day hybrid meeting with both in-person and remote participation to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). The Council continues to follow all public safety measures related to COVID–19 and intends to do so for this meeting.

DATES: The meeting will be held on Tuesday, April 12, Wednesday, April 13 and Thursday, April 14, 2022, beginning at 1 p.m. on Tuesday and 9 a.m. on Wednesday and Thursday.

ADDRESSES:

Meeting address: The meeting will be held at the Hilton Hotel, 20 Coogan Boulevard, Mystic, CT 06355; telephone: (860) 572–0731; online at *https://www.hilton.com/en/hotels/mysmhhf-hilton-mystic/.* Join the webinar at *https://register.gotowebinar.com/register/2725063024732767759.*

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492; *www.nefmc.org.*

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492, ext. 113.

SUPPLEMENTARY INFORMATION:

Agenda

Tuesday, April 12, 2022

After brief announcements, Council members and staff will each introduce themselves. Next, the Council will

receive reports on recent activities from its Chair and Executive Director, the Greater Atlantic Regional Fisheries Office (GARFO) Regional Administrator, the Northeast Fisheries Science Center (NEFSC) Director, the NOAA Office of General Counsel, the Mid-Atlantic Fishery Management Council liaison, staff from the Atlantic States Marine Fisheries Commission (ASMFC), and representatives from the U.S. Coast Guard, NOAA's Office of Law Enforcement, the Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT), and the NMFS Highly Migratory Species Advisory Panel. Next, the Council will receive the Monkfish Committee report and initiate Framework Adjustment 13 to the Monkfish Fishery Management Plan (FMP). This action will include 2023–25 specifications for the fishery and other management measures. The Council then will go into the Habitat Committee report. First, the Council will discuss and take final action on a framework to designate one or more Habitat Areas of Particular Concern (HAPCs) in Southern New England. The Council also will receive an update on offshore energy, aquaculture, cables, and other habitat-related work and approve a comment letter on the Coast Guard's Port Access Route Study (PARS) for approaches to Maine, New Hampshire, and Massachusetts. The Council then will adjourn for the day.

Wednesday, April 13, 2022

The Council will begin the second day of its meeting with the Scallop Committee report, which will cover three issues: (1) An update on work being conducted by the Scallop Survey Working Group; (2) next steps for the Evaluation of the Atlantic Sea Scallop Rotational Management Program final report, which the Council received during the February 2022 meeting; and (3) potential approval of a scoping document for limited access leasing. Next, GARFO staff will provide an overview of the agency's efforts to develop bycatch reduction measures to reduce takes of sea turtles in trawl fisheries. The Council will provide comments on this action. The Council then will receive a report on outcomes from the March 2022 meeting of the Northeast Trawl Advisory Panel (NTAP). Following this report, the Northeast Fisheries Science Center will present the peer review results for recent research track assessments for Gulf of Maine haddock, *Illex* squid, and butterfish.

After the lunch break, the Council will receive a presentation from the Gulf of Maine Research Institute on its Maximized Retention Electronic Monitoring Program for Groundfish Monitoring Amendment 23. This presentation will be followed by the Groundfish Committee report. First, the Council will initiate Framework Adjustment 65 to the Groundfish FMP, which will include: (1) 2023 total allowable catches (TACs) for U.S./Canada shared resources on Georges Bank; (2) 2023–24 specifications for Georges Bank cod and Georges Bank yellowtail flounder; (3) 2023–25 specifications for 14 additional groundfish stocks; (4) revised rebuilding plans for Gulf of Maine cod and Southern New England/Mid-Atlantic winter flounder; (6) additional measures to promote stock rebuilding; and (7) acceptable biological catch (ABC) control rule revisions. Next, the Council will discuss potential modifications to its 2022 groundfish priorities to address possible changes to Atlantic cod management units. The Council then will adjourn for the day.

Thursday, April 14, 2022

The Council will lead off the third day of its meeting with an update on the Mid-Atlantic Fishery Management Council's work to rebuild Atlantic mackerel. The Council will have the opportunity to provide comments and feedback on the mackerel rebuilding program. Next, members of the public will have the opportunity to speak during an open comment period on issues that relate to Council business but are not included on the published agenda for this meeting. The Council asks the public to limit remarks to 3–5 minutes. These comments will be received both in person and through the webinar. A guide for how to publicly comment through the webinar is available on the Council website at *https://s3.amazonaws.com/nefmc.org/NEFMC-meeting-remote-participation_generic.pdf.* The Northeast Fisheries Science Center then will present the State of the Ecosystem 2022 report for New England. The Council's Scientific and Statistical Committee will provide recommendations on this report prior to the Council's discussion. Next, the Council will take up the Ecosystem-Based Fishery Management (EBFM) Committee report. This will include: (1) An update on planning for EBFM informational outreach workshops and an introduction to the workshop facilitator; and (2) committee recommendations on a plan to conduct a Prototype Management Strategy Evaluation (MSE) for EBFM and the Georges Bank example Fishery Ecosystem Plan (eFEP).

Following the lunch break, the Council will receive an update from GARFO on the status of the Industry-Funded Monitoring (IFM) Program for the Atlantic herring fishery, which will be followed by Council discussion. Then, the Council will close out the meeting with other business.

Although non-emergency issues not contained on this agenda may come before the Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies (see **ADDRESSES**) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–06256 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB901]

Caribbean Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a two-day public hybrid meeting to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The public hybrid meeting will be held on April 12, 2022, from 10 a.m.

to 5 p.m., and April 13, 2022, from 10 a.m. to 5 p.m. All meetings will be at Eastern Standard Time.

ADDRESSES: *Meeting address:* The hybrid meeting will be held at the Courtyard Marriott Isla Verde Beach Resort, 7012 Boca de Cangrejos, Carolina, Puerto Rico, 00979.

You may join the SSC public hybrid meeting via Zoom by entering the following address: *https://us02web.zoom.us/j/87345855856?pwd=SDc1V1NIK24xcEF0Zlhud0lTNlcvdz09.*

Meeting ID: 873 4585 5856.

Passcode: 793249.

One tap mobile:

+19399450244,,87345855856#,,,,*793249# Puerto Rico

+17879451488,,87345855856#,,,,*793249# Puerto Rico

Dial by your location:

+1 939 945 0244 Puerto Rico
+1 787 945 1488 Puerto Rico
+1 787 966 7727 Puerto Rico
+1 312 626 6799 U.S. (Chicago)
+1 346 248 7799 U.S. (Houston)
+1 646 558 8656 U.S. (New York)
+1 669 900 9128 U.S. (San Jose)
+1 253 215 8782 U.S. (Tacoma)
+1 301 715 8592 U.S. (Washington, DC)

Meeting ID: 873 4585 5856.

Passcode: 793249.

Find your local number: https://us02web.zoom.us/u/kKUpZ2IPc.

In case there are problems and we cannot reconnect via Zoom, the meeting will continue via GoToMeeting. You may join from a computer, tablet or smartphone by entering the following address: *https://meet.goto.com/474688061*.

You can also dial in using your phone.

United States: +1 (872) 240–3212
Access Code: 474–688–061

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or *inroomlink.goto.com*
Meeting ID: 474 688 061

Or dial directly: 474688061@67.217.95.2 or 67.217.95.2##474688061.

Get the app now and be ready when the first meeting starts: *https://meet.goto.com/install.*

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 398–3717.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

April 12, 2022

10 a.m.–10:15 a.m.

—Call to order
—Roll call
—Approval of Verbatim Transcriptions
—Adoption of agenda

10:15 a.m.–12:30 p.m.

—Integrative analyses and visualization of SEAMAP-Caribbean (SEAMAP–C) data in Puerto Rico and the U.S. Virgin Islands (aka The Gold Copy)—JJ Cruz Motta
—Dashboard/Puerto Rico Port Sampling and Catch Validation Project—Todd Gedamke
—Discussion and Recommendations to the CFMC

12:30 p.m.–1:30 p.m.

—Lunch

1:30 p.m.–3 p.m.

—Southeast Fishery Science Center (SEFSC) Caribbean Branch Update
—SEFSC Inventory Update—Kevin McCarthy and Rachel Eckley
—SSC Recommendations to CFMC

3 p.m.–3:15 p.m.

—Break

3:15 p.m.–5 p.m.

—SEDAR-Stock Assessment Matrix—Kevin McCarthy, SEFSC
—Life history Update—Virginia Shervette/Noemi Peña/Jesus Rivera
—Continue discussion and recommendations to CFMC

April 13, 2022

10 a.m.–12 p.m.

—Island-Based Fishery Management Plan and Amendments Update—María López-Mercer, SERO/NOAA Fisheries
—Updated OFLs/ABCs for spiny lobster for years 2024–2026—SEFSC
—Update/SSC Review
—National SSC Update—Richard Appeldoorn
—SSC Recommendations to CFMC

12 p.m.–1 p.m.

–Lunch

1 p.m.–3 p.m.

—Caribbean Fishery Management Council's (CFMC) 5-year Strategic Plan—Michelle Duval
—Discussion: SSC Research Plan Recommendations to CFMC

3 p.m.–3:15 p.m.

—Break

3:15 p.m.–5 p.m.

—Finalize Research Priorities and Recommendations to CFMC
—Ecosystem-Based Fishery Management Technical Advisory Panel (EBFM TAP) Update
—Sennai Habtes
—SSC Ecosystem Conceptual Model review
  —Where is it and how is it being used
  —Lenfest overview (JJ Cruz Motta, Stacey Williams, Tarsila Seara)
  —Plan to Meld Conceptual Models—Potentially Create Task Force—Orian Tzadik
  —DAPs ECM overview (Liajay Rivera)
  —Ecosystem Status Report: Ecosystem Indicators—Kelly Montenero, Mandy Karnauskas, SEFSC
  —SSC Recommendations to the CFMC
—Other Business
—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on April 12, 2022, at 10 a.m. EST, and will end on April 13, 2022, at 5 p.m. EST. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair. In addition, the meeting may be completed prior to the date established in this notice.

Special Accommodations

For any additional information on this public virtual meeting, please contact Dr. Graciela García-Moliner, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 403–8337.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 21, 2022.

Tracey L. Thompson,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–06257 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; COVID–19 Vaccine Supplemental Medical Provider Statement

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of information collection; request for comment.

SUMMARY: The United States Patent and Trademark Office (USPTO), as required by the Paperwork Reduction Act of 1995, invites comments on the extension and revision of an existing information collection: 0651–0087 (COVID–19 Vaccine Supplemental Medical Provider Statement). The purpose of this notice is to allow 60 days for public comment preceding submission of the information collection to OMB.

DATES: To ensure consideration, comments regarding this information collection must be received on or before May 23, 2022.

ADDRESSES: Interested persons are invited to submit written comments by any of the following methods. Do not submit Confidential Business Information or otherwise sensitive or protected information.

- *Email: InformationCollection@uspto.gov.* Include ''0651–0087 comment'' in the subject line of the message.
- *Federal Rulemaking Portal: http://www.regulations.gov.*
- *Mail:* Kimberly Hardy, Office of the Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Request for additional information should be directed to Naveen Paul, Office of Equal Employment Opportunity and Diversity, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 571–270–5395; or by email at *Naveen.Paul@uspto.gov* with ''0651–0087 comment'' in the subject line. Additional information about this information collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

Consistent with guidance from the Centers for Disease Control and Prevention (CDC), guidance from the Safer Federal Workforce Task Force established pursuant to E.O. 13991 of January 20, 2021, *Protecting the Federal Workforce and Requiring Mask-Wearing,* and E.O. 14043 of September 9, 2021, *Requiring Coronavirus Disease 2019 Vaccination for Federal Employees,* the request for this collection of information is essential to implement the USPTO health and safety measures regarding the Federal employee medical exemptions to the COVID–19 mandatory vaccinations. The Rehabilitation Act of 1973, as amended, requires Federal agencies to provide reasonable accommodations to qualified employees with disabilities unless that reasonable accommodation would impose an undue hardship on the employee's agency. See 29 U.S.C. 791; 29 CFR part 1614; see also 20 CFR part 1630 and E.O.13164 of July 26, 2000, *Requiring Federal Agencies to Establish Procedures to Facilitate the Provision of Reasonable Accommodation.* Section 2 of E.O. 14043 mandates that each agency ''implement, to the extent consistent with applicable law, a program to require COVID–19 vaccination for all of its Federal employees, with exceptions only as required by law.'' This COVID–19 Vaccine Supplemental Medical Provider Statement is necessary for USPTO to determine legal exemptions to the vaccine requirement under the Rehabilitation Act.

The vaccination requirement issued pursuant to E.O. 14043, is currently the subject of a nationwide injunction. While that injunction remains in place, USPTO will not process requests for a medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043. USPTO will also not request the submission of any medical information related to a request for an exception from the vaccination requirement pursuant to E.O. 14043 while the injunction remains in place. But USPTO may nevertheless receive information regarding a medical exception. That is because, if USPTO were to receive a request for an exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 during the pendency of the injunction, USPTO will accept the request, hold it in abeyance, and notify the employee who submitted the request that implementation and enforcement of the COVID–19 vaccination requirement pursuant to E.O. 14043 is currently enjoined and that an exception therefore is not necessary so long as the injunction is in place. In other words, during the pendency of the injunction, any information collection related to requests for medical exception from the COVID–19 vaccination requirement pursuant to E.O. 14043 is not undertaken to implement or enforce the COVID–19 vaccination requirement.

II. Method of Collection

USPTO utilizes its *USPTO Accommodation Point* for employees to request accommodations. The individual responder/medical service provider will fill out the required fields of the form and submit the completed form to the appropriate USPTO personnel/employee requesting the accommodation. A link to this form or a PDF version may be emailed to respondents who will then print it out to complete it manually or complete it electronically. USPTO will continue to explore options to use technology to reduce the burden on respondents.

III. Data

OMB Control Number: 0651–0087.

Forms:

- USPTO–OEEOD Form 303 (COVID–19 Vaccine Supplemental Medical Provider Statement)

Type of Review: Extension and revision of a currently approved information collection.

Affected Public: Private sector.

Respondent's Obligation: Required to obtain or retain benefits.

Estimated Number of Annual Respondents: 150 respondents.

Estimated Number of Annual Responses: 150 responses.

Estimated Time per Response: The USPTO estimates that the responses in this information collection will take the public approximately 10 minutes (0.167 hours) to complete. This includes the time to gather the necessary information, create the document, and submit the completed request to the USPTO.

Estimated Total Annual Respondent Burden Hours: 25 hours.

Estimated Total Annual Respondent Hourly Cost Burden: $2,557.

TABLE 1—TOTAL BURDEN HOURS AND HOURLY COSTS TO RESPONDENTS

Item No.	Item	Estimated annual respondents (a)	Estimated responses per respondent (b)	Estimated annual responses (a) × (b) = (c)	Estimated time for response (hour) (d)	Estimated burden (hour/year) (c) × (d) = (e)	Rate ($/hour) (f)	Estimated Annual respondent cost burden (e) × (f) = (g)
1	COVID–19 Vaccine Supplemental Medical Provider Statement.	150	1	150	0.167 (10 minutes).	25	$103.06	$2,577
	Totals	150		150		25		2,577

Estimated Total Annual Respondent Non-Hourly Cost Burden: $0. There are no capital start-up, maintenance costs, recordkeeping costs, filing fees, or postage costs associated with this information collection.

IV. Request for Comments

The USPTO is soliciting public comments to:

(a) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) Evaluate the accuracy of the Agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

All comments submitted in response to this notice are a matter of public record. USPTO will include or summarize each comment in the request to OMB to approve this information collection. Before including an address, phone number, email address, or other personally identifiable information (PII) in a comment, be aware that the entire comment— including PII—may be made publicly available at any time. While you may ask in your comment to withhold PII from public view, USPTO cannot guarantee that it will be able to do so.

Kimberly Hardy,

Information Collections Officer, Office of the Chief Administrative Officer, United States Patent and Trademark Office.

[FR Doc. 2022–06333 Filed 3–23–22; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Defense Programs Advisory Committee

AGENCY: Department of Energy, National Nuclear Security Administration, Office of Defense Programs.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces a closed meeting of the Defense Programs Advisory Committee (DPAC). The Federal Advisory Committee Act requires that public notice of meetings be announced in the **Federal Register**. Due to national security considerations, the meeting will be closed to the public and matters to be discussed are exempt from public disclosure under an Executive Order, and the Atomic Energy Act of 1954.

DATES: April 6, 2022; 1:00 p.m. to 4:00 p.m.

ADDRESSES: Microsoft Teams Video Conferencing.

FOR FURTHER INFORMATION CONTACT: Ms. Watti Hill, Office of Strategic Partnership Programs (NA–10.1) National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585, (202) 586–8266; *watti.hill@nnsa.doe.gov.*

SUPPLEMENTARY INFORMATION:

Background: The DPAC provides advice and recommendations to the Deputy Administrator for Defense Programs on topics related to Defense Programs mission areas and those of the National Nuclear Security Administration.

Purpose of the Meeting: The Quarterly meeting of the Defense Programs Advisory Committee (DPAC) will cover the current status of Committee activities as well as additional charges and is expected to contain discussions of a sensitive nature.

Type of Meeting: In the interest of national security, the meeting will be closed to the public. The Federal Advisory Committee Act, 5 U.S.C. App. 2, section 10(d), and the Federal Advisory Committee Management Regulation, 41 CFR 102–3.155, incorporate by reference the Government in the Sunshine Act, 5 U.S.C. 552b, which, at 552b(c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters will be discussed.

Tentative Agenda: Welcome; Headquarters and DPAC Updates; discussion of reports and current actions; discussion of next charges; conclusion.

Public Participation: There will be no public participation in this closed meeting. Those wishing to provide written comments or statements to the Committee are invited to send them to Ms. Watti Hill at the address listed above.

Minutes: The minutes of the meeting will not be available.

Signed in Washington, DC, on March 15, 2022.

LaTanya Butler,

Deputy Committee Management Officer.

[FR Doc. 2022–05860 Filed 3–23–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1370–000]

Sunlight Storage, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Sunlight Storage, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888

First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is April 7, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: March 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06241 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–47–014; ER12–1540–012; ER12–1541–012; ER12–1542–012; ER12–1544–012; ER14–594–016; ER14–867–002; ER14–868–003; ER16–323–011; ER17–1930–006; ER17–1931–006; ER17–1932–006; ER19–606–004; ER19–1941–002; ER20–649–002; ER21–136–003.

Applicants: Flat Ridge 3 Wind Energy, LLC, AEP Energy Partners, Inc., Flat Ridge 2 Wind Energy LLC, AEP Generation Resources Inc., Southwestern Electric Power Company, AEP Texas Inc., Public Service Company of Oklahoma, Ohio Valley Electric Corporation, AEP Retail Energy Partners LLC, AEP Energy, Inc., Ohio Power Company, Wheeling Power Company, Kingsport Power Company, Kentucky Power Company, Indiana Michigan Power Company, Appalachian Power Company.

Description: Notice of Change in Status of Appalachian Power Company, et al.

Filed Date: 3/17/22.

Accession Number: 20220317–5145.

Comment Date: 5 p.m. ET 4/7/22.

Docket Numbers: ER20–1090–001.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corporation submits tariff filing per 35: Order 864 ADIT Compliance Filing to be effective 1/27/2020.

Filed Date: 3/18/22.

Accession Number: 20220318–5142.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER20–1828–003.

Applicants: PacifiCorp.

Description: Compliance filing: OATT Order 864 Compliance Filing—Third Deficiency Response to be effective 1/27/2020.

Filed Date: 3/18/22.

Accession Number: 20220318–5107.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER21–2513–003.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: Compliance filing: 676–I Order Compliance to be effective 5/1/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5145.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–875–001.

Applicants: California Independent System Operator Corporation.

Description: Tariff Amendment: 2022–03–18 Certificate of Concurrence—LGIA McFarland—Amendment to be effective 11/29/2021.

Filed Date: 3/18/22.

Accession Number: 20220318–5146.

Comment Date: 5 p.m. ET 4/8/22.

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: ER22–1373–000.

Applicants: Southern California Edison Company.

Description: § 205(d) Rate Filing: LA Rosamond West Solar SA No. 281 TOT411 to be effective 3/19/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5000.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1374–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: § 205(d) Rate Filing: 2022–03–18_Schedule 31 Annual Update Filing to be effective 5/18/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5008.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1375–000.

Applicants: Florida Power & Light Company.

Description: Florida Power & Light Company Submits Notice of Cancellation of the Florida-Southern Transmission Export Allocation Agreement.

Filed Date: 3/14/22.

Accession Number: 20220314–5318.

Comment Date: 5 p.m. ET 4/4/22.

Docket Numbers: ER22–1376–000.

Applicants: PJM Interconnection, L.L.C. Cancellation of ISA, SA No. 5126; Queue No. AB1–169 to be effective 4/10/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5023.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1377–000.

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): 2022–03–18_SA 2801 ATC-City of Sturgeon Bay 2nd Rev CFA to be effective 3/18/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5035.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1378–000.

Applicants: Golden Spread Electric Cooperative, Inc.

Description: § 205(d) Rate Filing: WPC Sched B Rider H Filing to be effective 5/17/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5057.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1379–000.

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): 2022–03–18 SA 2774 ATC-City of Cedarburg 2nd Rev CFA to be effective 5/18/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5067.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1380–000.

Applicants: AltaGas Pomona Energy Inc.

Description: Tariff Amendment: AltaGas Pomona Energy Cancellation of MBR Tariff to be effective 5/17/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5075.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1381–000.

Applicants: Pedricktown Cogeneration Company LP.

Description: Tariff Amendment: Notice of Cancellation to be effective 6/1/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5079.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1382–000.

Applicants: Newark Bay Cogeneration Partnership, L.P.

Description: Tariff Amendment: Notice of Cancellation to be effective 6/1/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5081.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1383–000.

Applicants: Martins Creek, LLC.

Description: Tariff Amendment: Notice of Cancellation to be effective 6/2/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5080.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1384–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Tariff Amendment: Notice of Cancellation of Service Agreement FERC No. 200 to be effective 2/16/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5091.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1385–000.

Applicants: BHER Market Operations, LLC.

Description: Baseline eTariff Filing: BHER Market Operations, LLC MBR Tariff to be effective 5/17/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5094.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1386–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Service Agreement No. 108 and Service Agreement No. 208 to be effective 2/16/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5095.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1387–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Initial rate filing: Alabama Power Company submits tariff filing per 35.12: First City Solar Affected System Upgrade Agreement Filing to be effective 2/4/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5112.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1388–000.

Applicants: Georgia Power Company.

Description: Initial rate filing: First City Solar Affected System Upgrade Agreement Filing to be effective 2/4/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5114.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1389–000.

Applicants: Mississippi Power Company.

Description: Initial rate filing: First City Solar Affected System Upgrade Agreement Filing to be effective 2/4/2022.

Filed Date: 3/18/22.

Accession Number: 20220318–5115.

Comment Date: 5 p.m. ET 4/8/22.

Docket Numbers: ER22–1390–000.

Applicants: Jersey Central Power & Light Company, Pennsylvania Electric Company.

Description: Jersey Central Power & Light and Pennsylvania Electric Company Submit A Notice of Cancellation of the Wheeling and Supplemental Power Agreement among JCP&L, Penelec and the Borough of Lavallette, New Jersey, dated October 1, 1993.

Filed Date: 3/15/22.

Accession Number: 20220315–5299.

Comment Date: 5 p.m. ET 4/5/22.

Docket Numbers: ER22–1391–000.

Applicants: Jersey Central Power & Light Company, Pennsylvania Electric Company.

Description: Jersey Central Power & Light and Pennsylvania Electric Company Submit A Notice of Cancellation of the Wheeling and Supplemental Power Agreement with the Borough of Lavallette, New Jersey, dated October 1, 1993.

Filed Date: 3/15/22.

Accession Number: 20220315–5300.

Comment Date: 5 p.m. ET 4/5/22.

Docket Numbers: ER22–1392–000.

Applicants: Jersey Central Power & Light Company, Pennsylvania Electric Company.

Description: Jersey Central Power & Light and Pennsylvania Electric Company Submit A Notice of Cancellation of the Wheeling and Supplemental Power Agreement with the Borough of Pemberton, New Jersey, dated July 30, 1993.

Filed Date: 3/15/22.

Accession Number: 20220315–5301.

Comment Date: 5 p.m. ET 4/5/22.

Docket Numbers: ER22–1393–000.

Applicants: Elephant Energy, LLC.

Description: Notice of Cancellation of Market Based Rate Tariff of Elephant Energy, LLC.

Filed Date: 3/18/22.

Accession Number: 20220318–5171.

Comment Date: 5 p.m. ET 4/8/22.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR21–8–000.

Applicants: North American Electric Reliability Corporation.

Description: Amendment to August 18, 2021 Petition of the North American Electric Reliability Corporation for Approval of Revisions to the NERC Rules of Procedure Regarding Reliability Standards.

Filed Date: 3/18/22.

Accession Number: 20220318–5143.

Comment Date: 5 p.m. ET 4/8/22.

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 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06238 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Effectiveness of Exempt Wholesale Generator Status

	Docket No.
El Sauz Ranch Wind, LLC	EG22–27–000
Northern Wind Energy Redevelopment, LLC.	EG22–28–000
Red Barn Energy, LLC	EG22–29–000
Rock Aetna Power Partners, LLC	EG22–30–000
Arrow Canyon Solar, LLC	EG22–31–000
Flower Valley II LLC	EG22–32–000
Mesa Wind Power LLC	EG22–33–000
AM Wind Repower LLC	EG22–34–000
Mulligan Solar, LLC	EG22–35–000
Lancaster Area Battery Storage, LLC.	EG22–36–000

Take notice that during the month of February 2022, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2021).

Dated: March 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06240 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–707–000.
Applicants: KPC Pipeline, LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Filing to be effective 4/1/2022.
Filed Date: 3/18/22.
Accession Number: 20220318–5033.
Comment Date: 5 p.m. ET 3/30/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06237 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–78–000]

ANR Pipeline Company; Notice of Availability of the Final Environmental Impact Statement for the Proposed Wisconsin Access Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Wisconsin Access Project, proposed by ANR Pipeline Company (ANR) in the above-referenced docket. ANR requests authorization to modify seven existing meter stations in Oneida, Marathon, Oconto, and Manitowoc Counties, Wisconsin and increase firm transportation capacity on its pipeline by 50,707 dekatherms per day.

The final EIS assesses the potential environmental effects of the construction and operation of the Wisconsin Access Project in accordance with the requirements of the National Environmental Policy Act. FERC staff concludes that approval of the Project would not result in significant environmental impacts, with the exception of climate change impacts, where staff find the annual operation and downstream greenhouse gas emissions from the project would exceed the Commission's presumptive significance threshold based on 100 percent utilization.

The final EIS addresses the potential environmental effects of the construction and operation of minor modifications to ANR's existing Coleman, Lena, Meeme, Mosinee, Rhinelander, Suring, and Two Rivers Meter Stations. The modifications include the replacement of some metering and filtering equipment, installation of additional metering equipment, and replacement of two meter station buildings at the Lena and Rhinelander Meter Stations.

The Commission mailed a copy of the *Notice of Availability of the Final Environmental Impact Statement for the Wisconsin Access Project* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*), select ''General Search,'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–78). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the *eLibrary* link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: March 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06232 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TX22–3–000]

Empire II, LLC; Notice of Filing

Take notice that on March 14, 2022, pursuant to section 211 of the Federal Power Act,[1] and Section 9.3.3 of the San Diego Gas & Electric Company (SDG&E) Transmission Owner Tariff (SDG&E TO Tariff), Empire II, LLC (Empire) filed an application requesting that the Federal Energy Regulatory Commission (Commission) issue an order requiring SDG&E to provide interconnection and transmission service for proposed solar photovoltaic and battery energy storage facility under the terms and conditions of the Transmission Control Agreement between SDG&E and the California Independent System Operator Corporation (CAISO), the SDG&E TO Tariff, CAISO's Fifth Replacement FERC Electric Tariff,[2] and the Generator Interconnection Agreement among Empire, SDG&E, and CAISO, dated April 12, 2021, as may be in effect from time to time.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://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 FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5:00 p.m. Eastern Time on April 4, 2022.

Dated: March 18, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–06231 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

[1] 16 U.S.C. 824j (2018).

[2] Capitalized terms that are not otherwise defined herein have the meanings set forth in the CAISO Tariff.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–11–000]

Extension of Non-Statutory Deadlines; Supplemental Notice

In response to emergency conditions caused by Novel Coronavirus Disease (COVID–19), on May 8, 2020, the Secretary first waived the Commission's regulations that require that filings with the Commission be notarized or supported by sworn declarations.[1] On December 8, 2021, the Secretary extended this waiver through March 31, 2022.[2]

Many companies and individuals have continued to return to their workplaces since issuance of the December 2021 Notice, and we expect more will do so in the coming months. Further, the Secretary noted in the December 2021 Notice that the Commission did not ''anticipate issuing any further blanket extensions discussed herein after March 31, 2022.'' [3] In light of improving conditions nationally, the Secretary provides this notice that the Commission will not extend the blanket waivers discussed herein after March 31, 2022. Beginning April 1, 2022, the Commission expects that entities will comply in the ordinary course with requirements in the Commission's regulations that filings be notarized or supported by sworn declarations.

The Commission recognizes that there could be certain circumstances that may warrant entity-specific waivers of these obligations after March 31, 2022. This notice reminds entities that if they believe that specific circumstances warrant continued relief from the requirements addressed herein after March 31, 2022, they may request a case-specific waiver. Such requests will be addressed at that time.

Dated: March 18, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–06239 Filed 3–23–22; 8:45 am]

BILLING CODE 6717–01–P

[1] *See, e.g.,* 18 CFR 45.7 (2021) (requiring application for authority to hold interlocking positions to be verified under oath).

[2] Supplemental Notice Waiving Regulations, *Extension of Non-Statutory Deadlines,* Docket No. AD20–11–000 (Dec. 8, 2021) (December 2021 Notice).

[3] *Id.* The Commission concurrently is issuing an order in Docket No. EL20–37–000 allowing expiration of blanket waiver of requirements to hold in-person meetings and/or to provide or obtain notarized documents in open access transmission tariffs and other Commission-jurisdictional agreements. *Temporary Action to Facilitate Social Distancing,* 178 FERC ¶ 61,190 (2022).

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0012; FRL–9692–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), ''State Program Adequacy Determination: Municipal Solid Waste Landfills (MSWLFs) and Non-Municipal, Non-Hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste.'' (EPA ICR Number 1608.09, OMB

Control Number 2050–0152) 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 May 31, 2022. Public comments were previously requested via the **Federal Register** on September 28, 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 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OLEM–2018–0012, 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: Craig Dufficy, Materials Recovery and Waste Management Division, Office of Resource Conservation and Recovery, Mail Code 5304T, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 566–0537; fax number: (202) 250–8572; 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.* For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Abstract: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of Section 4004(a) and Section 1008(a)(3). Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance. In response to the statutory requirement in § 4005(c), EPA developed 40 CFR part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program. The SIR does not require the use of a particular application form. The EPA Administrator has delegated the authority to make determinations of adequacy, as contained in the statute, to the EPA Regional Administrator. In all cases, the information will be analyzed to determine the adequacy of the state's permit program for ensuring compliance with the federal revised criteria.

Form Numbers: None.

Respondents/affected entities: State, Local, or Tribal Governments.

Respondent's obligation to respond: Mandatory under Section 4005(c) of RCRA.

Estimated number of respondents: 12.

Frequency of response: On occasion.

Total estimated burden: 993 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $41,674 (per year), which includes $41,674 for annual labor and $0 for annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 25 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to the extended total length in time for the RD&D permits (see 81 FR 28720) from 12 years to 21 years. This permit time increase requires more cumulative review of technical goals and objectives required in each permit.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–06267 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9685–01–OA; EPA–HQ–OA–2022–0051

National Environmental Justice Advisory Council; Notification for a Virtual Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification for a public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), the U.S. Environmental Protection Agency (EPA) hereby provides notice that the National Environmental Justice Advisory Council (NEJAC) will meet on the date and time described below. The meeting is open to the public. Members of the public are encouraged to provide comments relevant to EPA investments for addressing Environmental Justice and related topics being considered by the NEJAC. For additional information about registering to attend the meeting or to provide public comment, please see ''REGISTRATION'' under **SUPPLEMENTARY INFORMATION**. Pre-registration is required.

DATES: The NEJAC will hold a two-day virtual public meeting on Wednesday, April 20, 2022, and Thursday, April 21, 2022, from approximately 1:00 p.m. to 5:00 p.m., Eastern Time. A public comment period relevant to EPA investments and related topics will be considered by the NEJAC during the meeting on April 20, 2022 (see **SUPPLEMENTARY INFORMATION**). Members of the public who wish to participate during the public comment period must pre-register by 11:59 p.m., Eastern Time, April 13, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, NEJAC Designated Federal Officer, U.S. EPA; email: *nejac@epa.gov;* or telephone: (202) 566–0344. Additional information about the NEJAC is available at *https://www.epa.gov/environmentaljustice/national-environmental-justice-advisory-council-meetings.*

SUPPLEMENTARY INFORMATION: The meeting discussion will focus on the business of environmental justice as it relates to the Justice 40 Initiative, the new infrastructure bill, and EPA's endeavors on investments and related topics.

The Charter of the NEJAC states that the advisory committee will provide independent advice and recommendations to the EPA Administrator about broad, crosscutting issues related to environmental justice.

The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice.

Registration: Individual registration is required for the virtual public meeting. Information on how to register is located at *https://www.epa.gov/environmental justice/national-environmental-justice-advisory-council-meetings.* Registration to attend the meetings is available through the scheduled end time of the meeting day. Registration to speak during the public comment period will close at 11:59 p.m., Eastern Time, April 13, 2022. When registering, please provide your name, organization, city and state, and email address for follow up. Please also indicate whether you would like to provide public comment during the meeting, and whether you are submitting written comments at time of registration.

A. Public Comment

The NEJAC is interested in receiving public comments specific to EPA investments and the public's recommendation as to where investments are made. Every effort will be made to hear from as many registered public commenters during the time specified on the agenda. Individuals or groups making remarks during the oral public comment period will be limited to three (3) minutes. Please be prepared to briefly describe your comments and recommendations on what you want the NEJAC to advise the EPA to do as it relates to EPA's endeavors on investments and related topics. Submitting written comments for the record are strongly encouraged. You can submit your written comments in three different ways, (1) by using the webform at *https://www.epa.gov/environmental justice/forms/national-environmental-justice-advisory-council-nejac-public-comment,* (2) by creating comments in the Docket ID No. EPA–HQ–OA–2022–0051 at *http://www.regulations.gov,* and (3) by sending comments via email to *nejac@epa.gov.* Written comments can be submitted through May 4, 2022.

B. Information About Services for Individuals With Disabilities or Requiring English Language Translation Assistance

For information about access or services for individuals requiring assistance, please contact Fred Jenkins, via email at: *nejac@epa.gov* or contact by phone at (202) 566–0344. To request special accommodations for a disability or other assistance, please submit your request at least seven (7) working days prior to the meeting, to give EPA sufficient time to process your request. All requests should be sent to the email, listed in the **FOR FURTHER INFORMATION CONTACT** section.

Matthew Tejada,

Director, Office of Environmental Justice.

[FR Doc. 2022–06242 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0102, FRL–9691–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; RCRA Expanded Public Participation (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), RCRA Expanded Public Participation (EPA ICR Number 1688.10, OMB Control Number 2050–0149) 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 May 31, 2022. Public comments were previously requested via the **Federal Register** on October 12, 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 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OLEM–2018–0102, 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: 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.* For further information and updates on EPA Docket Center services, please visit us online at *https://www.epa.gov/dockets.* The telephone number for the Docket Center is 202–566–1744.

Abstract: Section 7004(b) of RCRA gives EPA broad authority to provide for, encourage, and assist public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under RCRA. In addition, the statute specifies certain public notices (*i.e.,* radio, newspaper, and a letter to relevant agencies) that EPA must provide before issuing any RCRA permit. The statute also establishes a process by which the public can dispute a permit and request a public hearing to discuss it. EPA carries out much of its RCRA public involvement at 40 CFR parts 124 and 270.

Form Numbers: None.

Respondents/affected entities: Businesses and other for-profit.

Respondent's obligation to respond: Mandatory (RCRA 7004(b)).

Estimated number of respondents: 47.

Frequency of response: On occasion.

Total estimated burden: 4,474 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $336,413 (per year), includes $4,863 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is an increase of 99 hours between this ICR and the current one.

This slight increase is due to a slight increase in the respondent universe.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–06268 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0107; FRL–9589–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Metal Furniture Surface Coating (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Metal Furniture Surface Coating (EPA ICR No. 1952.10, OMB Control No. 2060–0518), 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 April 13, 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 neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted on or before April 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0107, 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person, at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of metal furniture surface coating facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards in 40 CFR part 63 subpart RRRR. This includes submitting initial notifications, performance tests and periodic reports and results, maintaining records of materials usage, and any period during which the add-on control system is inoperative. These reports are used by EPA to determine compliance with these standards.

Form Numbers: 5900–0528.

Respondents/affected entities: Existing and new facilities that perform metal furniture surface coating operations.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart RRRR).

Estimated number of respondents: 16 (total).

Frequency of response: Initially, semiannually.

Total estimated burden: 4,270 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $505,000 (per year), which includes $0 for annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This ICR incorporates the requirements from the March 2019 and November 2020 rules. The decrease is due to two considerations. Since a previous ICR renewal, 1952.06, was published in 2016, sources have changed their coating practices to use non-HAP coatings, resulting in a decrease in the number of respondents. The data gathered during the recent rulemaking indicates that there are no sources using add-on controls, resulting in a decrease in O&M costs. There is no growth in this industry, therefore there is no annualized capital/startup cost.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–06270 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OLEM–2018–0757, FRL–9358–01–OLEM]

Agency Information Collection Activities; Proposed Collection; Comment Request; Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, EPA ICR No. 1572.13, OMB Control No. 2050–0050

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit the information collection request (ICR), Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types (EPA ICR No. 1572.13, OMB Control No. 2050–0050) 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–2018–0757, 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; 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: This ICR provides a discussion of all of the information collection requirements associated with specific unit standards applicable to owners and operators of facilities that treat, store, or dispose of hazardous wastes as defined by 40 CFR part 261. It includes a detailed description of the data items and respondent activities associated with each requirement and with each hazardous waste management unit at a facility. The specific units and processes included in this ICR are: Tank systems, Surface impoundments, Waste piles, Land treatment, Landfills, Incinerators, Thermal treatment, Chemical, physical, and biological treatment, Miscellaneous (subpart X), Drip pads, Process vents, Equipment leaks, Containment buildings, and Recovery/recycling.

With each information collection covered in this ICR, the EPA is aiding the goal of complying with its statutory mandate under RCRA to develop standards for hazardous waste treatment, storage, and disposal facilities, to protect human health and the environment. Without the information collection, the agency cannot assure that the facilities are designed and operated properly.

Form Numbers: None.

Respondents/affected entities: Entities potentially affected by this action are private sector and State, Local, or Tribal governments.

Respondent's obligation to respond: Mandatory (40 CFR 261, 264, 265, and 266).

Estimated number of respondents: 2,018.

Frequency of response: On occasion.

Total estimated burden: 356,305 hours per year. Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $11,197,174 (per year), includes $1,452,841 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. 2022–06227 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2021–0092; FRL—9620–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (EPA ICR Number 1821.11, OMB Control Number 2060–0419) 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 April 13, 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 25, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2021–0092, to (1) EPA online using *https://www.regulations.gov/* (our preferred method), by email to *a-and-r-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be confidential business information or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration Plants (40 CFR part 63, subpart CCC) were proposed on September 18, 1997, promulgated on June 22, 1999, and amended on September 19, 2012 and November 19, 2020. This rule applies to all facilities that pickle steel using hydrochloric acid (HCl) or regenerate hydrochloric acid and are either major sources or part of a facility that is a major source. This regulation does not apply to any pickling line that uses an acid other than hydrochloric acid or an acid solution containing either less than 6 percent hydrochloric acid or at a temperature less than 100 °F. New facilities include those that commenced construction or reconstruction after the date of proposal. In general, all NESHAP standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. This information is being collected to assure compliance with 40 CFR part 63, subpart CCC.

Form Numbers: None.

Respondents/affected entities: Steel pickling, HCl process facilities and hydrochloric acid regeneration plants.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart CCC).

Estimated number of respondents: 100 (total).

Frequency of response: Initially, occasionally, and semiannually.

Total estimated burden: 35,000 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $4,140,000 (per year), includes $10,600 annualized capital or operation & maintenance costs.

Changes in the Estimates: There is no change in burden from the most recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. This is due to two considerations. First, the regulations have not changed over the past three years and are not anticipated to change over the next three years. Second, the growth rate for this industry is very low or non-existent, so there is no significant change in the overall burden. Since there are no changes in the regulatory requirements and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs. This ICR also adjusts the number of responses from the currently approved ICR to account for the submittal of periodic test reports; this corrects the annual average hours per response but the burden to respondents does not change.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–06269 Filed 3–23–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0349; FR ID 78051]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 25, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Nicole Ongele, FCC, via email to *PRA@fcc.gov* and to *Nicole.Ongele@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Nicole Ongele at (202) 418–2991. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0349.

Title: Equal Employment Opportunity (''EEO'') Policy, 47 CFR Sections 73.2080, 76.73, 76.75, 76.79 and 76.1702.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities, Not-for-profit institutions.

Number of Respondents and Responses: 20,657 respondents, 20,657 responses.

Estimated Time per Response: 42 hours.

Frequency of Response: Recordkeeping requirement; annual reporting; 5 and 8-year reporting requirements and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority which covers this information collection is contained in Section 154(i) and 303 of the Communications Act of 1934, as amended, and Section 634 of the Cable Communications Policy Act of 1984.

Total Annual Burden: 867,594 hours.

Total Annual Cost: No cost.

Privacy Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The information collection requirements approved under this collection are as follows: 47 CFR 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. Section 73.2080 requires that each broadcast station employment unit with 5 or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. These same requirements also apply to Satellite Digital Audio Radio Service (''SDARS'') licensees. In 1997, the Commission determined that SDARS licensees must comply with the Commission's EEO requirements. *See Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310–2360 MHz Frequency Band,* 12 FCC Rcd 5754, 5791, ¶ 91 (1997) (''*1997 SDARS Order*''), FCC 97–70. In 2008, the Commission clarified that SDARS licensees must comply with the Commission's EEO broadcast rules and policies, including the same recruitment, outreach, public file, website posting, record-keeping, reporting, and self-assessment obligations required of broadcast licensees, consistent with 47 CFR 73.2080, as well as any other Commission EEO policies. *See Applications for Consent to the Transfer of Control of Licenses, SM Satellite Radio Holdings Inc., Transferor, to Sirius Satellite Radio Inc., Transferee,* 23 FCC Rcd 12348, 12426, ¶ 174, and note 551 (2008).

47 CFR 76.73 provides that equal opportunity in employment shall be afforded by all multichannel video program distributors (''MVPD'') to all qualified persons and no person shall be discriminated against in employment by such entities because of race, color, religion, national origin, age or sex.

Section 76.75 requires that each MVPD employment unit employing six or more full-time employees shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a cable entity's policy and practice.

Section 76.79 requires that every MVPD employment unit employing six or more full-time employees maintain, for public inspection, a file containing copies of all annual employment reports and related documents.

Section 76.1702 requires that every MVPD employment unit employing six or more full-time employees place certain information concerning its EEO program in its public inspection file.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–06261 Filed 3–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0986; FR ID #77308]

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information

collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 23, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0986.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents and Responses: 2,229 respondents; 13,804 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 50,857 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Federal Communications Commission (Commission) notes that the Universal Service Administrative Company (USAC or Administrator) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; must not use the data except for purposes of administering the universal support program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). The Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration, 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration, 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order, 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration and Further Notice of Proposed Rulemaking, 31 FCC Rcd 3087 (2016); *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 5949 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, 33 FCC Rcd 11893 (2018); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order, 32 FCC Rcd 5944 (2017).

In 2019, the Commission adopted an order establishing a separate, parallel high-cost program for the U.S. territories suffering extensive infrastructure damage due to Hurricanes Irma and Maria. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.,* WC Docket No. 18–143, et al., Report and Order and Order on Reconsideration, 34 FCC Rcd 9109 (2019) (*Puerto Rico and USVI Stage 2 Order*). Also, in the *2019 Supply Chain Order,* the Commission adopted a rule prohibiting the use of Universal Service Fund (USF) support, including high-cost universal service support, to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order, Further Notice of Proposed Rulemaking, and Order, 34 FCC Rcd 11423, 11433, para. 26. *See also* 47 CFR 54.9.

Through several orders, the Commission has changed, modified, and eliminated certain reporting obligations for high-cost support. These changes are outlined in the following:

On January 30, 2020, the Commission adopted an order establishing the framework for the Rural Digital Opportunity Fund (RDOF), building on the successful Connect America Fund (CAF) Phase II auction. *Rural Digital Opportunity Fund; Connect America Fund,* WC Docket Nos. 19–126 and 10–90, Report and Order, 35 FCC Rcd 686 (2020) (*RDOF Order*). The RDOF represents the Commission's single biggest step to close the digital divide by

providing up to $20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. In the *RDOF Order,* ''[t]o ensure that support recipients are meeting their deployment obligations,'' the Commission ''adopt[ed] essentially the same reporting requirements for the RDOF that the Commission adopted for the CAF Phase II auction.'' *Id.* at 712, para. 56.

In the *2020 Supply Chain Order,* the Commission adopted two additional supply chain rules associated with newly required certifications. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order, 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). First, the Commission adopted a rule, 47 CFR 54.10, to prohibit the use of a Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services has been or will be used to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. Second, the Commission adopted a rule, 47 CFR 54.11, which requires each eligible telecommunications carrier receiving universal service fund support to remove and replace all covered communications equipment and services from their networks, and subsequently certify prior to receiving a funding commitment or support that it does not use covered communications equipment or services. The Commission also adopted procedures, consistent with the Secure and Trusted Communications Networks Act of 2019 (Pub. L. 116–124), to identify such covered equipment and services and publish a Covered List. That list was published March 12, 2021 and will be updated as needed.

In the *Rate Floor Repeal Order,* the Commission decided to ''eliminate the rate floor and, following a one-year period of monitoring residential retail rates, eliminate the accompanying reporting obligations after July 1, 2020.'' *Connect America Fund,* WC Docket No. 10–90, Order, 34 FCC Rcd 2621, 2621 para. 2 (2019) (*Rate Floor Repeal Order*); *see also* 47 CFR 54.313(h). As explained in the *Order,* the rate floor was ''[i]ntended to guard against artificial subsidization of rural end user rates significantly below the national urban average'' but, practically speaking, ''increase[d] the telephone rates of rural subscribers . . . and individuals living on Tribal lands.'' *Rate Floor Repeal Order,* 34 FCC Rcd at 2621 para. 1.

The Commission therefore proposes to revise this information collection, as well as the Form 481 and its accompanying instructions, to reflect these modified and eliminated requirements. Finally, the Commission proposes to increase the respondents associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–06221 Filed 3–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1219; FR ID 78050]

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 23, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

OMB Control Number: 3060–1219.

Title: Connect America Fund-Alternative Connect America Cost Model Support.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,100 unique respondents; 1,100 responses.

Estimated Time per Response: 0.5 hours–2 hours.

Frequency of Response: On occasion and one-time reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254, 256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 700 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Commission notes that the Universal Service Administrative Company must preserve the confidentiality of all data obtained from respondents; must not use the data except for purposes of administering the universal service programs; and must not disclose data in company-specific form unless directed to do so by the Commission.

Needs and Uses: The Commission is requesting approval for the extension of this collection. In March 2016, the Commission adopted significant reforms to place the universal service support program on solid footing for the next decade to preserve and advance voice and broadband service in areas served by rate-of-return carriers. *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and*

Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime, WC Docket Nos. 10–90, 14–58, 07–135, 05–337, 03–109; CC Docket Nos. 01–92, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking, FCC 16–33 (*2016 Rate-of-Return Reform Order*).

As part of the *Rate-of-Return Reform Order,* the Commission adopted a voluntary path for rate-of-return carriers to receive model-based support in exchange for making a commitment to deploy broadband-capable networks meeting certain service obligations to a pre-determined number of eligible locations in a state. By creating a voluntary pathway to model-based support, the Commission will spur new broadband deployment in rural areas. In several subsequent orders and public notices, the Commission has further refined this voluntary pathway, and in the *December 2018 Rate-of-Return Reform Order,* the Commission adopted a second pathway for carriers that did not elect the first pathway. *Connect America Fund; ETC Annual Reports and Certifications; Establishing Just and Reasonable Rates for Local Exchange Carriers; Developing a Unified Intercarrier Compensation Regime,* WC Docket Nos. 10–90, 14–58, 07–135, 05–337, 03–109; CC Docket Nos. 01–92, Report and Order, Further Notice of Proposed Rulemaking, and Order on Reconsideration, FCC 18–176 (*December 2018 Rate-of-Return Reform Order*).

This information collection addresses the requirement that carriers electing model-based support must notify the Commission of that election and their commitment to satisfy the specific service obligations associated with the amount of model support.

In the *2016 Rate-of-Return Reform Order,* the Commission also adopted reforms to the universal service mechanisms used to determine support for rate-of-return carriers not electing model-based support. Among other such reforms, the Commission adopted an operating expense limitation to improve carriers' incentives to be prudent and efficient in their expenditures, a capital investment allowance to better target support to those areas with less broadband deployment, and broadband deployment obligations to promote ''accountability from companies receiving support to ensure that public investment are used wisely to deliver intended results.'' In the *December 2018 Rate-of-Return Order,* the Commission further modified or, in the case of the capital investment allowance, eliminated these requirements. Other requirements adopted in the *Rate-of-Return Reform Order* have been addressed under other Office of Management and Budget control numbers.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–06253 Filed 3–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0500; FR ID 78705]

Information Collection Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it can further reduce the information collection burden for small business concerns with fewer than 25 employees.

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before April 25, 2022.

ADDRESSES: Comments should be sent to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the web page *http://www.reginfo.gov/public/do/PRAMain,* (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–0500.

Title: Section 76.1713, Resolution of Complaints.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 10,750 respondents and 21,500 responses.

Estimated Hours per Response: 1–17 hours.

Frequency of Response: Recordkeeping and third-party disclosure requirements; annual reporting requirement.

Total Annual Burden: 193,500 hours.

Total Annual Cost: None.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 4(i), 303 and 308 of the Communications Act of 1934, as amended.

Needs and Uses: The information collection requirements contained in 47 CFR 76.1713 state cable system operators shall establish a process for resolving complaints from subscribers about the quality of the television signal delivered. Commission and franchising authorities, upon request. These records shall be maintained for at least a one-year period. Prior to being referred to the Commission, complaints from subscribers about the quality of the television signal delivered must be referred to the local franchising authority and the cable system operator.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–06273 Filed 3–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–1178; FR ID 76666]

Information Collection Requirement Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The Commission may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 23, 2022.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the Title as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1178.

Title: TV Broadcast Relocation Fund Reimbursement Form, FCC Form 2100, Schedule 399; Section 73.3700(e), Reimbursement Rules.

Form Number: FCC Form 2100, Schedule 399.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities; Not for profit institutions.

Number of Respondents and Responses: 2,080 respondents; 24,153 responses.

Estimated Hours per Response: 1–4 hours.

Frequency of Response: One-time reporting requirement; On occasion reporting requirement, Recordkeeping requirement.

Total Annual Burden: 46,133 hours.

Total Annual Cost: $7,350,000.

Obligation To Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in 47 U.S.C. 151, 154(j), 157 and 309(j) as amended; and Middle Class Tax Relief and Job Creation Act of 2012, Public Law 112–96, 6402 (codified at 47 U.S.C. 309(j)(8)(G)), 6403 (codified at 47 U.S.C. 1452), 126 stat. 156 (2012) (Spectrum Act).

Needs and Uses: The following information collection requirements are covered under this collection: Section 73.3700(e)(2) requires all broadcast television station licensees and MVPDs that are eligible to receive payment of relocation costs to file an estimated cost form providing an estimate of their reasonably incurred relocation costs no later than three months following the release of the Channel Reassignment Public Notice. If a broadcast television station licensee or MVPD seeks reimbursement for new equipment, it must provide a justification as to why it is reasonable under the circumstances to purchase new equipment rather than modify its corresponding current equipment in order to change channels or to continue to carry the signal of a broadcast television station that changes channels. Entities that submit their own cost estimates, as opposed to the predetermined cost estimates provided in the estimated cost form, must submit supporting evidence and certify that the estimate is made in good faith. Entities must also update the form if circumstances change significantly.

Section 73.3700(e)(3) requires all broadcast television station licensees and MVPDs that received an initial allocation from the TV Broadcaster Relocation Fund, upon completing construction or other reimbursable changes, or by a specific deadline prior to the end of the Reimbursement Period to be established by the Media Bureau, whichever is earlier, to provide the Commission with information and documentation, including invoices and receipts, regarding their actual expenses incurred as of a date to be determined by the Media Bureau. If a broadcast television station licensee or MVPD has not yet completed construction or other reimbursable changes by the Final Allocation Deadline, it must provide the Commission with information and documentation regarding any remaining eligible expenses that it expects to reasonably incur.

Section 73.3700(e)(4) requires broadcast television station licensees and MVPDs that have received money from the TV Broadcaster Relocation Fund, after completing all construction or reimbursable changes, to submit final expense documentation containing a list of estimated expenses and actual expenses as of a date to be determined by the Media Bureau. Entities that have finished construction and have submitted all actual expense documentation by the Final Allocation Deadline will not be required to file at the final accounting stage.

Section 73.3700(e)(6) requires broadcast television station licensees and MVPDs that receive payment from the TV Broadcaster Relocation Fund to retain all relevant documents pertaining to construction or other reimbursable changes for a period ending not less

than 10 years after the date on which it receives final payment from the TV Broadcaster Relocation Fund and to make available all relevant documentation upon request from the Commission or its contractor.

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–06254 Filed 3–23–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Agency Information Collection Activities: Submission for OMB Review; Comment Request; OMB No. 3064–NEW

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency Information Collection Activities: Submission for OMB Review; comment request.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) will submit the information collection described below to OMB for review and clearance under the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. Notice of the proposed new information collection was previously published in the **Federal Register** on January20, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before April 25, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency website: https://www.fdic.gov/resources/regulations/federal-register-publications/index.html.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The FDIC will submit the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice:

Title: Post-Examination Surveys.

OMB Number: 3064–NEW.

Frequency of Response: On occasion.

Affected Public: FDIC-supervised insured depository institutions.

Forms: 6600/58 (Post Examination Survey Safety and Soundness Exams); 6600/59 (Post Examination Survey Compliance and CRA Exams).

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN—POST-EXAMINATION SURVEYS

Information collection (IC) description	Type of burden	Estimated number of respondents	Estimated frequency of response	Estimated time per response (minutes)	Total estimated annual burden (hours)
Safety and Soundness Post-Examination Survey	Reporting	605	On Occasion	45	454
Consumer Compliance Post-Examination Survey	Reporting	550	On Occasion	45	413
Total Estimated Annual Burden					867

General Description of Collection: The purpose of the surveys is to gauge bankers' views on the effectiveness and quality of FDIC Safety and Soundness and Consumer Compliance examinations, as well as to identify ways to improve the examination process. Respondents will be asked to voluntarily rate the efficiency of the pre-examination process; examiners' professionalism and understanding of the laws and regulations; the examination process; and examination report quality. Respondents will also be allowed to provide feedback on any areas for improvement and will be given an option to have someone from the FDIC Office of the Ombudsman contact the institution confidentially about its recent examination or any other matters. Interested members of the public may obtain a copy of the proposed survey questionnaires on the following web pages:

- *https://www.fdic.gov/resources/regulations/federal-register-publications/2022/fdic-6600-58.pdf*
- *https://www.fdic.gov/resources/regulations/federal-register-publications/2022/fdic-6600-59.pdf*

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on March 17, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–06181 Filed 3–23–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–05]

Foreign Tire Sales, Inc., Complainant, v. Evergreen Shipping Agency (America) Corp.; as agent for Evergreen Line, Evergreen Group d/b/a Evergreen Line, Respondent; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Foreign Tires Sales, Inc., hereinafter ''Complainant'', against Evergreen Shipping Agency (America) Corp.; as agent for Evergreen Line, Evergreen Group d/b/a Evergreen Line (Evergreen), ''Respondents''. Complainant alleges that Respondent Evergreen Shipping Agency (America) Corp. is a corporation existing under the laws of the State of New Jersey and agent for Evergreen, a vessel-operating common carrier.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c), 41104(a)(2), 41104(a)(5), 41104(a)(9), and 41104(a)(10) with regard to refusal to provide space on their vessels. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-05/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by March 20, 2023, and the final decision of the Commission shall be issued by October 4, 2023.

Served: March 18, 2022.

William Cody,

Secretary.

[FR Doc. 2022–06210 Filed 3–23–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–07]

Acme Freight Services Corp., Complainant v. Total Terminals International, Respondent; Notice of Filing of Complaint and Assignment

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by ACME Freight Services Corp., hereinafter ''Complainant'', against Total Terminals International, ''Respondent''. Complainant alleges that Respondent is a Delaware corporation and marine terminal operator (''MTO'').

Complainant alleges that Respondents violated 46 U.S.C. 41102(c) and 46 CFR 545.4 and 545.5 with regard to assessing demurrage charges against containers, including containers that are subject to a governmental hold and therefore unavailable for pickup. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-07/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by March 21, 2023, and the final decision of the Commission shall be issued by October 25, 2023.

Served: March 21, 2022.

William Cody,

Secretary.

[FR Doc. 2022–06245 Filed 3–23–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–06]

Royal White Cement, Inc., Complainant v. CMA CGM S.A. and CMA CGM (America) LLC, Respondent; Notice of Filing of Complaint and Assignment

Served: March 21, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Royal White Cement, Inc., hereinafter ''Complainant'', against CMA CGM S.A. and CMA CGM (America) LLC, ''Respondents''. Complainant alleges that Respondent CMA CGM S.A. is a French corporation or similar form of entity, and that Respondent CMA CGM (America) LLC is a New Jersey limited liability company. Complainant alleges that Respondents are common carriers.

Complainant alleges that Respondents violated 46 U.S.C. 41102(c) with regard to refusal to accept bookings and provide equipment to accomplish such bookings pursuant to an agreed service contract. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-06/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding office in this proceeding shall be issued by March 21, 2023, and the final decision of the Commission shall be issued by October 5, 2023.

William Cody,

Secretary.

[FR Doc. 2022–06233 Filed 3–23–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MEDIATION AND CONCILIATION SERVICE

Privacy Act of 1974; System of Records

AGENCY: Federal Mediation & Conciliation Service.

ACTION: Notice of a new system of records.

SUMMARY: The Federal Mediation and Conciliation Service (FMCS) uses this system to process requests for arbitration panels, including payment for requests, to process annual fees for each arbitrator, to maintain a roster of qualified, private labor arbitrators to hear disputes arising under collective bargaining agreements, and provide fact finding and interest arbitration.

DATES: This system of records will be effective without further notice on April 25, 2022 unless otherwise revised pursuant to comments received. New routine uses will be effective on April 25, 2022. Comments must be received on or before April 25, 2022.

ADDRESSES: You may send comments, identified by FMCS–0008, by any of the following methods:

- *Mail:* Office of General Counsel, 250 E Street SW, Washington, DC 20427.
- *Email: register@fmcs.gov.* Include FMCS–0008 on the subject line of the message.
- *Fax:* (202) 606–5444.

FOR FURTHER INFORMATION CONTACT: Arthur Pearlstein, Director of Arbitration Services, at *apearlstein@fmcs.gov,* (202) 606–8103, or mail, The Office of Arbitration Services, FMCS, 250 E Street SW, Washington, DC 20427.

SUPPLEMENTARY INFORMATION: The enabling legislation for FMCS provides that ''the settlement of issues between employers and employees through collective bargaining may advance by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration . . .'' 29 U.S.C. 171(b). Pursuant to the statute and 29 CFR part 1404, FMCS has long maintained a roster of qualified, private labor arbitrators to hear disputes arising under collective bargaining agreements and provide fact finding and interest arbitration. The existing regulation establishes the policy and administrative responsibility for the FMCS roster, criteria, procedures for listing and removing arbitrators, and procedures for using arbitration services.

SYSTEM NAME AND NUMBER:

FMCS–0008 Arbitration Records.

SYSTEM LOCATION:

Federal Mediation and Conciliation Service, Office of General Counsel (OGC), 250 E Street SW, Washington, DC 20427.

SYSTEM MANAGER(S):

Arthur Pearlstein, Director of Arbitration, email *apearlstein@fmcs.gov,* send mail to the Federal Mediation and Conciliation Service, 250 E Street SW, Washington, DC 20427, Attn: Arthur Pearlstein, or call (202) 606–8103.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

29 U.S.C. 172, *et seq.* and 29 CFR part 1404.

PURPOSE(S) OF THE SYSTEM:

The records in this system are used to collect, process, and maintain arbitrator panel reports, payment requests, annual fees, and arbitrator rosters. The system maintains a roster of qualified, private labor arbitrators to hear disputes arising under collective bargaining agreements and provide fact findings and interest arbitration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The categories of individuals covered in the system are the public, FMCS clients, parties requesting an arbitration roster or services, arbitrators, applicants to be on the arbitration roster, and FMCS employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records maintained in the system include the:

(1) Records concerning requests for arbitrators including, but not limited to, the Request for Arbitration Panel (FMCS Form R–43). This form can be found at *https://www.fmcs.gov/services/arbitration/requesting-a-panel/.*

(2) Records pertaining to arbitrator registration, including but not limited to, Arbitrators' Personal Data Questionnaire (FMCS Form R–22), and records used to collect information from applicants submitted for consideration to the FMCS Arbitrator Review Board. This form can be found at *https://www.fmcs.gov/services/arbitration/information-joining-arbitrator-roster/.*

(3) Records concerning case processing updates including, but not limited to, The Arbitrator's Report and Fee Statement (FMCS Form R–19). This form can be found at *https://www.fmcs.gov/services/arbitration/information-fmcs-roster-arbitrators/.*

RECORD SOURCE CATEGORIES:

Information in this system of records is provided by:

(1) Parties seeking to request an arbitration panel which may include the public, Federal, state, and local employees, Unions, and employers; and

(2) Arbitrators provide information for registration and case processing updates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of these records or information contained in this system may be disclosed to authorized entities, as is determined to be relevant and necessary, outside the FMCS as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule regulation or order where the record, either alone or in conjunction with other information creates an indication of a violation or potential violation of civil or criminal laws or regulations.

(b) To disclose information to the National Archives and Records Administration (NARA) for use in its records management inspections; to the Government Accountability Office (GAO) for oversight purposes; to the Department of Justice (DOJ) to obtain that department's advice regarding disclosure obligations under the Freedom of Information Act (FOIA); or to the Office of Management and Budget (OMB) to obtain that office's advice regarding obligations under the Privacy Act.

(c) To disclose information to the National Archives and Records Administration (NARA) in records management inspections.

(d) To disclose information to contractors, grantees, experts, consultants, detailers, and other non-Government employees performing or working on a contract, service, or other assignment for the Federal Government when necessary to accompany an agency function related to this system of records.

(e) To officials of labor organizations recognized under 5 U.S.C. chapter 71 upon receipt of a formal request and in accordance with the conditions of 5 U.S.C. 7114 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

(f) To disclose information to a Member of Congress or a congressional office in response to an inquiry made on behalf of, and at the request of, an individual who is the subject of the record.

(g) To disclose information when FMCS determines that the records are relevant to a proceeding before a court, grand jury, or administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

(h) To disclose information to another Federal agency, to a court, or to a party in litigation before a court or in an administrative proceeding being conducted by a federal agency when the Government is a party to the judicial or administrative proceeding. Such disclosure is permitted only when it is relevant and necessary to the litigation or proceeding.

(i) To any agency, organization, or person for the purposes of performing audit or oversight operations related to the operation of this system of records as authorized by law, but only information necessary and relevant to such audit or oversight function.

(j) To disclose information to appropriate agencies, entities, and persons when: (1) FMCS suspects or has confirmed that there has been a breach of the system of records; (2) FMCS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, FMCS (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 FMCS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(k) To another Federal agency or Federal entity, when FMCS 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 national security, resulting from a suspected or confirmed breach.

(l) To disclose information to arbitrators or parties to an arbitration concerning case processing, or to investigate allegations of arbitrator misconduct.

(m) To disclose to professional organizations, including but not limited to the American Arbitration Association, JAMS, or the National Academy of Arbitrators concerning

application or suitability of an arbitrator.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained in hard copy and electronic form in locations only accessible to authorized personnel. Electronic records are stored on the agency's internal servers with restricted access to authorized Human Resources staff and designated deciding officials as determined by agency policy. Hard copy records are stored in a locked cabinet accessible to authorized Human Resources staff and designated deciding officials as determined by agency policy.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

These records are retrieved by the name or other programmatic identifier assigned to an individual in the electronic database and paper filing system.

POLICIES AND PRACTICES FOR RETENTION OF DISPOSAL OF RECORDS:

All records are retained and disposed of in accordance with General Records Schedule 4.1, issued by the National Archives and Records Administration.

ADMINSTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are located in a locked file storage area or stored electronically in locations only accessible to authorize personnel requiring agency security credentials. Access is restricted and accessible to limited Human Resources officials, and/or individuals in a need-to-know capacity. FMCS buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures.

RECORD ACCESS PROCEDURES:

Individuals wishing to request access to their records should contact the Office of General Counsel (OGC). Individuals must provide the following information for their records to be located and identified: (1) Full name, (2) Address, and (3) A specific description of the record content requested. See 29 CFR 1410.3, Individual access requests.

CONTESTING RECORDS PROCEDURES:

See 29 CFR 1410.6, Requests for correction or amendment of records, on how to contest the content of any records. Privacy Act requests to amend or correct records may be submitted to the Chief Privacy Officer at *privacy@fmcs.gov* or Chief Privacy Officer at FMCS, 250 E Street SW, Washington, DC 20427. Also, see *https://www.fmcs.gov/privacy-policy/.*

NOTIFICATION PROCEDURES:

See 29 CFR 1410.3(a), Individual access requests.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Dated: March 21, 2022.

Anna Davis,

Acting General Counsel.

[FR Doc. 2022–06243 Filed 3–23–22; 8:45 am]

BILLING CODE 6732–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–284 and CMS–10387]

Agency Information Collection Activities: Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by May 23, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–R–284 Transformed—Medicaid Statistical Information System (T–MSIS)

CMS–10387 Minimum Data Set 3.0 Nursing Home and Swing Bed Prospective Payment System (PPS) For the collection of data related to the Patient Driven Payment Model and the Skilled Nursing Facility Quality Reporting Program (QRP)

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for

approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Transformed—Medicaid Statistical Information System (T–MSIS); *Use:* The data reported in T–MSIS are used by federal, state, and local officials, as well as by private researchers and corporations to monitor past and projected future trends in the Medicaid program. The data provide the only national level information available on enrollees, beneficiaries, and expenditures. It also provides the only national level information available on Medicaid utilization. The information is the basis for analyses and for cost savings estimates for the Department's cost sharing legislative initiatives to Congress. The collected data are also crucial to our actuarial forecasts. *Form Number:* CMS–R–284 (OMB control number: 0938–0345); *Frequency:* Quarterly and monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 54; *Total Annual Responses:* 684; *Total Annual Hours:* 6,480. (For policy questions regarding this collection contact Connie Gibson at 410–786–0755.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Minimum Data Set 3.0 Nursing Home and Swing Bed Prospective Payment System (PPS) For the collection of data related to the Patient Driven Payment Model and the Skilled Nursing Facility Quality Reporting Program (QRP); *Use:* We are requesting to implement the MDS 3.0 v1.17.2 from Oct 1, 2020 to Oct 1, 2023. On May 15, 2020, in response to State Medicaid Agency and stakeholder requests, we updated the MDS 3.0 item sets to version 1.17.2. The changes in this version will allow State Medicaid Agencies to collect Patient Driven Payment Model (PDPM) payment codes and thereby inform their future payment models. Calculation of the PDPM payment code on OBRA assessment is not a federal requirement. These item set changes do not reflect any change in burden from the previous version, MDS 3.0 v1.17.1.

CMS uses the MDS 3.0 PPS Item Set to collect the data used to reimburse skilled nursing facilities for SNF-level care furnished to Medicare beneficiaries and to collect information for quality measures and standardized patient assessment data under the SNF QRP. *Form Number:* CMS–10387 (OMB control number: 0938–1140); *Frequency:* Yearly; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 15,471; *Total Annual Responses:* 4,905,042; *Total Annual Hours:* 4,169,286. (For policy questions regarding this collection contact Heidi Magladry at 410–786–6034).

Dated: March 21, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–06214 Filed 3–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10371]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by April 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' website address at website address at: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html*.

FOR FURTHER INFORMATION CONTACT: William Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of an existing information collection request; *Title of Information Collection:* Cooperative Agreements to Support Establishment of State-Operated Health Insurance Exchanges; *Use:* Section 1311(b) of the Affordable Care Act provides the opportunity for each State to establish an Exchange (now referred to as an Exchange). Section 1311 of the Affordable Care Act provides for grants to States for the planning and establishment of these Exchanges. Given the innovative nature of Exchanges and the statutorily-prescribed relationship between the Secretary and States in their development and operation, it is critical that the Secretary work closely with States to provide necessary guidance and technical assistance to ensure that States can meet the prescribed timelines, federal

requirements, and goals of the statute. Additionally, under 42 CFR 155.1200(b) State Exchanges are required to provide performance monitoring data to CMS. State Exchanges must provide this data at least annually and, in the manner, format, and deadlines specified by HHS. The information collection requirements associated with these ICRs will primarily involve programmatic narrative, accompanying budget narrative and appropriate supporting documentation, and provision of performance outcome and operational data by grantees operating their Exchanges. The SBEs are not required to track or submit any personally identifiable data. It is expected that States will create data with readily available word processing and spreadsheet programs relying on source data from information systems developed from grant funding, ACA section 1332 pass-through funding, or state funding sources and submit such information electronically. *Form Number:* CMS–10371 (OMB control number: 0938–1119); *Frequency:* Once; *Affected Public:* State Government agencies, non-profit entities; *Number of Respondents:* 75; *Number of Responses:* 273; *Total Annual Hours:* 2,451. For policy questions regarding this collection contact Jenny Chen at (301) 492–5156 or Shilpa Gogna at (301) 492–4257.

Dated: March 21, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–06213 Filed 3–23–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Children's Bureau National Youth in Transition Database (NYTD); OMB #0970–0340

AGENCY: Children's Bureau, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the National Youth in Transition Database (NYTD) Youth Services Report and Youth Outcomes Survey Data Collection (OMB #0970–0340, expiration date 03/31/2022). There are no changes requested to the form.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The Foster Care Independence Act of 1999 (42 U.S.C. 1305 *et seq.*) as amended by Public Law 106–169 requires state child welfare agencies to collect and report to ACF Children's Bureau data on the characteristics of youth receiving independent living services and information regarding their outcomes. The regulation implementing the NYTD, listed in 45 CFR 1356.80, contains standard data collection and reporting requirements for states to meet the law's requirements. Additionally, the Family First Prevention Services Act of 2017 (H.R. 253) further outlines the expectation of the collection and reporting of data and outcomes regarding youth who are in receipt of independent living services. ACF uses the information collected under the regulation to track independent living services, assess the collective outcomes of youth, and potentially to evaluate state performance with regard to those outcomes consistent with the law's mandate.

Respondents: State agencies that administer the Chafee Foster Care Program for Successful Transition to Adulthood (Chafee program) and youth served by these agencies.

ANNUAL BURDEN ESTIMATES FOR 2022–2024

Information collection title	Total number of respondents	Total number of responses per respondent	Average burden hours per response	Total burden hours for 2022–24	Annual burden hours
State Data File	52	2	3916	407,264	135,755
Youth Outcomes Survey	47,000	1	.5	23,500	7,833
Estimated Annual Burden Total					143,588

Estimated Total Annual Burden Hours: 143,588.

Authority: NYTD is authorized by Public Law 106–169, enacted December 14, 1999. This public law establishes the John H. Chafee Foster Care Independence Program, now known as Chafee program, at section 477 of the Social Security Act (the Act). NYTD data are collected pursuant to 45 CFR 1356.80.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–06234 Filed 3–23–22; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Native Employment Works (NEW) Plan Guidance and NEW Program Report (OMB No.: 0970–0174)

AGENCY: Division of Tribal TANF Management, Office of Family

Assistance, Administration for Children and Families, HHS.

ACTION: Request for public comment.

SUMMARY: The Administration for Children and Families (ACF) is requesting a 3-year extension of the form OFA–0086: NEW Plan Guidance and NEW Program Report (OMB #0970–0174, expiration 8/31/2022). There are minor changes requested to both documents.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The NEW Program Plan Guidance documents specify the information needed to complete a NEW program plan and explain the process for plan submission every third year and to complete the annual program report. The program plan is the application for NEW program funding and documents how the grantee will carry out its NEW program. ACF proposes a change in how draft plans are submitted. The program report provides HHS, Congress, and grantees information to document and assess the activities and accomplishments of the NEW program. ACF proposes to extend data collection with revisions that clarify that programs should not count more than once individuals who meet multiple categories; for example, persons age 20 are both youth and adults, but they should be counted as one or the other, not both.

Respondents: Indian tribes and tribal coalitions that operate NEW programs.

ANNUAL BURDEN ESTIMATES

Instrument	Total number of respondents (over 3 yrs.)	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
NEW Program Plan Guidance	40	[1] .333	29	386
NEW Program Report	40	1	15	600
Total Estimated Annual Burden				986

[1] We have used .333 responses per year to represent one submission of the NEW Program Plan Guidance during the 3-year approval period.

Comments: The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: 42 U.S.C. 612.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–06271 Filed 3–23–22; 8:45 am]

BILLING CODE 4184–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0352]

Secura Bio, Inc.; Withdrawal of Approval of New Drug Application for FARYDAK (Panobinostat) Capsules, 10 Milligrams, 15 Milligrams, and 20 Milligrams

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

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is withdrawing approval of the new drug application (NDA) for FARYDAK (panobinostat) Capsules, 10 milligrams (mg), 15 mg, and 20 mg, held by Secura Bio, Inc., 1995 Village Center Circle, Suite 128, Las Vegas, NV 89134. Secura Bio, Inc. has voluntarily requested that FDA withdraw approval of this application and has waived its opportunity for a hearing.

DATES: Approval is withdrawn as of March 24, 2022.

FOR FURTHER INFORMATION CONTACT: Kimberly Lehrfeld, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6226, Silver Spring, MD 20993–0002, 301–796–3137, *Kimberly.Lehrfeld@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On February 23, 2015, FDA approved NDA 205353 for FARYDAK (panobinostat) Capsules, 10 mg, 15 mg, and 20 mg, in combination with bortezomib and dexamethasone for the treatment of patients with multiple myeloma who have received at least two prior regimens, including bortezomib and an immunomodulatory agent, under the Agency's accelerated approval regulations, 21 CFR part 314, subpart H. The accelerated approval of FARYDAK (panobinostat) Capsules, 10 mg, 15 mg, and 20 mg, for multiple myeloma included a required postmarketing trial intended to verify the clinical benefit of FARYDAK.

On September 24, 2021, FDA published the **Federal Register** notice ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments,'' announcing that FARYDAK (panobinostat) Capsules would be discussed at an Oncologic Drug Advisory Committee Meeting (ODAC) scheduled for December 2, 2021 (86 FR 53067). On November 19, 2021, FDA met with Secura Bio, Inc. to discuss the planned ODAC meeting. The topics discussed included the lack of initiation of the postmarketing trial intended to verify clinical benefit.

On November 22, 2021, Secura Bio, Inc. submitted a letter asking FDA to withdraw approval of NDA 205353 for FARYDAK (panobinostat) Capsules, 10 mg, 15 mg, and 20 mg, pursuant to § 314.150(d) (21 CFR 314.150(d)) and waiving its opportunity for a hearing. In the letter, Secura Bio, Inc. stated they are requesting withdrawal of approval of the NDA for FARYDAK because it was not feasible for them to complete the required postmarketing clinical trials. On November 26, 2021, FDA acknowledged Secura Bio, Inc.'s request for withdrawal of approval of the NDA and waiver of its opportunity for hearing. FDA also cancelled the ODAC meeting scheduled for December 2, 2021, since the applicant's withdrawal request made discussion at an advisory committee meeting moot.

For the reasons discussed above, and in accordance with the applicant's request, approval of NDA 205353 for FARYDAK (panobinostat) Capsules, 10 mg, 15 mg, and 20 mg, and all amendments and supplements thereto, is withdrawn under § 314.150(d). Distribution of FARYDAK (panobinostat) Capsules, 10 mg, 15 mg, and 20 mg, into interstate commerce without an approved application is illegal and subject to regulatory action (see sections 505(a) and 301(d) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(a) and 331(d)).

Dated: March 18, 2022.

Andi Lipstein Fristedt,

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

[FR Doc. 2022–06182 Filed 3–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0371]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug Websites

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by April 25, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The title of this information collection is ''Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug Websites.'' Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Ila S. Mizrachi, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–7726, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Accelerated Approval Disclosures on Direct-to-Consumer Prescription Drug Websites

OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (PHS Act) (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 393(d)(2)(C)) authorizes FDA to conduct research relating to drugs and other FDA regulated products in carrying out the provisions of the FD&C Act.

The Office of Prescription Drug Promotion's (OPDP) mission is to protect the public health by helping to ensure that prescription drug promotion is truthful, balanced, and accurately communicated. OPDP's research program provides scientific evidence to help ensure that our policies related to prescription drug promotion will have the greatest benefit to public health.

Toward that end, we have consistently conducted research to evaluate the aspects of prescription drug promotion that are most central to our mission, focusing in particular on three main topic areas: Advertising features, including content and format; target populations; and research quality. Through the evaluation of advertising features, we assess how elements such as graphics, format, and disease and product characteristics impact the communication and understanding of prescription drug risks and benefits. Focusing on target populations allows us to evaluate how understanding of prescription drug risks and benefits may vary as a function of audience, and our focus on research quality aims at maximizing the quality of our research data through analytical methodology development and investigation of sampling and response issues. This study will inform the first topic area, advertising features, including content and format; and the second topic area, target populations.

Because we recognize the strength of data and the confidence in the robust nature of the findings is improved through the results of multiple converging studies, we continue to develop evidence to inform our thinking. We evaluate the results from our studies within the broader context of research and findings from other sources, and this larger body of knowledge collectively informs our policies as well as our research program. Our research is documented on our homepage, which can be found at: *https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/office-prescription-drug-promotion-opdp-research.* The website includes links to the latest **Federal Register** notices and peer-reviewed publications produced by our office. The website maintains information on studies we have conducted, dating back to a direct-to-consumer (DTC) survey conducted in 1999.

I. Background

Pursuant to section 506(c) of the FD&C Act (21 U.S.C. 356(c)) and 21 CFR part 314, subpart H (or 21 CFR part 601, subpart E for biological products), FDA may grant accelerated approval to a drug product under section 505(c) of the FD&C Act (21 U.S.C. 355(c)) or a biological product under section 351(a) of the PHS Act (42 U.S.C. 262(a)). This pathway enables faster approval of prescription drugs intended to treat serious or life-threatening illnesses. Accelerated approval may be based on a determination that a drug product has an effect on a surrogate endpoint (for example, a blood test result) that is reasonably likely to predict clinical benefit, or on a clinical endpoint that can be measured earlier than irreversible morbidity or mortality, that is reasonably likely to predict an effect on irreversible morbidity or mortality or other clinical benefit (*i.e.,* an intermediate clinical endpoint). In approving a drug under the accelerated

approval pathway, the severity, rarity, or prevalence of a condition, and the availability or lack of alternative treatments, are taken into account.

The accelerated approval pathway is limited to certain products intended to treat serious or life-threatening illnesses as there can be ''[u]ncertainty about whether clinical benefit will be verified and the possibility of undiscovered risks'' (FDA's 2014 guidance for industry entitled ''Expedited Programs for Serious Conditions—Drugs and Biologics,'' available at *https://www.fda.gov/downloads/Drugs/Guidances/UCM358301.pdf*). Sponsors are generally required to conduct post-approval studies to verify and describe the predicted clinical benefit, but those confirmatory studies are not complete at the time that the accelerated approval is granted (Ref. 1). In the event that the required post-approval confirmatory studies fail to verify and describe the predicted effect or clinical benefit, a drug's approval can be withdrawn using expedited procedures.

Under FDA regulations governing physician labeling for prescription drugs, the INDICATIONS AND USAGE section of FDA-approved prescribing information for a drug approved under accelerated approval must include not only the indication (§ 201.57(c) (21 CFR 201.57(c))) but also a ''succinct description of the limitations of usefulness of the drug and any uncertainty about anticipated clinical benefits . . .'' (§ 201.57(c)(2)(i)(B)). In a guidance, FDA recommended that in addition to these required elements, the INDICATIONS AND USAGE section for drugs approved under accelerated approval should generally acknowledge that continued approval for the drug or indication may be contingent on verification and description of clinical benefit in confirmatory trials (FDA 2019 guidance for industry entitled ''Labeling for Human Prescription Drug and Biological Products Approved Under the Accelerated Approval Regulatory Pathway,'' available at *https://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM390058.pdf*).

Some DTC websites have included disclosures about accelerated approval, and of those, many included similar content to that seen in the INDICATIONS AND USAGE section of approved labeling. A content analysis of DTC websites for accelerated approval products found that 21 percent of the disclosures used language directly from the approved physician labeling, 79 percent of the disclosures used at least some medical language, but 27 percent of the websites did not include any disclosure that the products attained approval through this pathway (Ref. 2). The same analysis found that 84 percent of accelerated approval disclosures on DTC websites mentioned the approval basis, 68 percent mentioned unknown outcomes, and 47 percent mentioned confirmatory trials (Ref. 2).

OPDP recently conducted a general-population study testing the disclosure of FDA accelerated approval information on a DTC prescription drug website (OMB control number 0910–0872—Experimental Study of an Accelerated Approval Disclosure; the 0910–0872 Study). The study tested a control condition with no disclosure; a disclosure based on wording used in physician labeling, including more complex or technical terminology (physician-labeling disclosure); and a consumer-friendly disclosure drafted using simpler language intended to be suited for that audience (consumer-friendly disclosure). The disclosures had three elements: (1) Approval basis, (2) unknown outcomes, and (3) confirmatory trials. The physician labeling disclosure was ''This indication is based on response rate. An improvement in survival or disease-related symptoms has not been established. Continued approval for this indication may be contingent upon verification of clinical benefit in subsequent trials.'' The consumer-friendly disclosure was ''In a clinical trial, [Drug X] returned blood counts to normal. However, we currently do not know if [Drug X] helps people live longer or feel better. We continue to study [Drug X] in clinical trials to learn more about [Drug X]'s benefits.'' We also varied whether the physician-labeling and consumer-friendly disclosures were presented with low or high prominence (varying the size, color, and location of the disclosure). Preliminary results related to the comprehension of the disclosures tested in that study suggest that the consumer-friendly disclosure helped participants understand information related to the drug's accelerated approval, but that participants' understanding was low overall.

II. New Proposed Study

The purpose of the current project is to replicate and extend our prior research through two studies by: (1) Testing the same experimental conditions with a different study population (cancer survivors and cancer caregivers in study 1) and, (2) testing additional consumer-friendly disclosures in study 2. Replication is an important part of science and, if confirmation of prior results is seen, can increase confidence in the results from our first study.

With regard to proposed study 1, public comments for FDA's previous accelerated approval disclosure study and other similar FDA studies have suggested conducting studies with people who have been diagnosed with the medical condition or who are caregivers to patients diagnosed with the medical condition that the fictitious drug in the study is intended to treat. Specifically, public comments on the previous study suggested enrolling participants who have been diagnosed with cancer (*i.e.,* cancer survivors) or people who have cared for loved ones with cancer (*i.e.,* cancer caregivers). Because a number of oncology products are granted accelerated approval, cancer survivors and cancer caregivers are more likely to seek out or be exposed to promotion for accelerated approval products than the general population. They may also be more familiar with cancer-related terms and concepts than the general population. Study 1 will involve cancer survivors and cancer caregivers, a different population than our prior study. It will test the ''three element'' version of the disclosure as noted above. We will also test the prominence of the disclosure (see table 1).

With regard to study 2, public comments on the original study (Docket No. FDA–2018–N–3138) expressed concern that over-disclosure could dissuade consumers from considering accelerated approval products. One public comment specifically suggested removing the ''unknown outcomes'' element in the consumer-friendly and physician-labeling disclosures. Based on these comments, in study 2, we propose testing four versions of the consumer-friendly disclosure (table 2): The ''three element'' version of the consumer-friendly disclosure as well as three other consumer-friendly disclosures that vary with respect to which of these three elements they address. This will allow us to evaluate the impact on participants' comprehension of the disclosure and perception of the fictitious drug when they view a disclosure with only the approval basis, the approval basis plus information about the unknown outcomes, the approval basis plus information about confirmatory trials, and finally the approval basis plus information about both the unknown outcomes and confirmatory trials. In study 2, the prominence of all the test conditions will be the same and will be the same as the ''high prominence'' version tested in study 1.

We plan to conduct two pretests not longer than 20 minutes, administered via internet panel, to pilot the main study procedures. We then plan to conduct two main studies not longer than 20 minutes, administered via internet panel. For the pretests and main studies, we will randomly assign the participants to one of the test conditions (see table 1 for the study 1 design and table 2 for the study 2 design). In both studies, participants will view a website for a fictitious oncology prescription drug. After viewing the website, participants will complete a questionnaire that assesses whether participants noticed the disclosure and their understanding of it, as well as perceptions of the drug's risks and benefits. We will also measure covariates such as demographics and literacy. The questionnaire is available upon request from *DTCresearch@fda.hhs.gov.*

For study 1, we hypothesize that participants will be more likely to notice the disclosure when it is presented more, rather than less, prominently. In turn, we expect that participants' perceptions of the drug are more likely to be affected by the disclosure in the high prominence condition. We also hypothesize that participants will be more likely to notice and understand the disclosure and use it to form their perceptions of the drug if they view the consumer-friendly language. For study 2, we hypothesize that participants will be more likely to understand each accelerated approval concept (*i.e.,* confirmatory trials, unknown outcomes) when the disclosure directly addresses the concept, compared with when the disclosure does not directly address the concept. Finally, we will explore whether the inclusion of the concepts of confirmatory trials and unknown outcomes in the disclosure affects participants' perceived risk, perceived risk-benefit tradeoff, perceptions of the website, or information-seeking intentions. To test these hypotheses, we will conduct inferential statistical tests such as logistic regression and analysis of variance.

For the pretests and main studies, we plan to recruit individuals who report a diagnosis with any cancer (except for certain non-melanoma skin cancers) for half the sample and individuals who report being a caregiver for someone with a diagnosis with any cancer (except for certain non-melanoma skin cancers) for the other half of the sample. We will exclude individuals who work for the U.S. Department of Health and Human Services or work in the healthcare, marketing, advertising, or pharmaceutical industries. With the sample sizes described below, we will have sufficient power to detect small-sized effects in the main study (table 3).

TABLE 1—STUDY 1 DESIGN

	High prominence	Low prominence	Absent
Physician-labeling version	Condition 1	Condition 3	Condition 5.
Consumer-friendly version	Condition 2	Condition 4.	

TABLE 2—STUDY 2 DESIGN

[Consumer-friendly disclosure elements]

	Approval basis	Approval basis + unknown outcomes	Approval basis + confirmatory trials	Approval basis + unknown outcomes + confirmatory trials
High prominence	Condition 6	Condition 7	Condition 8	Study 1 Condition 2.

In the **Federal Register** of June 11, 2021 (86 FR 31323), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received one submission that was PRA-related. Within the submission, FDA received multiple comments that the Agency has addressed below. For brevity, some public comments are paraphrased and therefore may not reflect the exact language used by the commenter. We assure the commenter that the entirety of their comments was considered even if not fully captured by our paraphrasing in this document. The following acronyms are used here: DTC = direct-to-consumer; HCP = healthcare professional; FDA and the Agency = Food and Drug Administration; OPDP = FDA's Office of Prescription Drug Promotion.

(Comment 1) Comment 1 expressed concern that this research will duplicate a prior FDA study and lack practical utility. The comment asserts that while the 60-day PRA notice provided a statement of ''preliminary results'' of the prior study, full study materials, results, and conclusions of that prior study have not been published. It requested that the results of the prior study be published before this study is conducted, suggesting that, without publishing the results of the prior study, FDA has not addressed how the new proposed research would address open research issues or limitations of the prior study.

(Response 1) Contrary to the comment's suggestion, we do not plan to duplicate the prior research, although there often is value in that undertaking. Rather, the present research seeks to replicate the previous study in a new patient population and extend the previous study by testing additional versions of the disclosure. The new research is directly informed by open research issues and limitations raised in the public comments from the previous study. The proposed studies will be conducted in a new cancer survivor and caregiver sample, which differs from the sample in the prior study, which was conducted with a general population sample. As noted above, cancer survivors and cancer caregivers are more likely to seek out or be exposed to promotion for accelerated approval products than the general population. They may also be more familiar with cancer-related terms and concepts than the general population. Replications in different study samples are often proposed. Indeed, at the time of the previously proposed study (0910–0872 Study), public comments suggested conducting the study with cancer survivors who had used oncology products. Also, in response to public comments on the prior study design, we will extend the prior research by testing additional versions of the disclosure. This study therefore has practical utility to expand our information regarding website disclosures regarding accelerated approval drugs, both by extending to additional versions of the

disclosure related to our overall questions, and to determine if results are consistent with those of the earlier study. We intend to publish the results of the current study as well as the prior study.

(Comment 2) Comment 2 stated that establishing mandates to unduly emphasize a product's accelerated approval status could deter appropriate usage and lead to misconception and confusion among patients. The comment specifically referred to one statement in the disclosure, ''we currently do not know if [Drug X] helps people live longer or feel better'' to suggest that the disclosure may oversimplify the benefits of the product and thus discourage patients from getting needed treatments. The comment later stated that the availability of FDA prior review of promotional pieces for accelerated approval means there is less need to prescribe specific overarching new rules for disclosures because FDA can consider disclosures on a case-by-case basis.

(Response 2) This notice proposes a data collection for research purposes and does not establish a mandate or propose a new rule. Instead, it proposes research that may inform FDA and stakeholder thinking on accelerated approval product disclosures in DTC promotional materials. The research will specifically investigate patient understanding of and reaction to the disclosure language about a product's accelerated approval status. Study 2 was designed in direct response to public comment on the previously proposed study (0910–0872 Study) raising concerns about over-disclosure. Study 2 will test several conditions based on disclosures found in the marketplace, two of which will not include the statement ''we currently do not know if [Drug X] helps people live longer or feel better'' (see table 2).

(Comment 3) Comment 3 suggested that DTC promotional materials are not the best venue for providing information about prescription drugs, given the role of healthcare professionals (HCPs) in discussing and prescribing treatments. Based on this, the comment suggested modifying the study to focus on prescriber-patient interactions rather than DTC promotion by including a component to evaluate patient understanding of accelerated approval after consultation with a prescriber.

(Response 3) We agree that the prescriber-patient interaction is important. Consumers often wish to participate in shared decision-making with HCPs when selecting prescription drugs and may request specific prescription drugs from their HCPs based on promotions they have seen in the marketplace. Because information consumers receive through DTC prescription drug promotion can impact these requests, it is important to investigate how the information in prescription drug promotional pieces impacts consumer attention, understanding, and perceptions.

(Comment 4) Comment 4 suggested conducting qualitative interviews or a blended approach of qualitative and quantitative research rather than a quantitative study. In addition, the comment recommended that the interviews include showing the stimuli to participants, asking them questions about the stimuli, and then showing them the stimuli again so they can read the disclosure and have it in front of them while answering questions.

(Response 4) We plan to conduct nine 1-hour interviews to cognitively test the stimuli and questionnaire. These interviews will allow for indepth discussions with participants, and the findings from the interviews will help improve the study materials. In addition, the questionnaire follows the approach the commenter suggested: Participants view the stimuli and answer questions, then see the disclosure again for questions 16 and 17. This will allow us to test what participants remember and understand after visiting a website for an accelerated approval product, as well as their understanding of the disclosure language while it is in front of them. We will use the cognitive interviews and pretesting to determine whether participants will be able to view the stimuli when answering more of the questions in study 2.

(Comment 5) Comment 5 suggested screening for patients who have a personal experience with Acute Lymphoblastic Leukemia (ALL) (the cancer referred to in the study stimuli) and who have received accelerated approval products from their prescribers.

(Response 5) We will ask participants about the type of cancer and type of treatment(s) they or their loved one had. In this study, we will not ask if they used an accelerated approval product, because participants are unlikely to know this information. In the pretest, we will examine the feasibility of quotas aiming for a broad range of cancer diagnoses in the sample, including blood cancers like ALL. We will also use the pretest to examine the feasibility of restricting recruitment to cancer survivors, and caregivers for cancer survivors, who have received a systemic therapy (*e.g.,* chemotherapy, hormonal therapy, immune therapy, targeted therapy).

(Comment 6) Comment 6 questioned why caregivers are included in the sample and noted that it is unclear what direct role caregivers have in drug prescribing decisions.

(Response 6) We included caregivers in part because previous public comments have encouraged FDA to include caregivers in DTC research (for example, Docket No. FDA–2019–N–2313). Prior research also supports the inclusion of caregivers in a study on consumer understanding of health information on a DTC prescription drug website. Surveys have found that many people searching for health information online are doing so on behalf of someone else (*e.g.,* Refs. 3 and 4). These ''surrogate seekers'' are more likely to be caregivers (Ref. 5). In addition, caregivers are a known audience for DTC prescription drug websites. For instance, to enter some DTC prescription drug websites, people must select whether they are ''a patient or caregiver'' or a ''healthcare provider.'' Other DTC prescription drug websites specifically include information for caregivers.

(Comment 7) Comment 7 stated that information on the proposed number of study participants was not observed in the 60-day notice, and suggested a minimum of 200–300 participants, with 400–500 being optimal. The comment also suggested considering quotas for demographic variables such as age and education to allow for subgroup analyses.

(Response 7) The proposed number of participants can be found in table 3 of this notice. Specifically, we propose 630 participants in study 1 and 400 participants in study 2. We have not proposed any planned subgroup analyses; however, we will have quotas for age, sex, race, and education to ensure a diverse sample.

(Comment 8) Comment 8 suggested that, for study participants to understand the disclosures being tested, they must first be told that the drug received an accelerated approval; accelerated approval is based on an FDA determination that the drug is likely to provide meaningful therapeutic benefits to patients over existing treatments and likely addresses a significant unmet medical need; and the drug is approved based on adequate and well-controlled clinical trial(s) on surrogate or intermediate clinical endpoints that are reasonably likely to predict clinical benefit, but that the drug's effects need to be verified with additional data.

(Response 8) Consumers encountering DTC websites for accelerated approval

products would not have this background information, so giving this information to participants would defeat the purpose of testing what perceptions these consumers form from the website disclosures.

(Comment 9) Comment 9 suggested testing an alternative disclosure that would include background information about accelerated approval, described in the last comment, along with the disclosures currently proposed to be tested.

(Response 9) We acknowledge that we cannot test all possible disclosure language. We based the disclosures we plan to test on FDA-approved labeling for accelerated approval products and on disclosures found in the marketplace (Ref. 2). We encourage research on alternate disclosures.

(Comment 10) Comment 10 stated that question 9, which asks participants about their understanding of the confirmatory trials concept from the disclosure, is unclear and suggested deleting the question or refining the answer options.

(Response 10) We will delete this question in study 1. As noted in the questionnaire, we plan to test two versions of question 9 in the study 2 pretests. We will refine or delete this question in study 2 based on findings from the cognitive interviews and pretesting.

(Comment 11) Comment 11 suggested clarifying ''quality of life'' in consumer-friendly terms and defining specific quality of life measures in question 10.

(Response 11) Question 10 does not refer to a specific quality of life measure. In a recent survey of metastatic breast cancer patients, most participants (89 percent) reported understanding the term ''quality of life'' (Ref. 6). We expect participants in this study will also understand the term ''quality of life'' without further clarification, but we will cognitively test and pretest the question to determine if any clarification is needed.

(Comment 12) Comment 12 stated that questions 11 and 12, which ask about risk-benefit tradeoffs, are redundant and too general, not sufficient to study over-disclosure, and that these questions typically require consumers and HCPs to arrive at the answer together. The comment suggested that instead, the study ask whether, based on information on the website, participants intend to ask to take the drug, not ask to take the drug, speak with a doctor about whether the drug is right for them, or none of these.

(Response 12) We disagree that consumers do not form their own perceptions about risk-benefits tradeoffs after seeing DTC promotional materials and prior to any discussion with a HCP. Thus, we plan to ask participants about their perceptions of the risk-benefit tradeoff through question 11, which is a common and validated item in DTC research. We will delete question 12 to reduce redundancy (Ref. 7). We will also ask about behavioral intentions. Participants do not necessarily have the type of cancer the fictitious drug is indicated to treat; therefore, it would not make sense to ask them about their intentions to ask about the drug for themselves. Instead, similar to what the comment requests, question 14 asks whether participants would recommend that a loved one diagnosed with the cancer that the fictitious drug is indicated to treat ask a doctor about taking the drug.

(Comment 13) Comment 13 recommended deleting question 13, which asks about the drug side effects, because it is too general and does not test the disclosure.

(Response 13) Question 13 is intended to measure the effect of the disclosure on participants' risk perceptions. We will assess this question in cognitive interviews and pretesting and will refine it if needed.

(Comment 14) Comment 14 suggested deleting or refining question 14, which asks participants to select all actions they would suggest a loved one take (*i.e.,* asking a doctor about taking the drug, asking about the drug's risks, its benefits, and its FDA approval). The comment stated that because all options may be applicable, it is unclear how the item would yield meaningful data for this research.

(Response 14) We revised question 14 from ''select all that apply'' to separate ''yes/no'' items for each action. We will assess the utility of asking about each of these actions in cognitive interviews and pretesting. At a minimum, we will retain the ''taking [Drug X]'' item to assess intentions as discussed in a previous comment.

(Comment 15) Comment 15 suggested that participants are unlikely to have the information to provide yes or no answers to question 19, which asks participants whether they used any accelerated approval products for their own cancer, and questioned why it is important for a patient to understand the regulatory approval pathway for a drug, as opposed to information about the drug's safety and effectiveness for use in discussion with an HCP.

(Response 15) We agree that participants are unlikely to know whether the product they used was an accelerated approval product and will delete this question in this study.

(Comment 16) Comment 16 suggested deleting question 21, which asks how similar the study website was to other DTC websites the participant has seen, because it seems vague and not directly related to the research question.

(Response 16) Question 21 is for pretesting purposes only and is intended to assess the quality of the stimuli. We will keep question 21 for pretesting but will not ask it in the main studies.

FDA estimates the burden of this collection of information as follows:

TABLE 3—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest 1 and 2 screener	3,600	1	3,600	0.08 (5 minutes)	288
Study 1 and 2 screener	20,600	1	20,600	0.08 (5 minutes)	1,648
Pretest 1	100	1	100	0.33 (20 minutes)	33
Main Study 1	630	1	630	0.33 (20 minutes)	208
Pretest 2	80	1	80	0.33 (20 minutes)	26
Main Study 2	400	1	400	0.33 (20 minutes)	132
Total					2,335

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

III. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500, and are available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the website addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Beaver J.A., L.J. Howie, L. Pelosof, et al., ''A 25-Year Experience of U.S. Food and Drug Administration Accelerated Approval of Malignant Hematology and Oncology Drugs and Biologics: A Review.'' *JAMA Oncology.* 2018; 4(6):849–856.
2. Sullivan H.W., A.C. O'Donoghue, K.T. David, et al., ''Disclosing Accelerated Approval on Direct-to-Consumer Prescription Drug websites.'' *Pharmacoepidemiology and Drug Safety.* 2018;27:1277–1280. *https://doi.org/10.1002/pds.4664.*
3. Cutrona, S.L., K.M. Mazor, S.N. Vieux, et al., ''Health Information-Seeking on Behalf of Others: Characteristics of 'Surrogate Seekers'.'' *Journal of Cancer Education.* 2015;30:12–19. *https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4282983/.*
4. Sadasivam, R.S., R.L. Kinney, S.C. Lemon, et al., ''Internet Health Information Seeking Is a Team Sport: Analysis of the Pew Internet Survey.'' *International Journal of Medical Informatics.* 2013;82:193–200.
* 5. Bangerter, L.R., J. Griffin, K. Harden, et al., ''Health Information-Seeking Behaviors of Family Caregivers: Analysis of the Health Information National Trends Survey.'' *JMIR Aging.* 2019;2:e11237. *https://aging.jmir.org/2019/1/e11237/.*
6. von Itzstein, M.S., E. Railey, M.L. Smith, et al., ''Patient Familiarity with, Understanding of, and Preferences for Clinical Trial Endpoints and Terminology.'' *Cancer.* 2021;126:1605–1613.
7. Kelly, B.J., D.J. Rupert, K.J. Aikin, et al., ''Development and Validation of Prescription Drug Risk, Efficacy, and Benefit Perception Measures in the Context of Direct-to-Consumer Prescription Drug Advertising.'' *Research in Social and Administrative Pharmacy.* 2021;17:942–955.

Dated: March 17, 2022.

Andi Lipstein Fristedt,

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

[FR Doc. 2022–06220 Filed 3–23–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: HRSA is publishing this notice of petitions received under the National Vaccine Injury Compensation Program (the Program), as required by Section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of HHS is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program in general, contact Lisa L. Reyes, Clerk of Court, United States Court of Federal Claims, 717 Madison Place NW, Washington, DC 20005, (202) 357–6400. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 08N146B, Rockville, Maryland 20857; (301) 443–6593, or visit our website at: *http://www.hrsa.gov/vaccinecompensation/index.html.*

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.,* provides that those seeking compensation are to file a petition with the United States Court of Federal Claims and to serve a copy of the petition to the Secretary of HHS, who is named as the respondent in each proceeding. The Secretary has delegated this responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at 42 CFR 100.3. This Table lists for each covered childhood vaccine the conditions that may lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested outside the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that ''[w]ithin 30 days after the Secretary receives service of any petition filed under section 2111 the Secretary shall publish notice of such petition in the **Federal Register**.'' Set forth below is a list of petitions received by HRSA on February 1, 2022, through February 28, 2022. This list provides the name of petitioner, city and state of vaccination (if unknown then city and state of person or attorney filing claim), and case number. In cases where the Court has redacted the name of a petitioner and/or the case number, the list reflects such redaction.

Section 2112(b)(2) also provides that the special master ''shall afford all interested persons an opportunity to submit relevant, written information'' relating to the following:

1. The existence of evidence ''that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition,'' and

2. Any allegation in a petition that the petitioner either:

a. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table but which was caused by'' one of the vaccines referred to in the Table, or

b. ''[S]ustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine'' referred to in the Table.

In accordance with Section 2112(b)(2), all interested persons may submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the United States Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Division of Injury Compensation Programs, Health Systems Bureau, 5600 Fishers Lane, 08N146B, Rockville, Maryland 20857. The Court's caption (*Petitioner's Name* v. *Secretary of HHS*) and the docket number assigned to the petition should be used as the caption for the written submission. Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

Carole Johnson,
Administrator.

List of Petitions Filed

1. Michelle Davis on behalf of A.D., Phoenix, Arizona, Court of Federal Claims No: 22–0098V
2. Barbara Sciortino, Las Vegas, Nevada, Court of Federal Claims No: 22–0099V
3. Ruby Sharma Dhital, West Hartford, Connecticut, Court of Federal Claims No: 22–0101V
4. Chelsea Smith on behalf of C.S., Danville, Kentucky, Court of Federal Claims No: 22–0103V
5. Brechen Santeramo, Fort Collins, Colorado, Court of Federal Claims No: 22–0104V
6. Shawn Geiger, Hackettstown, New Jersey, Court of Federal Claims No: 22–0106V
7. Roberta Johnson, Winfield, Illinois, Court of Federal Claims No: 22–0107V
8. Samuel Martin, Oklahoma City, Oklahoma, Court of Federal Claims No: 22–0109V
9. Marijane Angels, Southington, Connecticut, Court of Federal Claims No: 22–0112V
10. Suzanne Kallin, Los Angeles, California, Court of Federal Claims No: 22–0113V
11. Maria Sims, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–0115V
12. Karen Miller, Seattle, Washington, Court of Federal Claims No: 22–0116V
13. Jerry Brown, Greenville, Texas, Court of Federal Claims No: 22–0118V
14. Demetrius Lockett, Detroit, Michigan, Court of Federal Claims No: 22–0119V
15. Pamela Allen, Fairburn, Georgia, Court of Federal Claims No: 22–0122V
16. Ann Marie Indorf on behalf of K.I., Phoenix, Arizona, Court of Federal Claims No: 22–0123V
17. Dana Mowery, Delaware, Ohio, Court of Federal Claims No: 22–0124V
18. Ronald L. Jopes, Elizabethtown, Kentucky, Court of Federal Claims No: 22–0125V
19. Anne Rosenthal, Palo Alto, California, Court of Federal Claims No: 22–0126V
20. Joan Steede, Rockford, Illinois, Court of Federal Claims No: 22–0128V
21. Andrew Short, St. Paul, Minnesota, Court of Federal Claims No: 22–0129V
22. Herbert St. Amant, Cypress, California, Court of Federal Claims No: 22–0130V
23. Norman Michaud, Auburn, Maine, Court of Federal Claims No: 22–0134V
24. Jordanna Ross, La Porte, Indiana, Court of Federal Claims No: 22–0136V
25. Gary Krugel, Antigo, Wisconsin, Court of Federal Claims No: 22–0139V
26. CarolAnn Sinclair, Anacortes, Washington, Court of Federal Claims No: 22–0140V
27. Sheetal Paliwal, Libertyville, Illinois, Court of Federal Claims No: 22–0141V
28. Jonessa Casarez on behalf of A.C., Phoenix, Arizona, Court of Federal Claims No: 22–0142V
29. Hunter Miller, Phoenix, Arizona, Court of Federal Claims No: 22–0143V
30. Kelly Quinn, Tempe, Arizona, Court of Federal Claims No: 22–0144V
31. Mary Walsh, Valatie, New York, Court of Federal Claims No: 22–0148V
32. Arnold Saitow, Boston, Massachusetts, Court of Federal Claims No: 22–0150V
33. Zachary Hemenway, Staples, Minnesota, Court of Federal Claims No: 22–0153V
34. John Owen, West Des Moines, Iowa, Court of Federal Claims No: 22–0155V
35. Jordan Aguilar, Phoenix, Arizona, Court of Federal Claims No: 22–0156V
36. Jean Deoleo and Dayre Deoleo on behalf of I.D., Miami, Florida, Court of Federal Claims No: 22–0157V
37. Nanoya Burgan, Lawrenceville, Georgia, Court of Federal Claims No: 22–0158V
38. Mary White on behalf of M.A., Phoenix, Arizona, Court of Federal Claims No: 22–0159V
39. Muriel J. Duval, Las Vegas, Nevada, Court of Federal Claims No: 22–0160V
40. Florence Barrett, Tacoma, Washington, Court of Federal Claims No: 22–0161V
41. Ljubitza Ghiardi, Phoenix, Arizona, Court of Federal Claims No: 22–0162V
42. Clara Nickels, Phoenix, Arizona, Court of Federal Claims No: 22–0167V
43. Denise Warburton on behalf of C.C., Phoenix, Arizona, Court of Federal Claims No: 22–0169V
44. Sandra Fox, Pittsburgh, Pennsylvania, Court of Federal Claims No: 22–0176V
45. Alexis Dimick, Phoenix, Arizona, Court of Federal Claims No: 22–0188V
46. Jacki Della Rosa Carron, Upper Arlington, Ohio, Court of Federal Claims No: 22–0189V
47. Matthew J. Miller, Fairbury, Nebraska, Court of Federal Claims No: 22–0190V
48. Tiara Pore, New Hyde Park, New York, Court of Federal Claims No: 22–0191V
49. Cheryl A. Maxheimer, Fenton, Michigan, Court of Federal Claims No: 22–0192V
50. Kari Lynn Fisher, Port Angeles, Washington, Court of Federal Claims No: 22–0195V
51. Mira Goff on behalf of the Estate of Richard Goff, Deceased, Kenton, Ohio, Court of Federal Claims No: 22–0199V
52. Gregory Mills, Texas City, Texas, Court of Federal Claims No: 22–0203V
53. Teresa Vickers on behalf of the Estate of Wanda Sovine, Deceased, Hurricane, West Virginia, Court of Federal Claims No: 22–0204V
54. Larry Toothman, East Liverpool, Ohio, Court of Federal Claims No: 22–0207V
55. Danette Weems, St. Louis, Missouri, Court of Federal Claims No: 22–0208V
56. Amelia Goff, Eufaula, Alabama, Court of Federal Claims No: 22–0209V
57. Sabine Templeton on behalf of the Estate of Ramsay Templeton, Deceased, Fernandina Beach, Florida, Court of Federal Claims No: 22–0210V
58. Mark Cunningham, Charlotte, North Carolina, Court of Federal Claims No: 22–0211V
59. Bret Wood, Concord, North Carolina, Court of Federal Claims No: 22–0212V

60. Fahtima Isaac, Phoenix, Arizona, Court of Federal Claims No: 22–0213V
61. Shannon McDonald, Lumberton, New Jersey, Court of Federal Claims No: 22–0215V
62. Anita Enns, Katy, Texas, Court of Federal Claims No: 22–0216V
63. Joyce Glenn on behalf of the Estate of Anthony Glenn, Deceased, Fontana, California, Court of Federal Claims No: 22–0217V
64. April Keen, Greenville, South Carolina, Court of Federal Claims No: 22–0218V
65. Carey Cribbs, Ferndale, Michigan, Court of Federal Claims No: 22–0219V
66. Sara Davis Buechner, Philadelphia, Pennsylvania, Court of Federal Claims No: 22–0220V
67. Rafael Mauries, Cedar Park, Texas, Court of Federal Claims No: 22–0224V

[FR Doc. 2022–06249 Filed 3–23–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Tick-Borne Disease Working Group

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As required by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the Tick-Borne Disease Working Group (TBDWG) will hold a virtual meeting. The meeting will be open to the public. For this meeting, the TBDWG will be discussing and voting on recommendations for the 2022 TBDWG Report to the HHS Secretary and Congress. Most of the recommendations the TBDWG will consider are from the reports of five TBDWG subcommittees, which were created to examine critical topic areas related to tick-borne diseases. The 2022 report will address a wide range of topics related to tick-borne diseases, such as, surveillance, prevention, diagnosis, diagnostics, and treatment; identify advances made in research, as well as overlap and gaps in tick-borne disease research; and provide recommendations regarding any appropriate changes or improvements to such activities and research.

DATES: The meeting will be held online via webcast on April 27, 2022–April 28, 2022 from approximately 9:00 a.m. to 5:00 p.m. ET (times are tentative and subject to change) each day. The confirmed times and agenda items for the meeting will be posted on the TBDWG web page *https://www.hhs.gov/ash/advisory-committees/tickborne disease/meetings/2022-04-27/index.html* when this information becomes available.

FOR FURTHER INFORMATION CONTACT: James Berger, Designated Federal Officer for the TBDWG; Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Department of Health and Human Services, Mary E. Switzer Building, 330 C Street SW, Suite L600, Washington, DC 20024. Email: *tickbornedisease@hhs.gov.* Phone: 202–795–7608.

SUPPLEMENTARY INFORMATION: Registration information can be found on the meeting website at *https://www.hhs.gov/ash/advisory-committees/tickbornedisease/meetings/2022-04-27/index.html* when it becomes available. The public will have an opportunity to present their views to the TBDWG orally during the meeting's public comment session or by submitting a written public comment. Comments should be pertinent to the meeting discussion. Persons who wish to provide verbal or written public comment should review instructions at *https://www.hhs.gov/ash/advisory-committees/tickborne disease/meetings/2022-04-27/index.html* and respond by midnight April 15, 2022 ET. Verbal comments will be limited to three minutes each to accommodate as many speakers as possible during the 30 minute session. Written public comments will be accessible to the public on the TBDWG web page prior to the meeting.

Background and Authority: The Tick-Borne Disease Working Group was established on August 10, 2017, in accordance with Section 2062 of the 21st Century Cures Act, and the Federal Advisory Committee Act, 5 U.S.C. App., as amended, to provide expertise and review federal efforts related to all tick-borne diseases, to help ensure interagency coordination and minimize overlap, and to examine research priorities. The TBDWG is required to submit a report to the HHS Secretary and Congress on their findings and any recommendations for the federal response to tick-borne disease every two years.

Dated: March 14, 2022.

James J. Berger,

Designated Federal Officer, Tick-Borne Disease Working Group, Office of Infectious Disease and HIV/AIDS Policy.

[FR Doc. 2022–06226 Filed 3–23–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Hui (Herb) Bin Sun, Ph.D. (Respondent), formerly Professor of Orthopedic Surgery and Radiation Oncology, Albert Einstein College of Medicine (AECM). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), National Institutes of Health (NIH), grant R01 AR050968 and National Heart, Lung, and Blood Institute (NHLBI), NIH, grant P01 HL110900. The administrative actions, including supervision for a period of twelve (12) years, were implemented beginning on March 1, 2022, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Hui (Herb) Bin Sun, Ph.D., Albert Einstein College of Medicine: Based on the report of an investigation conducted by AECM and analysis conducted by ORI in its oversight review, ORI found that Dr. Sun, formerly Professor of Orthopedic Surgery and Radiation Oncology, AECM, engaged in research misconduct in research supported by PHS funds, specifically NIAMS, NIH, grant R01 AR050968 and NHLBI, NIH, grant P01 HL110900.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly falsifying and/or fabricating data included in sixteen (16) grant applications submitted for PHS funds:

- R01 AR065563–01, ''CITED2 and Chondroprotection,'' submitted to NIAMS, NIH, on 02/05/2013.

• R01 AR066009–01, ''Remote Loading for Osteoarthritis,'' submitted to NIAMS, NIH, on 06/04/2013.
• R01 AR065563–01A1, ''CITED2 and Chondroprotection,'' submitted to NIAMS, NIH, on 11/05/2014.
• R41 AR070695–01, ''A novel product for tendinopathy treatment,'' submitted to NIAMS, NIH, on 01/05/2015.
• R01 AG069693–01, ''Chondrocyte fate regulation and cartilage protection,'' submitted to National Institute on Aging (NIA), NIH, on 06/05/2015.
• R01 AG039561–06, ''Human tendon stem progenitor cell aging and regeneration,'' submitted to NIA, NIH, on 03/15/2016 (original grant funding from 08/15/2012–04/30/2018).
• R43 AT009414–01, ''A novel nutraceutical drug for tendinopathy treatment,'' submitted to National Center for Complementary and Alternative Medicine (NCCAM), NIH, on 04/05/2016.
• R01 AR070431–01A1, ''The role of Panx1 in the pathogenesis and pain of osteoarthritis,'' submitted to NIAMS, NIH, on 07/19/2016.
• R41 AG056246–01A1, ''A novel product for tendinopathy treatment,'' submitted to NIA, NIH, on 09/06/2016, funded from 09/15/2017–08/31/2019.
• R01 AG056623–01, ''Chondrocyte fate regulation and osteoarthritis,'' submitted to NIA, NIH, on 10/05/2016.
• R01 AR072038–01, ''MSC-derived exosomes and tendon disorders,'' submitted to NIAMS, NIH, on 10/05/2016.
• R43 AT009414–01A1, ''A novel nutraceutical drug for tendinopathy treatment,'' submitted to NCCAM, NIH, on 04/05/2017, funded from 08/01/2018–07/31/2020.
• R01 AR073194–01, ''Chondrocyte fate regulation and cartilage protection,'' submitted to NIAMS, NIH, on 06/05/2017.
• R01 AR074802–01, ''The role of Panx1 in the pathogenesis and pain of osteoarthritis,'' submitted to NIAMS, NIH, on 04/02/2018.
• R01 AR074802–01A1, ''The role of Panx1 in the pathogenesis and pain of osteoarthritis,'' submitted to NIAMS, NIH, on 08/01/2018.
• R44 AG065089–01, ''Botanical drug for spontaneous osteoarthritis,'' submitted to NIA, NIH, on 01/07/2019.

ORI found that Respondent intentionally, knowingly, or recklessly reported falsified and/or fabricated Western blot and histological image data for chronic deep tissue conditions including osteoarthritis (OA) and tendinopathy in murine models. Respondent included image data that were falsely reused and relabeled as data representing different experiments in fifty (50) figures included in sixteen (16) PHS grant applications. In the absence of reliable image data, the figures, quantitative data in associated graphs purportedly derived from those images, statistical analyses, and related text also are false.

Specifically, ORI found that:

1. Respondent reported falsified Western blot images from the same source that were reused and relabeled to represent different proteins and/or experimental results in:

• Figure 4B in R01 AR065563–01 and R01 AR065563–01A1 and Figure 11 in R01 AR069693–01, specifically:
— ''β-actin'' panel for ''Cartilage'' and ''β-actin'' panel for ''Liver'' are the same
— ''β-actin'' panel for ''Bone'' and ''β-actin'' panel for ''Spleen'' are the same
— ''Cited2'' blot band for Cartilage in ''WT'' and ''Sham'' are the same
— ''Cited2'' blot band for Bone in ''WT'' and ''Sham'' are the same
— ''Cited2'' blot band for Liver in ''WT'' and ''Sham'' are the same
— ''Cited2'' blot band for Spleen in ''WT'' and ''Sham'' are the same

• Figure 2A in R01 AG056623–01 and R44 AG065089–01 and Figure 1A in R01 AR073194–01, specifically:
—''β-actin'' panel for ''Cartilage'' and ''β-actin'' panel for ''Liver'' are the same
—Cited2 blot bands in ''WT'' and ''Sham'' within each of the three panels represent Cartilage, Bone, and Liver

2. Respondent reported falsified Western blot data by copying blot panels representing rAAV-vector and rAAV–GFP in human cartilage explants from Figure 11C in R01 AR065563–01 and Figure 16 in R01 AR066009–01 and manipulating and relabeling the same panels to represent ''Sham'' and ''KO'' samples in conditional knock out of Cited2 gene in cartilage of adult mice in:

• Figure 4B in R01 AR065563–01
• Figure 4B in R01 AR065563–01A1
• Figure 11 in R01 AR069693–01
• Figure 2A in R01 AG056623–01
• Figure 1A in R01 AR073194–01
• Figure 2A in R44 AG065089–01

3. Respondent reported falsified photomicrographs of supraspinatus tendon tissue from tendinopathy rats exposed to different experimental conditions that were reused and relabeled in:

• Figure 2A in R01 AR072038–01 to falsely represent overuse tendinopathy in rats treated with ex-ADSC–2D (control exosomes)
• Figure 2A in R01 AG039561–06 to falsely represent overuse tendinopathy nude rats with placebo treatment
• Figure 4A in R41 AR070695–01 to falsely represent overuse tendinopathy nude rats with placebo treatment
• Figure 3A in R43 AT009414–01 and R43 AT009414–01A1 to falsely represent collagenase induced Achilles tendinopathy in rats with placebo treatment

4. Respondent reported falsified photomicrographs that were reused and relabeled in:

• Figure 2A in R01 AR072038–01 to falsely represent overuse tendinopathy in rats injected with ex-ADSC–3D
• Figure 1A in R01 AG039561–06 to falsely represent collagenase-induced tendinopathy in rats injected with Cited2 reprogrammed tendon stem/progenitor cells (TSPCs)

5. Respondent reported falsified photomicrographs that were reused and relabeled from Figure 2C in R01 AR072038–01 representing cleaved collagen-1 stained supraspinatus tendon of overuse tendinopathy rats injected with placebo + ex-ADSC–2D (control exosomes) to falsely represent:

• Supraspinatus tendon tissue of overuse tendinopathy in rats after placebo injection in:
—Figure 2C in R01 AR072038–01
—Figure 5D in R41 AG056246–01A1
—Figure 2B in R01 AG039561–06
• Achilles tendon tissue of collagenase-induced tendinopathy rats after placebo injection in Figure 3D in R43 AT009414–01

6. Respondent falsified photomicrographs of human cartilage explants presented in R01 AG069693–01 that were reused and relabeled, specifically:

• Figure 12A representing NITEGE in non-arthritic (non-OA) sample in:
—Figure 11A in R01 AR065563–01, Figure 8A in R01 AG069693–01, and Figure 1A in R01 AG056623 to falsely represent NITEGE stained non-OA sample
—Figure 3 in R01 AR070431–01A1 to falsely represent IL–1β stained OA sample
• Figure 8A representing ADAMTS5 in non-OA and OA samples in:
—Figure 1A in R01 AG056623–01 to falsely represent p16 stained samples
• Figure 8A, two images representing matrix metalloproteinase 13 (MMP–13) and ADAMTS5 of OA samples in:
—Figure 3 in R01 AR070431–01A1 to

falsely represent NLRP3 or cleaved caspase 1
—Figure 1A in R01 AG056623–01 to falsely represent p21 and p16

- Figure 8B, two images in sham or destabilization of the medial meniscus (DMM) operated mouse representing:
  —MMP–13 reused and relabeled in Figure 1B in R01 AG056623–01 to falsely represent p21
  —ADAMTS5 reused and relabeled in Figure 1B in R01 AG056623–01 to falsely represent p16

7. Respondent reported falsified photomicrographs of non-OA or OA human cartilage explants presented in Figure 3 in R01 AR070431–01A1 that were reused and relabeled representing:

- Cleaved caspase 3 to falsely represent β-gal staining in Figure 1A in R01 AG056623–01
- NLRP3 or cleaved caspase-1 staining of non-OA human cartilage to falsely represent p21 and p16 in Figure 1A in R01 AG056623–01

8. Respondent reported falsified photomicrographs from the following published papers that were reused and relabeled to falsely represent unrelated experimental results in NIH grant applications:

- Green tea polyphenol treatment is chondroprotective, anti-inflammatory and palliative in a mouse post-traumatic osteoarthritis model. *Arthritis Res Ther.* 2014 Dec 17;16(6):508; doi: 10.1186/sl3075–014–0508-y (hereafter referred to as ''*Arthritis Res Ther.* 2014''). Erratum in: *Arthritis Res Ther.* 2019, Jan 3;21(1):1; doi: 10.1186/s13075–018–1791–9.
- Curcumin slows osteoarthritis progression and relieves osteoarthritis-associated pain symptoms in a post-traumatic osteoarthritis mouse model. *Arthritis Res Ther.* 2016 Jun 3; 18(1):128; doi: 10.1186/s13075–016–1025-y (hereafter referred to as ''*Arthritis Res Ther.* 2016'').
- Procyanidins Mitigate Osteoarthritis Pathogenesis by, at Least in Part, Suppressing Vascular Endothelial Growth Factor Signaling. *Int. J. Mol. Sci.* 2016, 17:2065; doi:10.3390/ijms17122065 (hereafter referred to as ''*Int. J. Mol. Sci.* 2016'').

Specifically, in:

- R01 AR070431–01A1, Respondent reported a falsified image panel that was reused and relabeled from:

—*Arthritis Res Ther.* 2016:

- Figure 6A representing type II collagen cleavage epitope (Col2–3/4 M) vehicle control to falsely represent aggrecan cleavage in DMM WT in Figure 2E in R01 AR070431–01A1
- Figure 6D representing ADAMTS5 staining of a vehicle control twice in Figure 2F in R01 AR070431–01A1 to falsely represent IL–1β and cleaved caspase staining

—*Arthritis Res Ther.* 2014:

- Figure 2C representing Col2–3/4 M in vehicle treated sham operated mice twice in Figures 2E and 2F in R01 AR070431–01A1 to falsely represent cleaved caspase and IL–1β respectively in sham operated WT mice
- Figure 2C representing Col2–3/4 M in epigallocatechin3-gallate (EGCG) treated DMM mice in Figure 2E in R01 AR070431–01A1 to falsely represent Col2–3/4 M in Panx1 KO DMM mice
- Figure 3A representing cleaved aggrecan in sham operated EGCG treated mice in Figure 2E in R01 AR070431–01A1 to falsely represent cleaved aggrecan in sham operated untreated WT mice
- Figure 3C representing cleaved aggrecan in DMM WT mice treated with EGCG in Figure 2E in R01 AR070431–01A1 to falsely represent cleaved aggrecan in DMM Panx1 KO mice
- Figure 4A representing MMP–13 in sham operated EGCG treated mice in Figure 4E in R01 AR070431–01A1 to falsely represent antibody-staining control
- Figure 4C representing MMP–13 in sham operated, vehicle treated mice in:
  ➢Figure 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent ADAMTS5 staining in Pax1 KO DMM mice
  ➢Figure 2F in R01 AR074802–01 and R01 AR070431–01A1 to falsely represent NLRP3 staining of Pax1 KO DMM
- Figure 4C representing MMP–13 in DMM vehicle treated mice in:
  ➢Figure 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent MMP–13 in DMM WT mice
  ➢Figure 2F in R01 AR074802–01 and R01 AR070431–01A1 to falsely represent NLRP3 in DMM WT mice
- Figure 5C representing ADAMTS5 in sham operated EGCG treated mouse twice in Figures 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent ADAMTS5 in sham operated WT mice
- Figure 5C representing ADAMTS5 in vehicle treated DMM operated mouse sample twice in Figures 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent ADAMTS5 in DMM WT mouse sample
- R01 AG056623–01, Respondent reported a falsified image panel that was reused and relabeled from:

—*Int. J. Mol. Sci.* 2016:

- Figure 1A representing cartilage from ''sham'' wildtype C57BL/6 mice treated with oral PBS in Figure 2B in R01 AG056623–01 to represent knee cartilage from ''sham'' Col2a1CreERTxCited2fl/fl mice injected with corn oil without tamoxifen

—*Arthritis Res Ther.* 2014:

- Figure 4A representing MMP–13 in vehicle-treated mice 4-weeks post DMM surgery in:
  ➢ Figure 8 in R01 AG056623–01 to falsely represent p21 in control mice following DMM surgery
  ➢ Figure 3 in R01 AG056623–01 to falsely represent β-gal in Cited2 KO mice
- Figure 4A representing MMP–13 in EGCG -treated mice 4-weeks post DMM surgery Figure 8 in R01 AG056623–01 to falsely represent p21 following DMM surgery in mice overexpressing Cited2
- Figure 4C representing MMP–13 in vehicle-treated mice 8-weeks post sham surgery in Figure 2C in R01 AG056623–01 to falsely represent p21 staining in Cited2 KO mice following DMM surgery
- Figure 4C representing MMP–13 in in EGCG-treated mice 8-weeks post DMM surgery in Figure 2C in R01 AG056623–01 to falsely represent p21 in oil-injected control mice for Cited2 was conditionally deleted in cartilage by injection of corn oil without Tamoxifen
- Figure 5A representing ADAMTS5 in vehicle-treated DMM-induced OA mice in:
  ➢ Figure 8 in R01 AG056623–01 to falsely represent p16 in control mice following DMM surgery
  ➢ Figure 2C in R01 AG056623–01 to falsely represent β-gal in Cited2 KO mice
  ➢ Figure 3 in R01 AG056623–01 to falsely represent β-gal in WT control mice with conditional deletion of Cited2 in cartilage
- Figure 5C representing ADAMTS5 in vehicle-treated DMM-induced OA mice in:
  ➢ Figure 8 in R01 AG056623–01 to falsely represent Cited2 in Cited-overexpressing mice as well as β-gal in control mice following DMM surgery
  ➢ Figure 2C in R01 AG056623–01 to falsely represent p16 staining in Cited2 KO mice
  ➢ Figure 8 in R01 AG056623–01 to falsely represent p16 in control mice following DMM surgery

Respondent neither admits nor denies ORI's findings of research misconduct.

The parties entered into a Voluntary Settlement Agreement (Agreement) to conclude this matter without further expenditure of time, finances, or other resources. The settlement is not an admission of liability on the part of the Respondent.

Respondent voluntarily agreed to the following:

(1) Respondent will have his research supervised for a period of twelve (12) years beginning on March 1, 2022 (the ''Supervision Period''). Prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) The requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract is supported by the research record.

(3) During the Supervision Period, Respondent will ensure that any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide certification to ORI at the conclusion of the Supervision Period that his participation was not proposed on a research project for which an application for PHS support was submitted and that he has not participated in any capacity in PHS-supported research.

(5) During the Supervision Period, Respondent will exclude himself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

Dated: March 21, 2022.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2022–06247 Filed 3–23–22; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request. 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment.

DATES: Comments on the ICR must be received on or before May 23, 2022.

ADDRESSES: Submit your comments to *Sherrette.Funn@hhs.gov* or by calling (202) 795–7714.

FOR FURTHER INFORMATION CONTACT: When submitting comments or requesting information, please include the document identifier 0990–New–60D and project title for reference, to Sherrette A. Funn, email: *Sherrette.Funn@hhs.gov,* or call (202) 795–7714 the Reports Clearance Officer.

SUPPLEMENTARY INFORMATION: Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Title of the Collection: Health Care Readiness Collections.

Type of Collection: Revision.

OMB No.: 0990–0391.

Abstract: The Office of the Assistant Secretary for Preparedness and Response (ASPR) in the Department of Health and Human Services (HHS) administers a portfolio of health care readiness programs and activities, including the Hospital Preparedness Program (HPP) authorized under Section 319C–2 of the Public Health Service (PHS) Act. HPP is a cooperative agreement program that strengthens national health care readiness, supports health care resilience, and enables rapid recovery.

Through the Health Care Readiness Portfolio, ASPR provides awards to 62 health departments in all 50 states, territories, freely associated states, and four metropolitan areas to support the health care delivery system through over 320 health care coalitions (HCCs) with nearly 45,000 members. An HCC is a network of public and private organizations that partner to conduct planning, training, and preparedness activities within a state or locality, building that area's overall readiness.

ASPR's Health Care Readiness Portfolio aligns preparedness activities across health care and also includes the Regional Disaster Health Response System (RDHRS) demonstration sites that establish regional partnerships to develop promising practices in coordinating disaster readiness and regional medical response; the National Special Pathogen System, a nationwide systems-based network approach for special pathogen care; workforce capacity activities; and other initiatives.

ASPR collects data annually to understand how federal funding has been spent, measure performance, and monitor adherence with program requirements. These data additionally support ASPR to develop funding opportunities, improve programmatic operations, and inform decision-making. ASPR is also responsible for allocating and monitoring emergency and supplemental funding, understanding recipient and sub-recipient real-time needs, and maintaining situational awareness of the current state of preparedness, response, and recovery activities. When circumstances require rapid information gathering, it is necessary for ASPR to also collect data

on an ad hoc basis to advance these goals. ASPR is changing the title of this collection from ''Hospital Preparedness Program Data Collection'' to ''Health Care Readiness Collections'' to better reflect the scope of data collected under this approval.

ANNUALIZED BURDEN HOUR TABLE

Forms (If necessary)	Respondents (If necessary)	Number of respondents	Number of responses per respondents	Average burden per response	Total burden hours
HPP Recipient End-of-Year Performance Report Collection.	HPP Recipients	62	1	21	1,302
HPP Sub-Recipient End-of-Year Performance Report Collection.	HPP Sub-Recipients	321	1	4	1,284
Ad hoc Information Collections	ASPR Health Care Readiness Portfolio Stakeholders.	5,296	1	1	5,296
Total			3		7,882

Sherrette A. Funn,

Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.

[FR Doc. 2022–06255 Filed 3–23–22; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Research Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Findings of research misconduct have been made against Daniel Leong, Ph.D. (Respondent), formerly a Research Technician, Albert Einstein College of Medicine (AECM). Respondent engaged in research misconduct in research supported by U.S. Public Health Service (PHS) funds, specifically National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS), National Institutes of Health (NIH), grant R01 AR050968 and National Heart, Lung, and Blood Institute (NHLBI), NIH, grant P01 HL110900. The administrative actions, including debarment for a period of four (4) years followed by supervision for a period of four (4) years, were implemented beginning on February 28, 2022, and are detailed below.

FOR FURTHER INFORMATION CONTACT: Wanda K. Jones, Dr.P.H., Acting Director, Office of Research Integrity, 1101 Wootton Parkway, Suite 240, Rockville, MD 20852, (240) 453–8200.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Research Integrity (ORI) has taken final action in the following case:

Daniel Leong, Ph.D., Albert Einstein College of Medicine: Based on the report of an investigation conducted by AECM and analysis conducted by ORI in its oversight review, ORI found that Dr. Daniel Leong, formerly a Research Technician, AECM, engaged in research misconduct in research supported by PHS funds, specifically NIAMS, NIH, grant R01 AR050968 and NHLBI, NIH, grant P01 HL110900.

ORI found that Respondent engaged in research misconduct by intentionally, knowingly, or recklessly falsifying and/or fabricating data included in sixteen (16) grant applications submitted for PHS funds:

- R01 AR065563–01, ''CITED2 and Chondroprotection,'' submitted to NIAMS, NIH, on 02/05/2013.
- R01 AR066009–01, ''Remote Loading for Osteoarthritis,'' submitted to NIAMS, NIH, on 06/04/2013.
- R01 AR065563–01A1, ''CITED2 and Chondroprotection,'' submitted to NIAMS, NIH, on 11/05/2014.
- R41 AR070695–01, ''A novel product for tendinopathy treatment,'' submitted to NIAMS, NIH, on 01/05/2015.
- R01 AG069693–01, ''Chondrocyte fate regulation and cartilage protection,'' submitted to National Institute on Aging (NIA), NIH, on 06/05/2015.
- R01 AG039561–06, ''Human tendon stem progenitor cell aging and regeneration,'' submitted to NIA, NIH, on 03/15/2016 (original grant funding from 08/15/2012–04/30/2018).
- R43 AT009414–01, ''A novel nutraceutical drug for tendinopathy treatment,'' submitted to National Center for Complementary and Alternative Medicine (NCCAM), NIH, on 04/05/2016.
- R01 AR070431–01A1, ''The role of Panx1 in the pathogenesis and pain of osteoarthritis,'' submitted to NIAMS, NIH, on 07/19/2016.
- R41 AG056246–01A1, ''A novel product for tendinopathy treatment,'' submitted to NIA, NIH, on 09/06/2016, funded from 09/15/2017–08/31/2019.
- R01 AG056623–01, ''Chondrocyte fate regulation and osteoarthritis,'' submitted to NIA, NIH, on 10/05/2016.
- R01 AR072038–01, ''MSC-derived exosomes and tendon disorders,'' submitted to NIAMS, NIH, on 10/05/2016.
- R43 AT009414–01A1, ''A novel nutraceutical drug for tendinopathy treatment,'' submitted to NCCAM, NIH, on 04/05/2017, funded from 08/01/2018–07/31/2020.
- R01 AR073194–01, ''Chondrocyte fate regulation and cartilage protection,'' submitted to NIAMS, NIH, on 06/05/2017.
- R01 AR074802–01, ''The role of Panx1 in the pathogenesis and pain of osteoarthritis,'' submitted to NIAMS, NIH, on 04/02/2018.
- R01 AR074802–01A1, ''The role of Panx1 in the pathogenesis and pain of osteoarthritis,'' submitted to NIAMS, NIH, on 08/01/2018.
- R44 AG065089–01, ''Botanical drug for spontaneous osteoarthritis,'' submitted to NIA, NIH, on 01/07/2019.

ORI found that Respondent intentionally, knowingly, or recklessly falsified and/or fabricated Western blot and histological image data for chronic deep tissue conditions including osteoarthritis (OA) and tendinopathy in murine models by reusing image data, with or without manipulating them to conceal their similarities, and falsely relabeling them as data representing different experiments in fifty (50) figures included in sixteen (16) PHS grant applications. In the absence of reliable image data, the figures, quantitative data in associated graphs purportedly derived from those images, statistical analyses, and related text also are false.

Specifically, ORI found that:

1. Respondent reused and relabeled Western blot images from the same source to falsely represent different proteins and/or experimental results in:

• Figure 4B in R01 AR065563–01 and R01 AR065563–01A1 and Figure 11 in R01 AR069693–01, specifically:
—''β-actin'' panel for ''Cartilage'' and ''β-actin'' panel for ''Liver'' are the same
—''β-actin'' panel for ''Bone'' and ''β-actin'' panel for ''Spleen'' are the same
—''Cited2'' blot band for Cartilage in ''WT'' and ''Sham'' are the same
—''Cited2'' blot band for Bone in ''WT'' and ''Sham'' are the same
—''Cited2'' blot band for Liver in ''WT'' and ''Sham'' are the same
—''Cited2'' blot band for Spleen in ''WT'' and ''Sham'' are the same
• Figure 2A in R01 AG056623–01 and R44 AG065089–01 and Figure 1A in R01 AR073194–01, specifically:
—''β-actin'' panel for ''Cartilage'' and ''β-actin'' panel for ''Liver'' are the same
—Cited2 blot bands in ''WT'' and ''Sham'' within each of the three panels represent Cartilage, Bone, and Liver

2. From Figure 11C in R01 AR065563–01 and Figure 16 in R01 AR066009–01, Respondent copied blot panels representing rAAV-vector and rAAV–GFP in human cartilage explants, flipped, resized, added a lane to the left, and reused and relabeled the bands to falsely represent ''Sham'' and ''KO'' samples in conditional knock out of Cited2 gene in cartilage of adult mice in:

• Figure 4B in R01 AR065563–01
• Figure 4B in R01 AR065563–01A1
• Figure 11 in R01 AR069693–01
• Figure 2A in R01 AG056623–01
• Figure 1A in R01 AR073194–01
• Figure 2A in R44 AG065089–01

3. Respondent reused and relabeled the same photomicrographs of supraspinatus tendon tissue from tendinopathy rats exposed to different experimental conditions in:

• Figure 2A in R01 AR072038–01 to falsely represent overuse tendinopathy in rats treated with ex-ADSC–2D (control exosomes)
• Figure 2A in R01 AG039561–06 to falsely represent overuse tendinopathy nude rats with placebo treatment
• Figure 4A in R41 AR070695–01 to falsely represent overuse tendinopathy nude rats with placebo treatment
• Figure 3A in R43 AT009414–01 and R43 AT009414–01A1 to falsely represent collagenase induced Achilles tendinopathy in rats with placebo treatment

4. Respondent reused and relabeled the same photomicrographs in:

• Figure 2A in R01 AR072038–01 to falsely represent overuse tendinopathy in rats injected with ex-ADSC–3D
• Figure 1A in R01 AG039561–06 to falsely represent collagenase-induced tendinopathy in rats injected with Cited2 reprogrammed tendon stem/progenitor cells (TSPCs)

5. Respondent reused and relabeled photomicrographs from Figure 2C in R01 AR072038–01 representing cleaved collagen-1 stained supraspinatus tendon of overuse tendinopathy rats injected with placebo + ex-ADSC–2D to falsely represent:

• Supraspinatus tendon tissue of overuse tendinopathy in rats after placebo injection in:
—Figure 2C in R01 AR072038–01
—Figure 5D in R41 AG056246–01A1
—Figure 2B in R01 AG039561–06
• Achilles tendon tissue of collagenase-induced tendinopathy rats after placebo injection in Figure 3D in R43 AT009414–01

6. Respondent reused and relabeled photomicrographs of human cartilage explants presented in R01 AG069693–01. Specifically, Respondent reused image panels from R01 AG069693–01:

• Figure 12A representing NITEGE in non-arthritic (non-OA) sample in:
—Figure 11A in R01 AR065563–01, Figure 8A in R01 AG069693–01, and Figure 1A in R01 AG056623–01 to falsely represent NITEGE stained non-OA sample
—Figure 3 in R01 AR070431–01A1 to falsely represent IL–1β stained OA sample
• Figure 8A representing ADAMTS5 in non-OA and OA samples in:
—Figure 1A in R01 AG056623–01 to falsely represent p16 stained samples
• Figure 8A, two images representing matrix metalloproteinase 13 (MMP–13) and ADAMTS5 of OA samples in:
—Figure 3 in R01 AR070431–01A1 to falsely represent NLRP3 or cleaved caspase 1
—Figure 1A in R01 AG056623–01 to falsely represent p21 and p16
• Figure 8B, two images in sham or destabilization of the medial meniscus (DMM) operated mouse representing:
—MMP–13 reused and relabeled in Figure 1B in R01 AG056623–01 to falsely represent p21
—ADAMTS5 reused and relabeled in Figure 1B in R01 AG056623–01 to falsely represent p16

7. Respondent reused and relabeled photomicrographs of non-OA or OA human cartilage explants presented in Figure 3 in R01 AR070431–01A1 representing:

• Cleaved caspase 3 to falsely represent β-gal staining in Figure 1A in R01 AG056623–01
• NLRP3 or cleaved caspase-1 staining of non-OA human cartilage to falsely represent p21 and p16 in Figure 1A in R01 AG056623–01

8. Respondent reused and relabeled photomicrographs from the following published papers to falsely represent unrelated experimental results in NIH grant applications:

• Green tea polyphenol treatment is chondroprotective, anti-inflammatory and palliative in a mouse post-traumatic osteoarthritis model. *Arthritis Res Ther.* 2014 Dec 17;16(6):508; doi: 10.1186/sl3075–014–0508–y (hereafter referred to as ''*Arthritis Res Ther.* 2014''). Erratum in: *Arthritis Res Ther.* 2019, Jan 3;21(1):1; doi: 10.1186/s13075–018–1791–9.
• Curcumin slows osteoarthritis progression and relieves osteoarthritis-associated pain symptoms in a post-traumatic osteoarthritis mouse model. *Arthritis Res Ther.* 2016 Jun 3; 18(1):128; doi: 10.1186/s13075–016–1025-y (hereafter referred to as ''*Arthritis Res Ther.* 2016'').
• Procyanidins Mitigate Osteoarthritis Pathogenesis by, at Least in Part, Suppressing Vascular Endothelial Growth Factor Signaling. *Int. J. Mol. Sci.* 2016, 17:2065; doi:10.3390/ijms17122065 (hereafter referred to as ''*Int. J. Mol. Sci.* 2016'').

Specifically, in:

• R01 AR070431–01A1, Respondent reused an image panel from:
—*Arthritis Res Ther.* 2016:
▪ Figure 6A representing type II collagen cleavage epitope (Col2–3/4 M) vehicle control and relabeled to falsely represent aggrecan cleavage in DMM WT in Figure 2E in R01 AR070431–01A1
▪ Figure 6D representing ADAMTS5 staining of a vehicle control and relabeled twice in Figure 2F in R01 AR070431–01A1 to falsely represent IL–1β and cleaved caspase staining
—*Arthritis Res Ther.* 2014:
▪ Figure 2C representing Col2–3/4 M in vehicle treated sham operated mice and relabeled twice in Figures 2E and 2F in R01 AR070431–01A1 to falsely represent cleaved caspase and IL–1β respectively in sham operated WT mice
▪ Figure 2C representing Col2–3/4 M in epigallocatechin3-gallate (EGCG) treated DMM mice in Figure 2E in R01 AR070431–01A1 and relabeled to falsely represent Col2–3/4 M in Panx1 KO DMM mice
▪ Figure 3A representing cleaved aggrecan in sham operated EGCG

treated mice and relabeled in Figure 2E in R01 AR070431–01A1 to falsely represent cleaved aggrecan in sham operated untreated WT mice

- Figure 3C representing cleaved aggrecan in DMM WT mice treated with EGCG and relabeled in Figure 2E in R01 AR070431–01A1 to falsely represent cleaved aggrecan in DMM Panx1 KO mice
- Figure 4A representing MMP–13 in sham operated EGCG treated mice and relabeled in Figure 4E in R01 AR070431–01A1 to falsely represent antibody-staining control
- Figure 4C representing MMP–13 in sham operated, vehicle-treated mice and relabeled in:
  - ➢ Figure 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent ADAMTS5 staining in Pax1 KO DMM mice
  - ➢ Figure 2F in R01 AR070431–01A1 to falsely represent NLRP3 staining of Pax1 KO DMM mice
- Figure 4C representing MMP–13 in DMM vehicle treated mice and relabeled in:
  - ➢ Figure 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent MMP–13 in DMM WT mice
  - ➢ Figure 2F in R01 AR070431–01A1 to falsely represent NLRP3 in DMM WT mice
- Figure 5C representing ADAMTS5 in sham operated EGCG treated mouse and relabeled twice in Figure 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent ADAMTS5 in sham operated WT mice
- Figure 5C representing ADAMTS5 in vehicle treated DMM operated mouse sample and relabeled twice in Figure 2E in R01 AR074802–01 and R01 AR074802–01A1 to falsely represent ADAMTS5 in DMM WT mouse sample
- R01 AG056623–01, Respondent reused an image panel from:

—*Int.J. Mol. Sci.* 2016:

- Figure 1A representing cartilage from ''sham'' wildtype C57BL/6 mice treated with oral PBS and relabeled in Figure 2B in R01 AG056623–01 to falsely represent knee cartilage from ''sham'' Col2a1CreERTxCited2fl/fl mice injected with corn oil without tamoxifen

—*Arthritis Res Ther.* 2014:

- Figure 4A representing MMP–13 in vehicle-treated mice 4-weeks post DMM surgery and relabeled in:
  - ➢ Figure 8 in R01 AG056623–01 to falsely represent p21 in control mice following DMM surgery
  - ➢ Figure 3 in R01 AG056623–01 to falsely represent β-gal in Cited2 KO mice
- Figure 4A representing MMP–13 in EGCG -treated mice 4-weeks post DMM surgery and relabeled in Figure 8 in R01 AG056623–01 to falsely represent p21 following DMM surgery in mice overexpressing Cited2
- Figure 4C representing MMP–13 in vehicle-treated mice 8-weeks post sham surgery and relabeled in Figure 2C in R01 AG056623–01 to falsely represent p21 staining in Cited2 KO mice following DMM surgery
- Figure 4C representing MMP–13 in EGCG-treated mice 8-weeks post DMM surgery and relabeled in Figure 2C in R01 AG056623–01 to falsely represent p21 in oil-injected control mice with Cited2 conditional deletion in cartilage without Tamoxifen
- Figure 5A representing ADAMTS5 in vehicle-treated DMM-induced OA mice and relabeled in:
  - ➢ Figure 8 in R01 AG056623–01 to falsely represent p16 in control mice following DMM surgery
  - ➢ Figure 2C in R01 AG056623–01 to falsely represent β-gal in Cited2 KO mice
  - ➢ Figure 3 in R01 AG056623–01 to falsely represent β-gal in WT control mice with conditional deletion of Cited2 in cartilage
- Figure 5C representing ADAMTS5 in vehicle-treated DMM-induced OA mice and relabeled in:
  - ➢ Figure 8 in R01 AG056623–01 to falsely represent Cited2 in Cited-overexpressing mice, as well as β-gal in control mice following DMM surgery
  - ➢ Figure 2C in R01 AG056623–01 to falsely represent p16 staining in Cited2 KO mice
  - ➢ Figure 8 in R01 AG056623–01 to falsely represent p16 in control mice following DMM surgery

Respondent neither admits nor denies ORI's findings of research misconduct. The parties entered into a Voluntary Settlement Agreement (Agreement) to conclude this matter without further expenditure of time, finances, or other resources. The settlement is not an admission of liability on the part of the Respondent.

Respondent voluntarily agreed to the following:

(1) Respondent will exclude himself voluntarily for a period of four (4) years beginning on February 28, 2022 (the ''Exclusion Period'') from any contracting or subcontracting with any agency of the United States Government and from eligibility for or involvement in nonprocurement or procurement transactions referred to as ''covered transactions'' in 2 CFR parts 180 and 376 (collectively the ''Debarment Regulations''). At the conclusion of the Exclusion Period, Respondent agreed to have his research supervised for a period of four (4) years (the ''Supervision Period''). During the Supervision Period, prior to the submission of an application for PHS support for a research project on which Respondent's participation is proposed and prior to Respondent's participation in any capacity in PHS-supported research, Respondent will submit a plan for supervision of Respondent's duties to ORI for approval. The supervision plan must be designed to ensure the integrity of Respondent's research. Respondent will not participate in any PHS-supported research until such a supervision plan is approved by ORI. Respondent will comply with the agreed-upon supervision plan.

(2) During the Supervision Period, the requirements for Respondent's supervision plan are as follows:

i. A committee of 2–3 senior faculty members at the institution who are familiar with Respondent's field of research, but not including Respondent's supervisor or collaborators, will provide oversight and guidance. The committee will review primary data from Respondent's laboratory on a quarterly basis and submit a report to ORI at six (6) month intervals setting forth the committee meeting dates and Respondent's compliance with appropriate research standards and confirming the integrity of Respondent's research.

ii. The committee will conduct an advance review of each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved. The review will include a discussion with Respondent of the primary data represented in those documents and will include a certification to ORI that the data presented in the proposed application, report, manuscript, or abstract is supported by the research record.

(3) During the Supervision Period, Respondent will ensure that any institution employing him submits, in conjunction with each application for PHS funds, or report, manuscript, or abstract involving PHS-supported research in which Respondent is involved, a certification to ORI that the data provided by Respondent are based on actual experiments or are otherwise legitimately derived and that the data, procedures, and methodology are accurately reported in the application, report, manuscript, or abstract.

(4) If no supervision plan is provided to ORI, Respondent will provide

certification to ORI at the conclusion of the Supervision Period that his participation was not proposed on a research project for which an application for PHS support was submitted and that he has not participated in any capacity in PHS-supported research.

(5) During the Exclusion and Supervision Periods, Respondent will exclude himself voluntarily from serving in any advisory or consultant capacity to PHS including, but not limited to, service on any PHS advisory committee, board, and/or peer review committee.

Dated: March 21, 2022.

Wanda K. Jones,

Acting Director, Office of Research Integrity, Office of the Assistant Secretary for Health.

[FR Doc. 2022–06246 Filed 3–23–22; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Peter Tung at 240–669–5483 or *peter.tung@nih.gov.* Licensing information and copies of the patent applications listed below may be obtained by communicating with the indicated licensing contact at the Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases, 5601 Fishers Lane, Rockville, MD 20852; tel. 301–496–2644. A signed Confidential Disclosure Agreement will be required to receive copies of unpublished patent applications.

SUPPLEMENTARY INFORMATION: Technology description follows:

Novel Compositions of Matter Comprising Stabilized Coronavirus Antigens and Their Use

Description of Technology

Using a computational design methodology, SARS-CoV–2 spike proteins containing engineered amino acid changes to the receptor binding domain (RBD) were designed. These engineered spike proteins improved the immune response upon immunization of animals. An engineered RBD was also expressed at greater yield, had increased temperature stability, and improved the immune response upon immunization of animals. Specifically, the disclosed RBD designs can be produced approximately 7 times more efficiently than the native sequence, facilitating vaccine manufacturing on a global scale. The disclosed designs also have up to 10 °C higher thermal stability than the native sequence, suggesting enhanced stability during storage and when in the body. Finally, immunization of animals with the disclosed antigens produces up to 10-fold higher levels of blocking antibodies than the native sequence and 30-fold higher levels of pseudoviral neutralizing antibodies. An additional RBD protein has been engineered to eliminate the need for glycosylation, facilitating production and single-component nanoparticle display of the antigen. The engineered receptor binding domain (RBD) and spike protein antigens produce significant improvements in pre-clinical animal models and may be used to develop improved coronavirus vaccines.

This technology is available for licensing for commercial development in accordance with 35 U.S.C. 209 and 37 CFR part 404, as well as for further development and evaluation under a research collaboration.

Potential Commercial Applications

- Novel SARS-CoV–2 vaccine.
- Improved SARS-CoV–2 diagnostics using stabilized antigens.
- Method of designing vaccine candidates or stabilized antigens by computational. optimization of amino acid identity, followed by additional sequence comparison and selection (Stabilizer for Protein Expression and Epitope Design (SPEEDesign)).

Competitive Advantages

- Novel SARS-CoV–2 spike vaccine with improved breadth and duration of protection.
- Novel RBD monomer and nanoparticle designs that are more immunogenic and stable than the naturally occurring RBD sequence.
- Computational method of designing vaccine antigens.

Development Stage

- Pre-clinical testing of the novel immunogens in non-human primates.

Inventors: Dr. Niraj Tolia and Dr. Thayne Dickey, both of NIAID.

Publications: ''Design of the SARS-CoV–2 RBD vaccine antigen improves neutralizing antibody response'', *https://doi.org/10.1101/2021.05.09.443238.*

Intellectual Property: HHS Reference No. E–045–2021–0–US–01—U.S. Provisional Application No. 63/200,194, filed February 18, 2021; PCT/US2022/070744, filed February 1, 2022

Licensing Contact: To license this technology, please contact Peter Tung at 240–669–5483 or *peter.tung@nih.gov.*

Collaborative Research Opportunity: The National Institute of Allergy and Infectious Diseases is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the invention. For collaboration opportunities, please contact Peter Tung at 240–669–5483; *peter.tung@nih.gov.*

Dated: March 17, 2022.

Surekha Vathyam,

Deputy Director, Technology Transfer and Intellectual Property Office, National Institute of Allergy and Infectious Diseases.

[FR Doc. 2022–06174 Filed 3–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Antimicrobial Resistant Infections.

Date: April 19, 2022.

Time: 1:30 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pauline Cupit, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–3275, *cupitcunninghpm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 18, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–06215 Filed 3–23–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2020–0093]

Port Access Route Study: Seacoast of North Carolina Including Offshore Approaches to the Cape Fear River and Beaufort Inlet, North Carolina

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability of draft report; request for comments.

SUMMARY: On March 18, 2020, the Coast Guard published a notice of study and request for comments announcing a Port Access Route Study (PARS) for the Seacoast of North Carolina Including Offshore Approaches to the Cape Fear River and Beaufort Inlet, North Carolina. This notice announces the availability of a draft report for public review and comment. We seek your comments on the content, proposed routing measures, and development of the report. The recommendations of the study may lead to future rulemakings or appropriate international agreements.

DATES: Your comments and related material must reach the Coast Guard on or before April 25, 2022.

ADDRESSES: You may submit comments identified by docket number USCG–2020–0093 using the Federal portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice or study, call or email Mr. Matthew Creelman, Fifth Coast Guard District (dpw), U.S. Coast Guard; telephone (757) 398–6225, email *Matthew.K.Creelman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

AIS Automated Information System
DHS Department of Homeland Security
FR Federal Register
PARS Port Access Route Study
ACPARS Atlantic Coast Ports Access Route Study
U.S.C. United States Code

II. Background and Purpose

The Ports and Waterways Safety Act (46 U.S.C. 70003(c)) requires the Coast Guard to conduct a PARS, *i.e.,* a study of potential traffic density and the need for safe access routes for vessels. Through the study process, the Coast Guard coordinates with Federal, State, local, tribal and foreign state agencies (as appropriate) to consider the views of maritime community representatives, environmental groups, and other interested stakeholders. The primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe access routes with other reasonable waterway uses such as construction and operation of renewable energy facilities and other uses of the Atlantic Ocean in the study area.

In 2019, the Coast Guard announced a supplemental study of routes used by all vessels to access ports on the Atlantic Coast of the United States (84 FR 9541, March 15, 2019). This posting announced PARS for specific port approaches and international transit areas along the Atlantic Coast. The purpose of the supplemental studies is to align the Atlantic Coast Port Access Route Study (ACPARS) (81 FR 13307, March 14, 2016) with port approaches. The ACPARS analyzed the Atlantic Coast waters seaward of existing port approaches within the U.S. Exclusive Economic Zone and was finalized in 2017 (82 FR 16510, April 5, 2017).

The purpose of this notice is to announce the availability of the draft PARS examining the seacoast of North Carolina and the offshore approaches to the Cape Fear River and Beaufort Inlet, North Carolina. We encourage you to participate in the study process by submitting comments in response to this notice. This PARS used Automated Information System (AIS) data and information from stakeholders to identify and verify customary navigation routes as well as potential conflicts involving alternative activities, such as wind energy generation and offshore mineral exploitation and exploration, off the seacoast of North Carolina and in the offshore approaches to the Cape Fear River and Beaufort Inlet, North Carolina.

The study area extends approximately 200 nautical miles seaward of Cape Fear including the offshore area of North and South Carolina used by commercial and public vessels transiting to and from these ports. An illustration showing the study area is available in the docket where indicated under **ADDRESSES**. Additionally, the study area is available for viewing on the Mid-Atlantic Ocean Data Portal at *http://portal.midatlanticocean.org/visualize/.* See the ''Maritime'' portion of the Data Layers section.

On March 18, 2020, the Coast Guard published a Notice of Study; request for comments entitled ''Port Access Route Study: Seacoast of North Carolina Including Offshore Approaches to the Cape Fear River and Beaufort Inlet, North Carolina'' in the **Federal Register** (85 FR 15487). The initial comment period closed on May 18, 2020.

III. Information Requested

PARS are the means by which the Coast Guard determines the need to establish traffic routing measures or shipping safety fairways to reduce the risk of collision, allision, and grounding, and their impact on the environment; increase the efficiency and predictability of vessel traffic; and preserve the paramount right of navigation while continuing to allow for other reasonable waterway uses. The study analyzes current routing measures around the approaches to the Cape Fear River and Beaufort Inlet, North Carolina, and proposes an adequate way to manage forecasted maritime traffic growth and to promote navigation safety. The study also reviewed coastal port access from the seacoasts of North and South Carolina within the study area and the co-dependent use of the waters in support of future development.

The Coast Guard received two discrete comments in response to our **Federal Register** notice and other outreach efforts. We received one additional comment, which was a duplicate of a previously submitted comment. All comments and supporting documents are available in a public docket and can be viewed at *http://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2020–0093 in the ''SEARCH'' box and click ''SEARCH.'' Next, look for this document in the Search Results column, and click on it.

As a result of the data analysis within this study, and considering the

comments received, the Coast Guard proposes four additional measures for consideration by the public: One precautionary area and three shipping safety fairways. We seek your input on these proposals and welcome comment on any impact to vessel transit time, commercial fishing activity, recreational activity, and/or navigation safety. All comments received will be reviewed and considered before a final version of the PARS is announced in the **Federal Register**. This notice is published under the authority of 46 U.S.C. 70004 and 5 U.S.C. 552(a).

IV. Public Participation and Request for Comments

We encourage you to submit comments to this notice of availability through the Federal portal at *https://www.regulations.gov.* To do so, go to *https://www.regulations.gov,* type USCG–2020–0093 in the ''SEARCH'' box and click ''SEARCH.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. In your submission, please include the docket number for this notice of availability and provide a reason for each suggestion or recommendation. If your material cannot be submitted using *https://www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this notice of inquiry as being available in the docket, find the docket as described in the previous paragraph, and then select ''Supporting & Related Material'' in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the *https://www.regulations.gov* Frequently Asked Questions web page. We review all comments received, but we may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

We accept anonymous comments. Comments we post to *https://www.regulations.gov* will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

This document is issued under authority of 5 U.S.C. 552(a).

Dated: March 8, 2022.

Richard E. Batson,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 2022–06235 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket Number USCG–2020–0172]

Port Access Route Study: Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability.

SUMMARY: The Coast Guard announces the completion of the Port Access Route Study for the Seacoast of New Jersey Including Offshore Approaches to the Delaware Bay, Delaware. The study examined existing shipping routes and waterway uses, to include the potential for offshore energy development, in the study area to evaluate the need for establishing or changing existing vessel routing measures. This notice summarizes the study's recommendation.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notice or study, call or email Mr. Matthew Creelman, Marine Planner at Fifth Coast Guard District, telephone (757) 398–6225, email *Matthew.K.Creelman2@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

ACPARS Atlantic Coast Ports Access Route Study
BOEM Bureau of Ocean Energy Management
DHS Department of Homeland Security
FR Federal Register
IMO International Maritime Organization
NEPA National Environmental Policy Act
OREI Offshore Renewable Energy Installation
PARS Port Access Route Study
SAR Search and Rescue
USCG United States Coast Guard

II. Background and Purpose

We conducted this Port Access Route Study (PARS) following a Notice of Study, published in the **Federal Register** on May 5, 2020. There was a 60-day public comment period, as well as other outreach efforts identified in Section C of the study. During the comment period the USCG received 32 comments in response to the notice.

We conducted two (2) public meetings, as published in the **Federal Register** (85 FR 64507), on September 13, 2020. Audio recordings of both meetings are contained in the public docket as annotated in Section C of the study.

On September 24, 2021, we published a Notice of Availability of the draft study in the **Federal Register** (86 FR 53089) with a 30-day public comment period and a request for public comment.

During the 30-day public comment period, the USCG received 15 comments in response to our draft study. All comments and supporting documents are available in the public docket and can be viewed at *https://www.regulations.gov.* To view documents, in the ''Search'' box insert ''USCG–2020–0172'' and click ''Search''.

The goal of the study is to enhance navigational safety in the study area by examining existing shipping routes and waterway uses. We have undertaken measures to (1) determine what, if any, navigational safety concerns exist with vessel transits in the study area; (2) determine whether to recommend changes to enhance navigational safety by examining existing shipping routes and all other waterway uses; and (3) reconcile any other proposed changes with other reasonable waterway uses.

III. Study Recommendations

The recommendations of this PARS are based on the data analysis for historical vessel traffic patterns, comments received to the docket, public outreach, and consultation with other government agencies and stakeholders. Recommendations in the study include:

1. Submit proposals to the IMO to create precautionary areas offshore from the entrance to the Delaware River where shipping safety fairways and traffic separation schemes intersect.

2. Submit proposals to the IMO to extend the Traffic Separation Schemes in the approach to the Delaware River beyond any OREI lease areas adjacent to the approaches.

3. Submit a proposal to the IMO to extend the two-way route along the New Jersey coast across the entrance of the Delaware Bay and along the Delaware coast.

4. Amend the proposed Shipping Safety Fairways along the Atlantic Coast to separate the Cape Charles to Montauk Point Fairway into a Cape Charles to Delaware Bay Fairway and a Barnegat to Narragansett Fairway.

5. Create a New Jersey to New York Fairway and include this in the Shipping Safety Fairways along the Atlantic Coast.

6. Establish a Fairway Anchorage adjacent to the Southeastern Traffic Separation Scheme to accommodate future needs for safe anchorage around OREI.

IV. Summary of Changes

Recommendations in Section F were expanded to include a general notice to mariners on navigation safety around OREI.

The table of coordinates was removed in an effort to avoid confusion. Detailed coordinates for proposed routing measures, fairways, and anchorage grounds will be announced in future rulemakings.

A statement acknowledging the impact of OREI on SAR was included in Section F to address future actions necessary to ensure operational units revise plans to incorporate in the future.

A section summarizing comments to the draft report from the public was added as a new Section G and subsequent sections were re-labeled to incorporate this addition.

V. Future Actions

The USCG will continue to serve as a NEPA cooperating agency to the Bureau of Ocean Energy Management's (BOEM) environmental review of each proposed OREI project. In that role, the USCG will evaluate the navigational safety risks of each proposal on a case-by-case basis.

The final study will be submitted to the Coast Guard's Office of Navigation Systems (CG–NAV–2) for consideration and to inform the Coast Guard's ongoing efforts to establish shipping safety fairways along the Atlantic Coast, which can be found at 85 FR 37034.

The final study is available for viewing and download from the **Federal Register** docket at *http://www.regulations.gov* or the USCG Navigation Center website at *https://www.navcen.uscg.gov/?pageName=PARSReports.*

Dated: March 18, 2022.

Laura M. Dickey,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 2022–06228 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2020–0016]

Meetings To Implement Pandemic Response Voluntary Agreement Under Section 708 of the Defense Production Act

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Announcement of meetings.

SUMMARY: The Federal Emergency Management Agency (FEMA) is holding meetings under the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to Respond to COVID–19 and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to Respond to COVID–19, in order to implement the Voluntary Agreement for the Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic.

DATES:

- Thursday, March 24, 2022, from 1 p.m. to 3 p.m. Eastern Time (ET).
- Thursday, April 7, 2022, from 1 p.m. to 3 p.m. ET.

FOR FURTHER INFORMATION CONTACT: Robert Glenn, FEMA Office of Response and Recovery's Office of Business, Industry, and Infrastructure Integration, via email at *OB3I@fema.dhs.gov* or via phone at (202) 212–1666.

SUPPLEMENTARY INFORMATION: Notice of these meetings is provided as required by section 708(h)(8) of the Defense Production Act (DPA), 50 U.S.C. 4558(h)(8), and consistent with 44 CFR part 332.

The DPA authorizes the making of ''voluntary agreements and plans of action'' with representatives of industry, business, and other interests to help provide for the national defense.[1] The President's authority to facilitate voluntary agreements with respect to responding to the spread of COVID–19 within the United States was delegated to the Secretary of Homeland Security in Executive Order 13911.[2] The Secretary of Homeland Security further delegated this authority to the FEMA Administrator.[3]

On August 17, 2020, after the appropriate consultations with the Attorney General and the Chairman of the Federal Trade Commission, FEMA completed and published in the **Federal Register** a ''Voluntary Agreement, Manufacture and Distribution of Critical Healthcare Resources Necessary to Respond to a Pandemic'' (Voluntary Agreement).[4] Unless terminated earlier, the Voluntary Agreement is effective until August 17, 2025, and may be extended subject to additional approval by the Attorney General after consultation with the Chairman of the Federal Trade Commission. The Agreement may be used to prepare for or respond to any pandemic, including COVID–19, during that time.

On May 24, 2021, four additional plans of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Diagnostic Test Kits and other Testing Components to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Drug Products, Drug Substances, and Associated Medical Devices to respond to COVID–19, the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Devices to respond to COVID–19, and the Plan of Action to Establish a National Strategy for the Manufacture, Allocation, and Distribution of Medical Gases to respond to COVID–19—were finalized.[5] These plans of action established several sub-committees under the Voluntary Agreement, focusing on different aspects of each plan of action.

On October 15, 2021, the sixth plan of action under the Voluntary Agreement—the Plan of Action to Establish a National Strategy for the Coordination of National Multimodal Healthcare Supply Chains to Respond to COVID–19—was finalized.[6] This plan of action established several sub-committees under the Voluntary Agreement, focusing on different transportation categories.

The meetings are chaired by the FEMA Administrator's delegates from the Office of Response and Recovery (ORR) and Office of Policy and Program Analysis (OPPA), attended by the Attorney General's delegates from the U.S. Department of Justice, and attended by the Chairman of the Federal Trade Commission's delegates. In implementing the Voluntary Agreement, FEMA adheres to all procedural requirements of 50 U.S.C. 4558 and 44 CFR part 332.

Meeting Objectives: The objectives of the meetings are as follows:

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[1] 50 U.S.C. 4558(c)(1).

[2] 85 FR 18403 (Apr. 1, 2020).

[3] DHS Delegation 09052, Rev. 00.1 (Apr. 1, 2020); DHS Delegation Number 09052 Rev. 00 (Jan. 3, 2017).

[4] 85 FR 50035 (Aug. 17, 2020). The Attorney General, in consultation with the Chairman of the Federal Trade Commission, made the required finding that the purpose of the voluntary agreement may not reasonably be achieved through an agreement having less anticompetitive effects or without any voluntary agreement and published the finding in the **Federal Register** on the same day. 85 FR 50049 (Aug. 17, 2020).

[5] *See* 86 FR 27894 (May 24, 2021). *See also* 86 FR 28851 (May 28, 2021).

[6] *See* 86 FR 57444 (Oct. 15, 2021). *See also* 87 FR 6880 (Feb. 7, 2022).

1. Convene the Requirements Sub-Committees under the Medical Devices and Drug Products/Drug Substances Plans of Action to establish priorities related to the COVID–19 response under the Voluntary Agreement.

2. Gather Requirements Sub-Committee Participants and Attendees to ask targeted questions for situational awareness.

3. Identify pandemic-related information gaps and areas that merit sharing by holding quarterly meetings of the Requirements Sub-Committees with key stakeholders.

4. Identify potential Objectives and Actions that should be completed under the Requirements Sub-Committees.

Meetings Closed to the Public: By default, the DPA requires meetings held to implement a voluntary agreement or plan of action be open to the public.[7] However, attendance may be limited if the Sponsor[8] of the Voluntary Agreement finds that the matter to be discussed at a meeting falls within the purview of matters described in 5 U.S.C. 552b(c), such as trade secrets and commercial or financial information.

The Sponsor of the Voluntary Agreement, the FEMA Administrator, found that these meetings to implement the Voluntary Agreement involve matters which fall within the purview of matters described in 5 U.S.C. 552b(c) and the meetings are therefore closed to the public.

Specifically, these meetings may require participants to disclose trade secrets or commercial or financial information that is privileged or confidential. Disclosure of such information allows for meetings to be closed to the public pursuant to 5 U.S.C. 552b(c)(4).

The success of the Voluntary Agreement depends wholly on the willing participation of the private sector participants. Failure to close these meetings to the public could reduce active participation by the signatories due to a perceived risk that sensitive company information could be released to the public. A public disclosure of a private sector participant's information executed prematurely could reduce trust and support for the Voluntary Agreement.

A resulting loss of support by the participants for the Voluntary Agreement would significantly hinder the implementation of the Agency's objectives. Thus, these meeting closures are permitted pursuant to 5 U.S.C. 552b(c)(9)(B).

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–06252 Filed 3–23–22; 8:45 am]

BILLING CODE 9111–19–P

[7] *See* 50 U.S.C. 4558(h)(7).

[8] ''[T]he individual designated by the President in subsection (c)(2) [of section 708 of the DPA] to administer the voluntary agreement, or plan of action.'' 50 U.S.C. 4558(h)(7).

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0058, abstracted below, to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with TSA's commitment to improving service delivery.

DATES: Send your comments by April 25, 2022. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on September 29, 2021 (86 FR 53982).

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

Type of Request: Extension.

OMB Control Number: 1652–0058.

Form(s): NA.

Affected Public: Individuals, Households, Businesses, Organizations, and State, Local or Tribal Governments.

Abstract: The information collection activity provides a means to gather qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery.

From TSA's perspective, qualitative feedback from customers and stakeholders is information that provides useful insights on their perceptions, experiences, opinions, and expectations regarding TSA products or services, provides TSA with an early warning of issues with service, and focuses attention on areas where changes regarding communication, training, or operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between TSA and its customers and stakeholders. They will also allow feedback to contribute

directly to the improvement of program management. The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered by TSA. If this information is not collected, vital feedback from customers and stakeholders on TSA's services will be unavailable.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature. Information gathered is intended to be used solely within TSA general service improvement and program management purposes and is not intended for release outside of TSA (if released, TSA will indicate the qualitative nature of the information). Feedback collected under this generic clearance provides useful qualitative information, but it does not yield data that can be generalized to the overall population. Qualitative information is not designed or expected to yield statistically reliable or actionable results; it will not be used for quantitative information collections. Depending on the degree of influence the results are likely to have, there may be future information collection submissions for other generic mechanisms that are designed to yield quantitative results.

Below we provide TSA's projected average estimates for the next three years:

Number of Annual Respondents: 7,094,500.

Estimated Annual Burden Hours: 1,180,050 hours.

Dated: March 21, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–06265 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Extension of Agency Information Collection Activity Under OMB Review: Law Enforcement Officers Safety Act and Retired Badge/Credential

AGENCY: Transportation Security Administration, DHS.

ACTION: 30-Day notice.

SUMMARY: This notice announces that the Transportation Security Administration (TSA) has forwarded the Information Collection Request (ICR), Office of Management and Budget (OMB) control number 1652–0071, abstracted below to OMB for review and approval of an extension of the currently approved collection under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the submission of information from former employees who are interested in a Law Enforcement Officers Safety Act (LEOSA) Identification (ID) Card, a retired badge, and/or a retired credential.

DATES: Send your comments by April 25, 2022. A comment to OMB is most effective if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' and by using the find function.

FOR FURTHER INFORMATION CONTACT: Christina A. Walsh, TSA PRA Officer, Information Technology (IT), TSA–11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598–6011; telephone (571) 227–2062; email *TSAPRA@tsa.dhs.gov.*

SUPPLEMENTARY INFORMATION: TSA published a **Federal Register** notice, with a 60-day comment period soliciting comments, of the following collection of information on January 12, 2022. *See* 87 FR 1773.

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The ICR documentation will be available at *http://www.reginfo.gov* upon its submission to OMB. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Title: Law Enforcement Officers Safety Act and Retired Badge/Credential.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 1652–0071.

Forms: TSA Form 2825A; TSA Form 2808–R.

Affected Public: Former TSA employees.

Abstract: The Law Enforcement Officers Safety Act (LEOSA) [1] allows a ''qualified retired law enforcement officer'' [2] to carry a concealed firearm in any jurisdiction in the United States, regardless of State or Local laws, with certain limitations and conditions. The DHS Directive and Instruction Manual 257–01, *Law Enforcement Officers Safety Act* (December 22, 2017), defines a ''qualified law enforcement officer'' as applicable to DHS programs and authorities.

TSA Management Directive (MD) 3500.1, *LEOSA Applicability and Eligibility* (June 5, 2018), implements the LEOSA statute in accordance with the DHS Directive Under TSA MD 3500.1, TSA issues photographic identification to qualified retired LEOs who separate or retire from TSA in ''good standing'' and meet other qualification requirements identified in TSA MD 3500.1.

In addition, under TSA MD 2800.11, *Badge and Credential Program* (Jan. 27, 2014), an employee retiring from Federal service is eligible to receive a ''retired badge and/or credential'' if the individual: (1) Was issued badge and/or credential during their service with TSA and was authorized to carry the badge/and or credential at the time of their retirement, (2) qualifies for a Federal annuity under the Civil Service Retirement System or the Federal

[1] Public Law 108–277, 118 Stat. 865, July 22, 2004, codified in 18 U.S.C. 926B and 926C, as amended by the Law Enforcement Officers Safety Act Improvements Act of 2010 (Pub. L. 111–272, 124 Stat. 2855; Oct. 12, 2010) and National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239, 126 Stat. 1970; Jan. 2, 2013).

[2] As defined in DHS Directive and Instruction Manual 257–01, Law Enforcement Officers Safety Act, (December 22, 2017).

Employees Retirement System, and (3) meets all of the other qualification requirements under the applicable MDs.[3]

Under TSA's current application process for these two programs, qualified applicants may apply for a LEOSA ID Card, a Retired Badge, and/or a Retired Credential, as applicable, either while still employed by TSA (shortly before separating or retiring) or after they have separated or retired (after they become private citizens, *i.e.,* are no longer employed by the Federal Government).

The *LEOSA Identification Card Application* (TSA Form 2825A) requires collection of identifying information, contact information, official title, separation date, and last known field office. The *Retired Badge and/or Retired Credential Application* (TSA Form 2808–R) requires collection of identifying information, contact information, TSA employment/position information (TSA component or Government agency), official title, and entry on duty date.

Number of Respondents: 366.

Estimated Annual Burden Hours: An estimated 54.5 hours annually.

Dated: March 21, 2022.

Christina A. Walsh,

TSA Paperwork Reduction Act Officer, Information Technology.

[FR Doc. 2022–06266 Filed 3–23–22; 8:45 am]

BILLING CODE 9110–05–P

[3] These instructions are included in DHS Instruction: 121–01–002 (Issuance and Control of DHS Badges); DHS Instruction 121–01–008 (Issuance and Control of the DHS Credentials); and the associated Handbook for TSA MD 2800.11.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RR03042000, 22XR0680A1, RX.18786000.1000000; OMB Control Number 1006–0015]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the Bureau of Reclamation (Reclamation) are proposing to renew an information collection.

DATES: Interested persons are invited to submit comments on or before April 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to Jeremy Dodds, Manager, Water Accounting and Verification Group, LCB–4200, Boulder Canyon Operations Office, Interior Region 8: Lower Colorado Basin, Bureau of Reclamation, P.O. Box 61470, Boulder City, NV 89006–1470; or by email to *jdodds@usbr.gov* with a courtesy copy to *bor-sha-bcooadmin@usbr.gov.* Please reference OMB Control Number 1006–0015 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request (ICR), contact Jeremy Dodds by email at *jdodds@usbr.gov,* or by telephone at (702) 293–8164. Individuals who are hearing or speech impaired may call the Federal Relay Service at (800) 877–8339 for TTY assistance. You may also view the ICR at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

A **Federal Register** notice with a 60-day public comment period soliciting comments on this collection of information was published on October 26, 2021 (86 FR 59185). No comments were received.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

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

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: Reclamation delivers Colorado River water to water users for diversion and beneficial consumptive use in the States of Arizona, California, and Nevada. The Consolidated Decree of the United States Supreme Court in the case of *Arizona* v. *California, et al.,* entered March 27, 2006 (547 U.S. 150 (2006)), requires the Secretary of the Interior to prepare and maintain complete, detailed, and accurate records of diversions of water, return flow, and consumptive use and make these records available at least annually. The information collected ensures that a State or water user within a State does not exceed its authorized use of Colorado River Water. Water users are obligated by provisions in their water delivery contracts to provide Reclamation information on diversions and return flows. Reclamation determines the consumptive use by subtracting return flow from diversions or by other engineering means.

Title of Collection: Diversions, Return Flow, and Consumptive Use of Colorado River Water in the Lower Colorado River Basin.

OMB Control Number: 1006–0015.

Form Number: Forms LC–72A, LC–72B, Custom Forms.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: The respondents will include the Lower

Basin States (Arizona, California, and Nevada), local and tribal entities, water districts, and individuals that use Colorado River water.

Total Estimated Number of Annual Respondents: 84.

Total Estimated Number of Annual Responses: 491.

Estimated Completion Time per Response: See table.

Total Estimated Number of Annual Burden Hours: 103 hours.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: Monthly, annually, or otherwise as stipulated by the water user's Colorado River water delivery contract with the Secretary of the Interior.

Total Estimated Annual Nonhour Burden Cost: None.

Frequency of data collection (monthly/annual)	Form No.	Number of respondents	Minutes/ response	Number responses/ respondent	Total responses/ year	Total hours/year
Annual	LC–72A	8	10	1	8	1
Annual	LC–72B	12	10	1	12	2
Monthly	Custom Forms	37	12	12	444	89
Annual	Custom Forms	27	25	1	27	11
Total		84			491	103

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Jacklynn L. Gould,

Regional Director, Interior Region 8: Lower Colorado Basin, Bureau of Reclamation.

[FR Doc. 2022–06250 Filed 3–23–22; 8:45 am]

BILLING CODE 4332–90–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1243]

Certain Active Matrix OLED Display Devices and Components Thereof; Notice of Commission Decision Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 32) of the presiding administrative law judge (''ALJ'') terminating the investigation in its entirety based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. 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.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 2, 2021, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Solas OLED Ltd. of Dublin, Ireland (''Solas'' or ''Complainant''). *See* 86 FR 7878–79 (Feb. 2, 2021). The complaint, as amended and supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain active matrix OLED display devices and components thereof by reason of infringement of claims 13–17 of U.S. Patent No. 7,573,068 (''the '068 patent'') and claims 2–40 of U.S. Patent No. 7,868,880 (''the '880 patent''). *See id.* The notice of investigation names the following respondents: BOE Technology Group Co., Ltd. and Beijing BOE Display Technology Co., Ltd. of Beijing, China, and BOE Technology America, Inc. of Santa Clara, California (collectively ''BOE''); and Samsung Electronics Co., Ltd. of Suwon-si, South Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Display Co., Ltd. of Yongin-si, South Korea (collectively ''Samsung''). *See id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *See id.*

On October 28, 2021, the Commission partially terminated the investigation as to the BOE respondents. *See* Order No. 23 (Oct. 4, 2021), *unreviewed by* Comm'n Notice (Oct. 28, 2021).

On October 29, 2021, the Commission terminated the investigation as to claims 14–16 of the '068 patent and claims 12, 13, 15–19, 22–24, 34, 35, and 38–40 of the '880 patent based on the withdrawal of the allegations in the complaint as to those claims. *See* Order No. 24 (Oct. 5, 2021), *unreviewed by* Comm'n Notice (Oct. 29, 2021).

On December 14, 2021, the Commission terminated the investigation as to claims 3–5, 7–9, 11, 20, 21, 25–29, 31–33, 36, and 37 of the '880 patent based on the withdrawal of the allegations in the complaint as to those claims. *See* Order No. 28 (Nov. 16, 2021), *unreviewed by* Comm'n Notice (Dec. 14, 2021).

On March 1, 2022, Complainant and the remaining respondents, Samsung, filed a joint motion to terminate the investigation in its entirety based on settlement. On March 3, 2022, OUII filed a response in support of the joint motion.

On March 4, 2022, the ALJ issued the subject ID (Order No. 32) granting the joint motion. The ID finds that ''[t]he pending motion for termination complies with the Commission Rules.'' *See* ID at 2. Specifically, the motion includes confidential and public copies of the settlement agreement (''the Agreement'') in accordance with Commission Rule 210.21(b)(1), 19 CFR 210.21(b)(1). *See id.* In addition, as noted in the ID, the motion states that ''[o]ther than the Agreement, there are no other agreements, written or oral, express or implied, between Solas and Samsung concerning the subject matter

of this Investigation.'' *See id.* at 3. Furthermore, in accordance with Commission Rule 210.50(b)(2), 19 CFR 210.50(b)(2), the ID finds ''no evidence indicating that terminating this investigation based on the Agreement would be contrary to the public interest.'' *See id.*

No petition for review of the subject ID was filed. The Commission has determined not to review the subject ID. The investigation is terminated.

The Commission's vote for this determination took place on March 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: March 18, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06208 Filed 3–23–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1286]

Certain Oil-Vaping Cartridges, Components Thereof, and Products Containing the Same; Commission Determination Not To Review an Initial Determination Granting in Part Complainant's Motion To Amend the Complaint and Notice of Investigation and To Terminate the Investigation With Respect to a Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 20) of the presiding administrative law judge (''ALJ''), granting in part complainant's motion to amend the complaint and notice of investigation and to terminate the investigation as to respondent BBTank USA, LLC (''BBTank'') based upon withdrawal of allegations in the complaint.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on November 10, 2021, based on a complaint filed on behalf of Shenzhen Smoore Technology Limited (''Smoore'') of China. 86 FR 62567–69 (Nov. 10, 2021). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain oil-vaping cartridges, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 10,357,623; 10,791,763; 10,791,762; and U.S. Registered Trademark No. 5,633,060. *Id.* at 62567–68. The complaint further alleged that a domestic industry exists. *Id.* at 62568. The Commission's notice of investigation named numerous respondents including BBTank of Lambertville, Michigan; BoldCarts.com of Tempe, Arizona; Bold Crafts, Inc. of Irvine, California; Green Tank Technologies Corp. of Canada; Blinc Group Holdings, LLC of New York, New York; and BulkCarts.com of Canton, Michigan. *Id.* at 62568. The Office of Unfair Import Investigations (''OUII'') is also named as a party in this investigation. *Id.*

On February 1, 2022, Smoore filed a motion for leave to amend the complaint and notice of investigation pursuant to Commission Rule 210.14(b)(1), 19 CFR 210.14(b)(1). Specifically, Smoore's motion requests to: (1) Change the corporate entity name of Respondents BoldCarts.com and Bold Crafts, Inc., to Bold Crafts, LLC d/b/a Bold Carts and BoldCarts.com; (2) change the corporate entity name of Respondent Green Tank Technologies Corp. to Greentank Technologies Corp.; (3) change the corporate entity name of Blinc Group Holdings, LLC, to The Blinc Group Inc.; (4) change the corporate entity name of Respondent BulkCarts.com to Zachary R. Esquivel d/b/a ZRE Enterprises Inc. and ceramiccellcartridges.com; (5) substitute Respondent BBTank with proposed respondents DES Products Ltd. d/b/a O2VAPE and TCM Enterprises, LLC d/b/a O2VAPE; (6) terminate the investigation as to Respondent BBTank based on withdrawal of allegations in the complaint; (7) delete paragraph 148 of the complaint alleging trademark infringement by Respondent BBTank; (8) name additional proposed respondent AEG Holdings (HK) Ltd. n/k/a AVD Holdings Ltd.; and (9) replace Exhibit 36 to the complaint. *See* Order No. 20 at 1–2 (Feb. 23, 2022). OUII, BBTank, and proposed respondents DES Products Ltd. and TCM Enterprises, LLC, filed responses to Smoore's motion. *Id.* at 2.

On February 23, 2022, the ALJ issued the subject ID granting in part the motion. *Id.* at 11. The ID granted Smoore leave to amend the complaint and notice of investigation to: (1) Change the names of Respondents BoldCarts.com and Bold Crafts, Inc., to Bold Crafts, LLC d/b/a Bold Carts and BoldCarts.com; (2) change the name of Respondent Green Tank Technologies Corp. to Greentank Technologies Corp.; (3) change the name of Blinc Group Holdings, LLC, to The Blinc Group Inc.; and (4) replace Exhibit 36 to the complaint. *Id.* at 3–4, 10. The ID also found that Smoore's request to terminate BBTank from the investigation complies with Commission Rule 210.21(a)(1), 19 CFR 210.21(a)(1), and that no extraordinary circumstances warrant denying the request. *Id.* at 9–10. No petitions for review were filed.

The Commission has determined not to review the subject ID. The complaint and notice of investigation are amended as indicated above, and Respondent BBTank is hereby terminated from the investigation.

The Commission vote for this determination took place on March 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 18, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06207 Filed 3–23–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1297]

Certain Video Processing Devices, Components Thereof, and Digital Smart Televisions Containing the Same II; Notice of a Commission Determination Not To Review an Initial Determination Granting a Motion To Intervene of Amazon.Com, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 9) issued by the presiding administrative law judge (''ALJ'') on February 25, 2022, granting a motion to intervene of Amazon.com, Inc. (''Amazon'').

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 3, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed by DivX, LLC of San Diego, California (''DivX''). 87 FR 6200–01 (Feb. 3, 2022). The complaint alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain video processing devices, components thereof, and digital smart televisions containing the same by reason of infringement of certain claims of U.S. Patent Nos. 8,832,297 and 8,472,792. The complaint also alleged the existence of a domestic industry. The notice of investigation named as respondents: TCL Technology Group Corporation of Huizhou, Guangdong, China; TCL Electronics Holdings Limited of Shenzhen, Guangdong, China; TTE Technology, Inc. of Shenzhen, Guangdong, China; TCL King Electrical Appliances (Huizhou) Co. Ltd. of Huizhou, Guangdong, China; TCL MOKA International Limited of Sha Tin, New Territories, Hong Kong; and TCL Smart Device (Vietnam) Co., Ltd. of Tan Binh Commune, Bae Tan Uyen District, Binh Duong Province, Vietnam (collectively, ''TCL''). *Id.* at 6201. The Commission's Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

On February 11, 2022, Amazon moved pursuant to 19 CFR 210.19 to intervene in this investigation. Respondents TCL did not oppose. Order No. 9, at 1 (Feb. 25, 2022). While complainant DivX did not oppose Amazon's requested relief, and ''does not otherwise plan to file a response to the motion, it (i) takes no position as to whether it is more appropriate for Amazon to intervene in this Investigation as an intervenor or as a respondent, and reserves all rights, and (ii) makes no representations regarding TCL's knowledge of Amazon technology.'' *Id.* (quoting Mot. at 1).

Amazon requests that it be permitted to intervene in this investigation as an intervenor ''with full participation rights and obligations with respect to the issues of infringement/non-infringement, validity/invalidity, any related subsidiary issues (*e.g.,* claim construction), any other issue directed to or otherwise involving Amazon's technology, including reasonable discovery of the foregoing (subject to Amazon's objections), such as responding to discovery requests, producing corporate designees for deposition and hearing testimony, and being subject to motions to compel to the same extent as any of the Respondents.'' *Id.* at 1–2 (quoting Mot. at 1). Amazon did not ask to be accorded respondent status. *Id.* at 2 (citing Mem. at 2–10).

Amazon explains that DivX accuses certain TCL products of infringing the asserted patents ''at least in part because they use and incorporate Amazon technology—primarily, Amazon's Prime Video.'' *Id.* (quoting Mem. at 8). Amazon therefore contends that it has a ''substantial interest in this investigation with respect to Prime Video, and TCL's interests are not only centered on their own devices, but TCL also lacks the knowledge and information to be able to adequately represent Amazon's interest with respect to Prime Video and any other Amazon technologies.'' *Id.* (quoting Mem. at 7).

On February 25, 2022, the ALJ issued the subject ID, granting Amazon's motion. The ID found that there is no dispute that Amazon has an interest in infringement and invalidity issues regarding the asserted patents, that Amazon's interests are not adequately protected by TCL, and that intervention has been granted in similar circumstances in previous investigations. *Id.* at 2–3 (citing *Certain Communications or Computing Devices and Components Thereof,* Inv. No. 337–TA–925, Order No. 6 at 4 (Sept. 9, 2014) (granting Google's motion to intervene), *unreviewed by* Comm'n Notice (Oct. 10, 2014)). The ID further found that there is also no dispute that Amazon's motion was timely filed, having been filed only days after the institution of the investigation. *Id.* at 3. The ID also found that no party claims any undue prejudice from Amazon's intervention, and that there is no opposition to Amazon's intervention in this investigation. *Id.* The ID found that, therefore, Amazon's participation will facilitate discovery and aid the Commission in resolving the parties' dispute.

On March 3, 2022, DivX, TCL, and Amazon filed a letter with the Commission requesting an expedited determination on whether to review the subject ID and indicating that none of the parties would petition for review of the ID.

The Commission has determined not to review the ID. Amazon's intervention as intervenor in this investigation is granted.

The Commission vote for this determination took place on March 18, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: March 18, 2022.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2022–06177 Filed 3–23–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

[Docket No: DOL–2021–00##]

Privacy Act of 1974; System of Records

AGENCY: Office of Assistant Secretary for Administration and Management, DOL.

ACTION: Notice of a new system of records.

SUMMARY: As required by the Privacy Act of 1974, and Office of Management and Budget (OMB) Circular No. A–108, this notice is a new Privacy Act System of Records titled Contractor and Visitor Public Health Emergency Records DOL/OASAM–38, which include information on contractor employees, special government employees and student volunteers who work in, as well as visitors to, Department of Labor (DOL) facilities during declared public health emergencies. The system contains information provided by the contractor's employees including such information as their applicable vaccination or medical countermeasure status and whether they are experiencing symptoms associated with the public health emergency. Each contractor with employees who will work in DOL facilities (regardless of whether the contract is with DOL or another Federal agency such as GSA) will be asked to confirm if its employees have been vaccinated or have received appropriate medical countermeasures, in addition, the contractor will be required to ensure that its employees follow the guidelines specified for working in DOL facilities, for example, to mitigate the spread of COVID–19, not fully vaccinated employees are required to wear masks and maintain physical distancing. Visitors to DOL facilities will also be asked to provide information about their vaccination or medical countermeasure status and information about whether they are experiencing any symptoms associated with the public health emergency. Contractors, special government employees and student volunteers may also be asked to provide proof of their vaccination status.

DATES:

Comment Dates: We will consider comments that we receive on or before April 25, 2022.

Applicable date: This notice is applicable upon publication, subject to a 30-day review and comment period for the routine uses.

ADDRESSES: We invite you to submit comments on this notice. You may submit comments by any of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail, hand delivery, or courier:* 200 Constitution Avenue NW, N–1301, Washington, DC. In your comment, specify Docket ID DOL–2021–00##.
- *Federal mailbox: https://dol.gov/privacy.*

All comments will be made public by DOL and will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: To submit general questions about the system, contact Rick Kryger, at telephone 202–693–4158, or email *kryger.rick.j@dol.gov*.

SUPPLEMENTARY INFORMATION: DOL is establishing a system of records, DOL/OASAM–38, subject to the Privacy Act of 1974, 5 U.S.C. 552a. The purpose of this new system of records is to house information provided by contractors, subcontractors, their employees, special government employees, student volunteers, and visitors needed for DOL to take appropriate actions during a public health emergency. This system supports DOL's COVID–19 safety protocols as required by Executive Order 13991; Office of Management and Budget (OMB) Memorandums M–21–15 and M–21–25; COVID–19 Workplace Safety: Agency Model Safety Principles issued by the Federal Safer Federal Workforce Task Force; and other applicable law and policy. Federal labor, employment and workforce health and safety laws that govern the collection, dissemination, and retention of DOL employees' medical information include the Americans with Disability Act (ADA), the Rehabilitation Act of 1973 (Rehab Act), and the Occupational Safety and Health Act of 1970. The Department of Health and Human Services (HHS) Secretary may, under section 319 of the Public Health Service (PHS) Act codified at 42 U.S.C. 247d, declare that: (a) A disease or disorder presents a public health emergency; or (b) that a public health emergency, including significant outbreaks of infectious disease or bioterrorist attacks, otherwise exists.

The Occupational Safety and Health Act (OSHA) of 1970, Public Law 91–596, 29 U.S.C. 668, Section 19(a) requires the head of each Federal agency to establish and maintain an effective and comprehensive occupational safety and health program and safe and healthful places and conditions of employment, and to keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action. OSHA also requires that Federal agencies maintain an injury and illness prevention program, which is a proactive process designed to reduce injuries, illnesses, and fatalities.

This OASAM–38 notice covers DOL employees and individuals that do not fall under Title 5 and OPM's personnel recordkeeping authority and thus are not covered by the OPM/GOVT–10 SORN. Federal civilian employee medical records are covered by a government-wide Privacy Act SORN published by the Office of Personnel Management (OPM), OPM/GOVT–10, Employee Medical File System Records (75 FR 35099, June 21, 2010; modification published at 80 FR 74815, November 30, 2015). These Federal employee confidential medical records are managed in accordance with OPM regulations at 5 CFR part 293, the OPM/GOVT–10 SORN, and its published routine uses. The OPM/GOVT–10 SORN covers Federal civilians that are identified under Title 5 U.S.C. chapter 21. The majority of DOL Federal employees fall under Title 5 and their medical records are covered by the OPM/GOVT–10 SORN and must be managed in accordance with that SORN and applicable OPM regulations.

Any collection of records in DOL/OASAM–38 is only permitted during a time of a public health emergency or similar health and safety incident. During such an emergency or incident, DOL will only collect the minimum information necessary to respond to the emergency or incident, and comply with Federal workforce safety requirements, when DOL determines that a significant risk of substantial harm exists to individuals working at or visiting a DOL controlled facility, or attending a DOL sponsored event in a non-DOL controlled facility. DOL's responsibilities for ensuring a safe workforce and secure buildings and workspaces depend on the nature and circumstances of the public health emergency.

In order to meet requirements for workforce safety during a public health emergency or similar incident, DOL may collect records that could include medical countermeasures, such as vaccinations, diagnostic test results, whether the individual is experiencing relevant symptoms, and any other information necessary to assist DOL with determining appropriate mitigation measures to take with respect to contractor employees, special government employees, student volunteers and visitors in DOL facilities or in the performance of duties associated with the Department.

In general, the information will be used to confirm that contractors, their employees, special government employees, student volunteers and visitors to DOL facilities are aware of and complying with requirements necessitated by the public health emergency, such as those to wear masks and maintain physical distancing while working onsite or visiting a DOL

facility. For onsite contractor employees, the information will be used to make decisions such as office space planning and assigning office space, assigning tasks that require individuals to work in close physical proximity, as well for operational staffing requirements for carrying out work in field operations.

DOL may also collect location and dates of potential exposure, information related to employee requests for reasonable accommodation, and other information that may be relevant or required for DOL to comply with Federal guidelines and prevent or slow the spread of the COVID–19 disease and mitigate health impacts to DOL personnel, visitors, and other individuals at DOL controlled facilities and sponsored events.

This notice also adds required breach routine uses to ensure that the Department can disclose information necessary to respond to a DOL breach and to assist another agency in responding to a confirmed or suspected breach, as appropriate, pursuant to OMB M–17–12.

SYSTEM NAME AND NUMBER:

Contractor and Visitor Public Health Emergency Records DOL/OASAM–38.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The U.S. Department of Labor (DOL) Office of Assistant Secretary and Administration and Management owns the Contractor and Visitor Public Health Emergency Records System, which is housed in secure datacenters in the continental United States. Each DOL agency that has contractors working in a DOL facility has custody of the records pertaining to its own contracts. Contact the system manager for additional information.

SYSTEM MANAGER(S):

Rick Kryger, Deputy Chief Information Officer, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue NW, N–1301, Washington, DC 20210.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Emergencies Act (50 U.S.C. 1601–1651); the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121, 5192(1)); Section 319 of the Public Health Service (PHS) Act (42 U.S.C. 247d); 5 U.S.C. 301, 7901, 7902, and 7903; the Occupational Safety and Health Act (29 U.S.C. 668), Executive Order 12196 ''Occupational safety and health programs for Federal employees''; Workforce Innovation and Opportunity Act (WIOA) WIOA 159(g) ((29 U.S.C. 3209(g)) and WIOA 147(a)(3)(J) ((29 U.S.C. 3197(a)(3)(J)).

PURPOSE(S) OF THE SYSTEM:

To capture and report health and safety-related information during public health emergencies. Such reporting will be provided to DOL contracting officers and other authorized officials in DOL to enable the agency to use the data from the system to review submissions for compliance with applicable mitigation requirements, and, in the case of contractor employees, with contractual terms and conditions for contracts for which they are responsible.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The Contractor and Visitor Public Health Emergency Records System contains records related to employees of prime and subcontractors who are performing work on federal contract awards at any DOL facility, or in shared operations. An owner, agent, or employee of a prime or subcontractor may enter or certify information, as applicable.

The Contractor and Visitor Public Health Emergency Records System will also contain records related to contractors, subcontractors, their employees, special government employees, student volunteers, visitors, individuals from outside the DOL workforce on detail to DOL, experts/consultants, and grantees.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system of records consists of electronic or hard copy records, including records of vaccination status or other medical countermeasures (such as diagnostic test results), status of employees or visitors, and other health and safety information related to the public health emergency. The information in the system of records includes the name of the person entering, and as applicable, certifying, information on behalf of the prime or subcontractor, their position within the company, phone number, and email address. Categories of records include, but are not limited to: Name, unique identifier assigned by the prime or subcontractor, medical countermeasure (vaccination or diagnostic test) status, symptom questionnaires and other information relevant and necessary for mitigation purposes. Optional records that may be required for certain contracts or in certain geographic areas include: Name, position, work phone number, email address, DOL facility, lands, or shared operations at which the employee will be working on-site, and other similar records related to their official responsibilities.

RECORDS SOURCE CATEGORIES:

Contract employee records are created, reviewed and, as appropriate, certified by the prime or subcontractor. Records pertaining to the individual entering and certifying data in the system may be created by the individual, by a contracting officer, or in the case of a subcontractor by the prime contractor or another subcontractor. Visitor records are created, reviewed and, as appropriate, certified by the appropriate Agency Official receiving the visitor to the DOL facility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, and all universal routine uses listed at 81 FR 25765, 25775 (April 29, 2016) and *https://www.dol.gov/agencies/sol/privacy/intro,* information in this system may disclosed as follows:

1. The information in this system may be disclosed to state and local public health officials for purposed related to the public health emergency, such as contract tracing.

2. To appropriate agencies, entities, and persons when (1) the DOL suspects or confirms a breach of the System of Records; (2) the DOL determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DOL (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 DOL's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

3. To another Federal agency or Federal entity, when the DOL 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 national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records in this system of records are stored on security measure protected (for example, e-authentication, password, restricted access protocol, etc.) databases, electronically on e-media devices (computer hard drive, magnetic disc, tape, digital media, CD, DVD, etc.). Paper copies of records are stored within secured or locked facilities.

POLICIES AND PRACTICES FOR RETRIEVEAL OF RECORDS:

Records may be retrieved by the individual's name, unique identifier assigned by the prime or subcontractor, vaccination status, position, or facility at which the employee will be working on-site.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained in file folders and DOL computer systems at applicable locations as set out above under the heading ''System Location.'' System records will be retained and disposed of according to DOL's records maintenance and disposition schedules as well as any applicable General Records Schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system of records are safeguarded in accordance with applicable rules and policies, including all applicable DOL automated systems security and access policies. Strict controls have been imposed to minimize the risk of compromising the information that is being stored. Access to the computer systems containing the records in this system of records is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions.

Records in the system are protected from unauthorized access and misuse through a combination of administrative, technical, and physical security measures. Administrative measures include but are not limited to policies that limit system access to individuals within an agency with a legitimate business need, and regular review of security procedures and best practices to enhance security. Technical measures include but are not limited to system design that allows prime contractor and subcontractor employees access only to data for which they are responsible; role-based access controls that allow government employees access only to data regarding contracts awarded by their agency or reporting unit; required use of strong passwords that are frequently changed; and use of encryption for certain data transfers. Physical security measures include but are not limited to the use of data centers which meet government requirements for storage of sensitive data.

RECORDS ACCESS PROCEDURES:

Prime and subcontractors enter and review their own data in the system and are responsible for ensuring that those data are correct. If an individual wishes to access their own data in the system after it has been submitted, that individual should consult the System Manager.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the above listed System Manager and should include the reason for contesting it and the proposed amendment to the information with supporting information to show how the record is inaccurate. A request for contesting records pertaining to an individual should contain:

- Name, and
- Any other pertinent information to help identify the file.

NOTIFICATION PROCEDURES:

An individual may request information regarding this system of records or information as to whether the system contains records pertaining to the individual from the System Manager above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

Milton Stewart,

Senior Agency Official for Privacy, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

[FR Doc. 2022–06209 Filed 3–23–22; 8:45 am]

BILLING CODE 4510–04–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (22–022)]

Heliophysics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Advisory Committee (HPAC). This Committee functions in an advisory capacity to the Director, Heliophysics Division, in the NASA Science Mission Directorate. The meeting will be held for the purpose of soliciting, from the science community and other persons, scientific and technical information relevant to program planning.

DATES: Thursday, May 5, 2022, 2:30 p.m.–6:00 p.m.; and Friday, May 6, 2022, 11:00 a.m.–5:00 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Mrs. KarShelia Kinard, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–2355, or *karshelia.kinard@nasa.gov.*

Dr. Janet Kozyra, Designated Federal Officer, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, at *janet.kozyra@nasa.gov,* 202–875–3278.

SUPPLEMENTARY INFORMATION: This meeting will be virtual and will take place telephonically and via WebEx. Any interested person must use a touch-tone phone to participate in this meeting. Any interested person may call the USA toll free number 1–877–939–1570, or toll number 1–210–234–0110, passcode 9775739, followed by the # sign to participate in this meeting by telephone on both days. The WebEx link is *https://nasaenterprise.webex.com/nasaenterprise/j.php?MTID=md29775a628286c1b87f1c28cc34d3b87;* the meeting number is 2763 347 9700 and the password is HPACMay2022! (case sensitive) on both days.

The agenda for the meeting includes the following topic:

- Heliophysics Division Update
- Diversity, Equity, Inclusion and Accessibility Efforts
- Research and Analysis Program Trends

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2022–06126 Filed 3–23–22; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to renew clearance of this collection. In accordance with the requirements of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

DATES: Written comments should be received by May 23, 2022 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Suite 18000W, Alexandria, VA 22314, or by email to *splimpto@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 292–7556 or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Title of Collection: ''Postdoctoral Research Fellowships in Biology Application Form A and Reference Writer Recommendation.''

OMB Approval Number: 3145–0203.

Expiration Date of Approval: September 30, 2022.

Type of Request: Intent to seek approval to renew an information collection for three years.

Proposed Project: Two organizational units within the Directorate of Biological Sciences of the National Science Foundation will use the NSF Application Form A and recommendation form for the Postdoctoral Research Fellowships in Biology Program (*https://beta.nsf.gov/funding/opportunities/postdoctoral-research-fellowships-biology-prfb*). They are the Division of Biological Infrastructure (DBI) and the Division of Integrative Organismal Systems (IOS). All scientists submitting the NSF Application Forms and recommendation forms to these units will be asked to complete an electronic version of the forms. The NSF Application Form A consists of brief questions about the investigator and the substance of the research. The recommendation form consists of brief questions about the reference writer and the uploading of a recommendation letter drafted by the reference writer.

Use of the Information: The information gathered with the NSF Application Form A and recommendation form serves three main purposes. The first is to provide vehicles for applicants to submit applications and reference writers to submit recommendations.

The second is facilitation of the proposal review process. Since peer review is a key component of NSF's grant-making process, it is imperative that proposals are reviewed by scientists with appropriate expertise. The information collected helps ensure that the proposals are evaluated by specialists who are well versed in appropriate subject matter. This helps maintain a fair and equitable review process.

The third use of the information is program evaluation. The Directorate is committed to investing in a range of substantive areas. With data from this collection, the Directorate can calculate submission rates and funding rates in specific areas of research. Similarly, the information can be used to identify emerging areas of research, evaluate changing infrastructure needs in the research community, and track the amount of international research. As the National Science Foundation is committed to funding cutting-edge science, these factors all have implications for program management.

The Directorate of Biological Sciences has a continuing commitment to monitor its information collection in order to preserve its applicability and necessity. Through periodic updates and revisions, the Directorate ensures that only useful, non-redundant information is collected. These efforts will reduce excessive reporting burdens.

Burden on the Public: The Directorate estimates that an average of 25 minutes is expended for each application submitted and an average of 170 minutes is expended for reference writer recommendation added. An estimated 930 responses are expected during the course of one year for a total of 542 public burden hours annually.

Expected Respondents: Individuals.

Estimated Number of Responses: 930.

Estimated Number of Respondents: 930.

Estimated Total Annual Burden on Respondents: 1886 hours.

Frequency of Responses: On occasion.

Dated: March 18, 2022.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2022–06175 Filed 3–23–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2022–0052]

Acceptability of Probabilistic Risk Assessment Results for Advanced Non-Light Water Reactor Risk-Informed Activities

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide for trial use; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment and for trial use, a new regulatory guide (RG) 1.247, ''Acceptability of Probabilistic Risk Assessment Results for Non-Light Water Reactor Risk-Informed Activities.'' This new guidance describes one acceptable approach for determining whether the acceptability of the probabilistic risk assessment (PRA) used to support a PRA application is sufficient to provide confidence in the results for non-light water reactors (NLWRs) and risk-informed activities. As a trial RG, this issuance does not provide final staff positions and the guidance within may be revised based on experience obtained by the NRC with its use after its publication.

DATES: Submit comments by May 23, 2022. Comments received during this public comment period will be considered and responded to. The public comment period will be followed by a 2-year trial use period. At any time during the trial use period, a member of the public may submit suggestions to

the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series. This trial use period may be extended, as necessary, based on the experience obtained. After the trial use period, the NRC staff will develop and issue a draft RG that will include the stakeholder feedback and experience gained from use of the trial RG. The draft RG issuance will also provide an additional formal public comment opportunity, with feedback considered prior to final RG publication.

ADDRESSES: You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0052. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

For additional direction on accessing information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Anders Gilbertson, telephone: 301–415–1541, email: *Anders.Gilbertson@nrc.gov,* Michelle Gonzalez telephone: 301–415–5661, email: *Michelle.Gonzalez@nrc.gov,* or Harriet Karagiannis, telephone: 301–415–2493, email: *Harriet.Karagiannis@nrc.gov.* These individuals are staff in the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2022–0052 when contacting the NRC about the availability of information regarding this action. You may obtain publicly available information related to this action, by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0052.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2022–0052 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *https://www.regulations.gov* as well as enters the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing this new trial RG in the NRC's ''Regulatory Guide'' series and requesting public comment. This series was developed to describe methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, to explain techniques that the staff uses in evaluating specific issues or postulated events, and to describe information that the staff needs in its review of applications for permits and licenses.

This RG titled, ''Acceptability of Probabilistic Risk Assessment Results for Non-Light Water Reactor Risk-Informed Activities,'' is designated as a trial use RG 1.247 and is available in ADAMS under Accession No. ML21235A008. It describes one acceptable approach for determining whether the acceptability of the PRA used to support an application is sufficient to provide confidence in the results, such that the PRA can be used in regulatory decision-making for NLWRs for implementing the requirements in Part 50 and 52 of title 10 of the *Code of Federal Regulations* (10 CFR), or future applicable regulations. In addition, this RG is intended to be consistent with the NRC's PRA Policy Statement and reflects and endorses, with staff exceptions and clarifications, national consensus PRA standards provided by standards development organizations and guidance provided by nuclear industry organizations.

It is issued as a trial RG since the staff has determined that additional implementation experience would better inform draft and final staff positions. Such revisions would involve the development of a draft RG that would include lessons learned and public comments from use of this trial RG. The draft RG would also be available for public comment prior to issuance of a final RG. Therefore, the staff positions included in this trial RG could be different that the ones that would be included in the draft and final RG.

The staff is also issuing a regulatory analysis (ADAMS Accession No. ML21235A010). The staff develops a regulatory analysis to assess the value of issuing this new regulatory guide as well as alternative courses of action.

III. Backfitting, Forward Fitting, and Issue Finality

This trial RG does not establish a staff position for purposes of 10 CFR 50.109, ''Backfitting'' or constitute forward fitting as that term is defined and described in NRC Management Directive

(MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests'' (ADAMS Accession No. ML18093B087). Any changes to this trial RG, such as withdrawal or addition of or modification to staff positions based on experience gained during the trial use period, prior to issuing a final RG will not be considered to be backfitting as defined in 10 CFR 50.109. This will ensure that the lessons learned from the regulatory trial use of the pilot applications of this RG are adequately addressed and that this guidance is sufficient to enhance regulatory stability in the review and approval of risk-informed applications for non-light water reactors.

Dated: March 18, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–06222 Filed 3–23–22; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1151; NRC–2022–0047]

Westinghouse Electric Company, LLC; Columbia Fuel Fabrication Facility; and US Ecology, Inc.; Idaho Resource Conservation and Recovery Act Subtitle C; Hazardous Disposal Facility Located Near Grand View, Idaho

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment and exemptions; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing exemptions from NRC regulations and associated license amendment related to requests from Westinghouse Electric Company, LLC (WEC) and US Ecology, Inc. (USEI). WEC requested NRC approval for an alternate disposal and related exemptions for specified low-activity radioactive waste from the Columbia Fuel Fabrication Facility (CFFF) in Hopkins, South Carolina containing byproduct material and special nuclear material (SNM) under License Number SNM–1107. Additionally, the NRC is approving exemptions requested by USEI from the applicable licensing requirements to allow USEI to receive and dispose of the material from CFFF without an NRC license. The USEI disposal facility, located near Grand View, Idaho, is a Subtitle C Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility permitted by the State of Idaho to receive low-level radioactive waste. Approval of the alternate disposal request from WEC and the exemptions and license amendment requested by WEC, and associated exemptions requested by USEI would allow WEC to transfer the specific waste from CFFF to USEI for disposal.

DATES: The exemptions are effective on March 24, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0047 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0047. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the ''For Further Information Contact'' section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The Request for Alternate Disposal Approval and Exemption for Specific CFFF Waste (License No. SNM–1197, Docket No. 70–1151) dated November 5, 2022, as corrected by letter dated December 1, 2021, is available in ADAMS under Accession Nos. ML21309A095 and ML21336A461, respectively. The staff's Safety Evaluation Report dated March 4, 2022, is available in ADAMS under Package Accession No. ML22054A045.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jenny Tobin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2328, email: *Jennifer.Tobin@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Westinghouse Electric Company, LLC (WEC) holds a special nuclear materials (SNM) License Number SNM–1107 under part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Special Nuclear Material.'' Under the terms of its license, WEC fabricates nuclear fuel at the Columbia Fuel Fabrication Facility (CFFF). The US Ecology, Inc. (USEI) disposal facility near Grand View, Idaho is a Subtitle C Resource Conservation and Recovery Act (RCRA) hazardous waste disposal facility permitted by the State of Idaho to receive radioactive waste.

II. Request/Action

The proposed action would approve the alternate disposal request and provide exemptions from 10 CFR 70.3 and 10 CFR 30.3 and an associated WEC license amendment, allowing WEC to transfer and USEI to receive and dispose of waste containing byproduct material and SNM. The volumetrically contaminated waste includes calcium fluoride (CaF_2) sludge dredged from the disposal lagoons and the Sanitary Lagoon located on the site, the sanitary lagoon liner, contaminated soil from under and adjacent to the Sanitary Lagoon, and soil associated with the demolition of the CaF_2 storage pad. The surface-contaminated waste being considered for disposal includes obsolete uranium hexafluoride (UF_6) shipping cylinders and debris associated with demolition and removal of the CaF_2 pad and Sanitary Lagoon. The waste being considered originates from processes associated with the chemical conversion of UF_6 to uranium dioxide (UO_2) performed at CFFF and is contaminated with isotopic uranium (U–234, U–235, and U–238) and technicium-99 (Tc-99).

As proposed, this waste would be transported from CFFF in South Carolina to the USEI facility near Grand View, Idaho using a combination of trucks and railcars. The USEI facility is a RCRA Subtitle C hazardous waste disposal facility permitted by the State of Idaho.

III. Discussion

Pursuant to 10 CFR 70.17 and 10 CFR 30.11, the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of 10 CFR part 70 and part 30 respectively, as

it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

The Exemptions Are Authorized by Law

The proposal provides that the material described in this notice would be transported and disposed of in compliance with Federal, State, and local regulations. Further, as previously noted, the NRC is authorized to grant exemptions from 10 CFR parts 30 and 70. Granting these exemptions are also not contrary to the Atomic Energy Act of 1954, as amended, or other regulatory requirements or law. Therefore, such disposal is not otherwise contrary to NRC requirements, and is otherwise authorized by law.

The Exemptions Will Not Endanger Life, Property or the Common Defense and Security

NRC staff reviewed the information provided by WEC to support its 10 CFR 20.2002 alternate disposal request and the specific exemptions from 10 CFR 30.3 and 10 CFR 70.3 and the associated license amendment in order to dispose of the specified material associated with cleanup activities at CFFF. The NRC staff concluded that the requested disposal of waste containing byproduct material and SNM is acceptable under 10 CFR 20.2002. Details provided in this request, in combination with appropriate references to past approvals of similar procedures and material from the same site, provide an adequate description of the waste and demonstrate that the proposed manner and conditions of waste disposal would be protective of public health and safety and security and would not endanger property. In particular, under the alternate disposal request, public doses would be a fraction of the natural background radiation dose and a fraction of the annual public dose limit. NRC staff also notes that the request is also subject to regulation under RCRA. Lastly, because of the presence of SNM, the NRC evaluated potential criticality in its safety evaluation report and found no concerns. Therefore, the NRC concludes that issuance of the exemption will not endanger life, property, or the common defense and security.

The Exemptions Are in the Public Interest

Issuance of the exemptions to WEC and USEI is in the public interest because it provides for the efficient and safe disposal for the subject waste material, facilitates the decommissioning of the CFFF site consistent with the consent agreement between CFFF and the South Carolina Department of Health and Environmental Control, and conserves low-level radioactive waste disposal capacity at licensed low-level radioactive disposal sites while ensuring that the material being considered is disposed of safely in a regulated facility. Therefore, based upon the evaluation previously noted, exemptions are appropriate pursuant to 10 CFR 30.11 and 10 CFR 70.17.

IV. Environmental Considerations

As required by 10 CFR 51.21, the NRC performed an environmental assessment (EA) that analyzes the environmental impacts of the proposed exemptions in accordance with the National Environmental Policy Act of 1969 and NRC implementing regulations in 10 CFR part 51. Based on the conclusions of the EA, the NRC staff has determined that there is no need to prepare an environmental impact statement for the proposed exemptions and has issued a finding of no significant impact (FONSI). The EA and FONSI were published in the **Federal Register** on March 10, 2022 (87 FR 13766).

V. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 70.17 and 10 CFR 30.11, exemptions for WEC and USEI are authorized by law, will not present an undue risk to the public health and safety, are consistent with the common defense and security, and are in the public interest. Therefore, the Commission hereby grants WEC and USEI exemptions from 10 CFR 70.3 and 10 CFR 30.3 to allow WEC to transfer certain low-activity radioactive materials, including byproduct and SNM, from the WEC CFFF for disposal at the USEI disposal facility located near Grand View, Idaho, and issues WEC a conforming license amendment.

Dated: March 21, 2022.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Chief, Fuel Facility Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–06236 Filed 3–23–22; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94467; File No. SR–NYSE–2022–13]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change for Certain Amendments to the Preamble to Rule 9217

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes certain amendments to the preamble to Rule 9217. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes certain amendments to the preamble to Rule 9217.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

The preamble to current Rule 9217 consists of two paragraphs. The first provides that any member organization of covered person [3] may be subject to a fine under Rule 9216(b) with respect to any rules listed therein and that the fine amounts and fine levels set forth therein shall apply to the fines imposed. The second paragraph provides that nothing in the rule requires the Exchange to impose a fine for a violation of any rule under the Minor Rule Plan and that if the Exchange determines that any violation is not minor in nature, the Exchange may, at its discretion, proceed under the Rule 9000 Series rather than under Rule 9217.

The Exchange proposes to add two additional paragraphs to the preamble based on the preamble to the version of Rule 9217 adopted by the Exchange's affiliate NYSE Arca, Inc. (''NYSE Arca'') and to reorder the paragraphs as subsections (a) through (d), as follows.

The current first paragraph of the preamble to Rule 9217 would become new subsection (a). The text would be unchanged except that the Exchange would add '', not to exceed $5,000,'' after fine to clarify that a minor rule fine on the Exchange cannot exceed $5,000.[4]

The Exchange would add a new subsection (b) that would provide that Regulatory Staff designated by the Exchange shall have the authority to impose a fine pursuant to this Rule. Proposed Rule 9217(b) is identical to NYSE Arca Rule 10.9217(b).

The Exchange would also add the following text as new subsection (c) to Rule 9217:

> Any person or organization found in violation of a minor rule is not required to report such violation on SEC Form BD or Form U–4 if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Any fine imposed in excess of $2,500 is subject to current rather than quarterly reporting to the Commission pursuant to Rule 19d–1 under the Act.

Proposed subsection (c) is identical to NYSE Arca Rule 10.9217(c).

Finally, the current second paragraph of the preamble to Rule 9217 would become new subsection (d). The text of proposed Rule 9217(d) would be unchanged.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in Rule 9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct.

The Exchange believes that harmonizing the preamble to Rule 9217 with that of its affiliates would remove impediments to and perfect the mechanism of a free and open market and a national market system by a providing greater harmonization between Exchange rules and those of its affiliates in connection with minor rule fines, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and will remove impediments to and perfect the mechanism of a free and open market and a national market system. Moreover, by adopting the same applicable minor rule standards for violations of those standards as its affiliates, the Exchange would promote regulatory consistency.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to align the Exchange's rule setting forth violations eligible for a minor rule fine more closely with that of its affiliates.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2022–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments

[3] Rule 9120(g) defines covered person to mean a member, principal executive, approved person, registered or non-registered employee of a member organization, or other person (excluding a member organization) subject to the jurisdiction of the Exchange.

[4] *See* Securities Exchange Act Release No. 87212 (October 3, 2019), 84 FR 54193 (October 9, 2019) (SR–NYSE–2019–44) (Order) (increasing the maximum fine for minor rule violations to $5,000 in order to align the Exchange's minor rule plan more closely with that of its affiliates).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2022–13 and should be submitted on or before April 14, 2022.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[9] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[10] which governs minor rule violation plans.

As stated above, the Exchange proposes certain amendments to the preamble of Rule 9217. Specifically, the Exchange proposes to add two additional paragraphs to the preamble based on the preamble of NYSE Arca, its affiliate exchange, add clarifying language regarding the maximum fine amount for violations appropriate for disposition under Rule 9216(b), and reorder the paragraphs to the preamble of Rule 9217. The Commission believes that Rule 9217 is an effective way to discipline a member for a minor violation of a rule. The Commission finds that the Exchange's proposal to amend the preamble is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities. The Commission also believes that the Exchange's proposal to add clarifying language regarding the maximum fine amount for violations appropriate for disposition under Rule 9216(b) and to reorder the paragraphs in the preamble is consistent with the Act because such changes will add clarity and accuracy to the Exchange's rules.

In approving the propose rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 9216(b) and 9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 9217 or whether a violation requires formal disciplinary action.

For the same reasons discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[11] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal will assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[12] and Rule 19d–1(c)(2) thereunder,[13] that the proposed rule change (SR–NYSE–2022–13) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06188 Filed 3–23–22; 8:45 am]

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[7] 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).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[10] 17 CFR 240.19d–1(c)(2).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 240.19d–1(c)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94463; File No. SR–CboeEDGA–2022–006]

Self-Regulatory Organizations; Cboe EDGA 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 11.16 to April 18, 2022

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2022, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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 EDGA Exchange, Inc. (''EDGA'' 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 11.16 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/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[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).

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

EDGA Rules 11.16(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 11.16 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 11.16 to extend the pilot's October 18, 2020,[8] October 18, 2021,[9] and March 18, 2022.[10] 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 market-wide circuit breaker under Rule 11.16 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 11.16, 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.

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

[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. 85668 (April 16, 2019), 84 FR 16743 (April 22, 2019) (SR–CboeEDGA–2019–006).

[8] *See* Securities Exchange Act Release No. 87335 (October 17, 2019), 84 FR 56858 (October 23, 2019) (SR–CboeEDGA–2019–016)

[9] *See* Securities Exchange Act Release No. 90127 (October 8, 2020), 85 FR 65085 (October 14, 2020) (SR–CboeEDGA–2020–026).

[10] *See* Securities Exchange Act Release No. 93366 (October 15, 2021), 86 FR 58330 (October 21, 2021) (SR–CboeEDGA–2021–023).

[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'').

[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.*

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 11.16 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 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 11.16 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 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

[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).

[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).

Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGA–2022–006 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2022–006. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2022–006 and should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06184 Filed 3–23–22; 8:45 am]

BILLING CODE 8011–01–P

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94471; File No. SR–NASDAQ–2022–015]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Exempt Non-Convertible Bonds Listed Under Rule 5702 From Certain Corporate Governance Requirements

March 18, 2022.

On February 4, 2022, The Nasdaq Stock Market LLC (''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 exempt non-convertible bonds listed under Rule 5702 from certain corporate governance requirements. The proposed rule change was published for comment in the **Federal Register** on February 23, 2022.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day for this filing is April 9, 2022.

The Commission is extending the 45-day time period for Commission action on the proposed rule change. The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change.

Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 24, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NASDAQ–2022–015).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06191 Filed 3–23–22; 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. 94265 (February 16, 2022), 87 FR 10265.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94470; File No. SR–CboeEDGX–2021–052]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines

March 18, 2022.

I. Introduction

On December 6, 2021, Cboe EDGX Exchange, Inc. (''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan (''MRVP''), in connection with certain minor rule violations and applicable fines. The proposed rule change was published for comment in the **Federal Register** on December 23, 2021.[4] 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

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 93815 (December 17, 2021), 86 FR 73029.

disapprove the proposed rule change.[5] On March 8, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed.[6] The Commission received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its MRVP in Rule 25.3 in connection with certain minor rule violations and applicable fines. Rule 25.3 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding.[7] Current Rule 25.3(a)–(g) sets forth a list of specific Exchange Rules under which an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange.

Specifically, the proposed rule change amends Rule 25.3 by: (1) Eliminating violations of Rule 22.6(a) (regarding Market Maker firm quotes) in Rule 25.3(c), which currently imposes fines for violations of Rules 22.6(a) through (c) (Market Maker Quotations); (2) relocating violations of Rule 22.6(b) (regarding Market Maker initial quote volume requirements) and Rule 22.6(c) (regarding Market Maker two-sided quote requirements) to Rule 25.3(d),[8] which currently imposes fines for violations of Rule 22.6(d) (regarding Market Maker continuous quoting obligations) so that a single MRVP provision governs violations of a Market Maker's quoting obligations; and (3) updating the fine schedule applicable to minor rule violations related to Market Maker quoting obligations (*i.e.,* Rules 22.6(b)–(d), as proposed) in Rule 25.3(d).

First, the proposed rule change eliminates the violation of 22.6(a) currently in Rule 25.3(c) of the MRVP. Specifically, Rule 22.6(a) requires a Market Maker to submit bids and offers that are firm for all orders. The Exchange no longer believes violations of Rule 22.6(a) to be minor in nature and therefore proposes to remove it from the list of rules in Rule 25.3 eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of Rule 22.6(a), to the extent they would occur,[9] may directly impact trading on the Exchange, the maintenance of a fair and orderly market and customer protections because honoring firm quotations is vital in promoting efficient functioning of intermarket price priority and trading in general. Pursuant to Rule 25.3, the Exchange is not required to proceed under said Rules as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under Chapter VIII (Discipline) rules as to any such violation. The Exchange notes that the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), which recently filed a proposal, approved by the Commission,[10] to no longer include such violations as eligible for a minor rule disposition on Cboe Options for the same reason—it no longer believed violations of the firm quote requirement to be minor in nature.

The proposed rule change next relocates violations of Rules 22.6(b)[11] and (c), currently in Rule 25.3(c) of the MRVP, to Rule 25.3(d) (Rule 25.3(c), as amended)[12] of the MRVP. The Exchange notes that Rule 22.6 governs Market Maker quoting obligations on the Exchange and, more specifically, Rule 22.6(b) requires a Market Maker to submit initial quotes that contain a minimum size (currently, at least one contract) and Rule 22.6(c) requires a Market Maker to submit two-sided quotes. As stated above, Rule 25.3(d) currently imposes certain fines for a Market Maker's failure to meet the continuous quoting obligations in Rule 22.6(d). By relocating violations of Rules 22.6(b) and (c) to join violations of Rule 22.6(d) in Rule 25.3(d) of the MRVP, the proposed rule change amends the MRVP to impose the same fine schedule for violations of a Market Maker's quoting obligations. As a result of combining these into Rule 25.3(d), the proposed rule change subsequently renames Rule 25.3(d) as ''Market Maker Quoting Obligations''. The Exchange notes that the proposed rule change is consistent, and intended to harmonize to the extent possible, with the MRVP of the Exchange's affiliated options exchange, Cboe Options, which imposes one fine schedule for a market maker's failure to meet its quoting obligations on Cboe Options, including failure to meet continuous quoting requirements and failure to meet initial quote volume requirements.[13] The Exchange's other affiliated options exchanges, Cboe BZX Exchange, Inc. (''BZX Options'') and Cboe C2 Exchange, Inc. (''C2 Options''), have also filed proposals to update their MRVPs in connection with the violations of market maker quoting requirements on BZX Options and C2 Options, to the extent possible, in an identical manner.[14]

[5] *See* Securities Exchange Act Release No. 94143, 87 FR 7518 (February 9, 2022) (extending the time period to March 23, 2022).

[6] In Amendment No. 1, the Exchange revised the proposal to: (1) Provide additional detail and clarification regarding the Exchange's current and proposed treatment of violations of a Market Maker's quoting obligations, (2) correct an inadvertent error in the Exhibit 5, and (3) remove a superfluous provision in the Exhibit 5 to provide for additional clarity. Amendment No. 1 to the proposed rule change is available at: *https://www.sec.gov/rules/sro/cboeedgx.htm.*

[7] The Exchange may, with respect to any such violation, proceed under Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and impose the fine set forth in Rule 25.3(a)–(g).

[8] As a result of the proposed elimination or relocation of the rule violations listed under Rule 25.3(c), the proposed rule change ultimately eliminates Rule 25.3(c) from the MRVP and subsequently renumbers current Rules 25.3(d), 25.3(e), 25.3(f) and 25.3(g) to Rules 25.3(c), 25.3(d), 25.3(e) and 25.3(f), respectively.

[9] The Exchange notes that Market Maker bids and offers entered on the Exchange's all-electronic trading platform are firm for all orders for the number of contracts specified in the bid and offer, subject to the exceptions noted in Rule 22.6(a) and in Rule 602 of Regulation NMS under the Exchange Act of 1934 (the ''Act''), and that the electronic execution of marketable orders against resting bids and offers is system-enforced by the Exchange as provided in the Exchange Rules.

[10] *See* Securities Exchange Act Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR–CBOE–2021–045) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 13.15, Which Governs the Exchange's Minor Rule Violation Plan).

[11] Amendment No. 1 corrects an inadvertent error in the Exhibit 5 in connection with the relocation of violations of Rule 22.6(b) to Rule 25.3(d) by correcting reference to Rule ''22.b(b)'' to correctly reflect Rule ''22.6(b)''.

[12] *See supra* note 8.

[13] *See* Cboe Options Rule 13.15(g)(9).

[14] The Exchange notes that C2 Option's proposal has been approved by the Commission and BZX

Continued

The Exchange notes that, under current Rule 25.3(c), violations of the Market Maker initial quote volume requirement (Rule 22.6(b)) and violations of the Market Maker two-sided quote requirement (Rule 22.6(c)) are to be treated separately for purposes of determining the number of cumulative violations under the applicable fine schedule. For example, if during the same period, a Market Maker violates the initial quote volume requirement five times and also violates the two-sided quote requirement four times, the current provision would provide for two separate Letters of Caution (one for the initial quote size violations and one for the two-sided quote violations).[15] The Cboe Options MRVP applicable to violations of market maker quoting obligations does not contain this language and, as proposed, the amended MRVP language would not include this ''separate treatment'' provision for Market-Maker quoting obligations to be consistent with corresponding Cboe Options MRVP provision. Additionally, while current Rule 25.3(c) provides that Rules 22.6(b) and (c) shall be treated separately for purposes of determining the number of cumulative violations, pursuant to Rule 8.15(a), the Exchange, like Cboe Options, is permitted to ''aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.'' [16] The Exchange, like Cboe Options, considers violations of a Market Maker's quoting obligations Rule 22.6(b), (c) and (d)) to be similar in nature.[17] The Exchange believes moving violations of Rule 22.6(b) and (c) from Rule 25.3(c) to Rule 25.3(d) and removing the language to treat each paragraph separately for purposes of determining the cumulative violations aligns with how the Exchange generally surveils for and sanctions violations across market maker quoting obligations while still allowing the flexibility to treat the violations separately, if necessary. By aligning the fine schedule across each of the Market Maker quoting obligations the proposed rule change will allow for consistent application of the MRVP for the various Market Maker quoting obligations whether the violations are sanctioned separately or aggregation is warranted pursuant to Rule 8.15(a).

Further, the Exchange notes that Rule 25.3(d) currently provides that violations occurring during a calendar month are aggregated and sanctioned as a single offense. In line with the proposed change to allow the Exchange the flexibility to choose to aggregate violations across different sections governing market maker quoting obligations (upon the proposed relocation of the Market Maker two-sided quote and initial quote volume requirements to Rule 25.3(d)), the proposed rule change removes this language. Without the explicit requirement that the Exchange must aggregate and sanction violations as a single offense, the Exchange is free to determine whether or not violations of a Market Maker's quoting obligations across different sections, and across different review periods (*e.g.,* calendar months),[18] should be aggregated and sanctioned as a single offense pursuant to Rule 8.15(a); [19] just as the Exchange may choose to aggregate violations, pursuant to Rule 8.15(a), across different sections without time constraints (*e.g.,* in a calendar month) under other MRVP provisions that otherwise do not contain any explicit aggregation requirement.[20] Moreover, the Exchange believes that, notwithstanding the relocation of the two-sided quote and initial quote volume requirements to Rule 25.3(d), the aggregation requirement in Rule 25.3(d) currently conflicts with Rule 22.6(d) and a Market Maker's continuous quoting obligations. Specifically, Rule 22.6(d)(1) provides that the Exchange determines compliance by a Market Maker with the continuous quoting obligation in Rule 22.6(d) on a monthly basis. Rule 22.6(d)(1) goes on to provide that determining compliance with the continuous quoting obligations on a monthly basis does not relieve a Market Maker from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet this obligation each trading day. Therefore, the Exchange believes that it should have the flexibility to be able to separately charge for violations of a Market Maker's continuous quoting obligations on a monthly basis and a daily basis.

The proposed rule change also updates the fine schedule heading in Rule 25.3(d) to reflect that fines may be imposed per the number of offenses, rather than violations, within one period (*i.e.,* any rolling 24-month period), which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed, and further harmonizes Rule 25.3(d) with that of Cboe Options corresponding MRVP provision, which also counts the number of offenses in connection with market maker violations of quoting obligations in any rolling 24-month period.

Ultimately, the Exchange believes that the proposed flexibility to choose whether to aggregate violations of a Market Maker's quoting obligations across sections will allow it to administer discipline in a manner it deems most appropriate. For example, if a Market Maker violates its continuous quoting obligation pursuant to Rule 22.6(d) on multiple trading days, January 27, 28 and 31, 2022, due to a systemic error, and also violates the initial quote volume requirement pursuant to Rule 22.6(b) multiple times during the next trading day, February 1,

Option's proposal is currently pending approval by the Commission. *See* Securities Exchange Act Release Nos. 93887 (December 30, 2021), 87 FR 504 (January 5, 2022) (SR–C2–2021–019) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Certain Fine Amounts in Rule 13.15, Which Governs the Exchange's Minor Rule Violation Plan, and Non-Substantive Clarifying Changes); *and* 93834 (December 20, 2021), 86 FR 73072 (December 23, 2021) (SR–CboeBZX–2021–083) (Notice of Filing of a Proposed Rule Change To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines).

[15] The Exchange notes that Rule 22.6(b) requires the best bid and best offer entered by a Market Maker to have a size of at least one contract. The System requires a bid or offer to include a size of at least one contract, as a bid or offer with a size of zero results in any existing bid/offer quote for that series to be cancelled. As a result, the Exchange does not observe violations of Rule 22.6(b), but retains the provision in MRVP should the minimum size requirement be greater than one in the future.

[16] Cboe Options Rule 13.15(a) contains the same language. The Exchange, like Cboe Options, may consider violations of a Market Maker's quoting obligations under Rule 22.6(b), (c), and (d) to be similar in nature.

[17] The Exchange notes that Rule 22.6(d) requires a Market Maker to provide continuous bids and offers in accordance with, among other things, the Rule 22.6(c) requirement to provide two-sided quotes. Because two-sided quotes are an element of the continuous electronic quote obligation, and violations of continuous quoting requirements can be the direct result of failure to provide two-sided quotes, the Exchange commonly cites Rule 22.6(d) in connection with two-sided quote violations. However, depending on the particular facts and circumstances, a Market Maker may be cited for a violation of continuous electronic quotes under Rule 22.6(d) or two-sided quotes under Rule 22.6(c) or both.

[18] *See infra* note 21.

[19] *See supra* note 16.

[20] If the current provision were to be maintained in Rule 25.3(d) upon the relocation of the initial quote volume requirement and the two-sided quote requirement to Rule 25.3(d), then violations of a Market Maker's quoting obligations would never amount to more than one offense if they occurred in the same month. For example, if a Market Maker were to violate Rule 22.6(d) in February 2022 and violate Rule 22.6(b) and/or Rule 22.6(c) during the same month, then, pursuant to the current provision, such violations would have to be treated as a single offense and could not constitute more than one offense.

2022,[21] due to the same systemic error that has since been corrected, the Exchange may deem it appropriate to treat such violations as a single offense [22] and issue a Letter of Caution, which is applicable to a first offense pursuant to Rule 25.3(d). This would be in lieu of treating such violations as two separate offenses—the violation of the Market Maker's continuous quoting obligations (22.6(d)) as a first offense, for which the Exchange would issue a Letter of Caution, and the violations of its initial quote volume requirement aggregated into a separate, second offense, for which the Exchange would then issue a fine applicable to a second offense pursuant to Rule 25.3(d) (as proposed and described in detail below). If, in June 2022 (*i.e.,* within the same 24-month period as the above referenced violations),[23] the Market Maker violates the initial quote volume requirement multiple times throughout the month due to another systemic error, and also violates the continuous quote requirement pursuant to Rule 22.6(d) on multiple days throughout June 2022 due to the same systemic error, the Exchange may again deem it appropriate to treat these violations as a single offense, constituting the Market Maker's second offense within the previous rolling 24-month period for which the Exchange would then issue a fine applicable to a second offense pursuant to Rule 25.3(d) (as proposed). The Exchange could, alternatively, choose to aggregate the June 2022 violations of the initial quote volume requirement as one offense and the June 2022 violations of the continuous quote requirement as another offense, which would result in the issuance of two offenses stemming from the same review period (*i.e.,* a review of June 2022) [24] to which the Exchange would then issue a fine applicable to a second and third offense within the previous rolling 24-month period pursuant to Rule 25.3(d) (as proposed).

The proposed rule change next amends the fine schedule in Rule 25.3(d) (Rule 25.3(c), as amended) [25] applicable to Market Makers for violations of their quoting obligations (Rules 22.6(b)–(d), as proposed) in order to harmonize, to the extent possible, this MRVP provision with the corresponding Cboe Options MRVP provision applicable to violations of a market maker's quoting obligations on Cboe Options. The current fine schedule in Rule 25.3(d), currently applicable to violations of a Market Maker's continuous quoting obligations, sets forth the following:

For the first violation during any rolling 24-month period (*i.e.,* one period),[26] the fine schedule imposed by Rule 25.3(d) currently permits the Exchange to give a Letter of Caution. For a second violation during the same period, the fine schedule currently permits the Exchange to apply a fine of $1,000. For a third violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $2,500. For a fourth violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $5,000. Finally, for five or more violations in the same period, the fine schedule currently permits the Exchange to proceed with formal disciplinary action.

The proposed rule change updates the fine schedule to provide that, during any rolling 24-month period, the Exchange may continue to give a Letter of Caution for a first offense,[27] may apply a fine of $1,500 for a second offense,[28] may apply a fine of $3,000 for a third offense, and may proceed with formal disciplinary action for subsequent offenses. As described above, and as is the case for all rule violations covered under Rule 25.3, the Exchange may determine that it is appropriate to commence a formal disciplinary proceeding for a violation of Market Maker quoting obligations and may choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP. The Exchange may continue to aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected, and treat such violations as a single offense.[29]

The Exchange believes it is appropriate to increase the fine amounts for a second and third offense and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense. Particularly, the Exchange believes that applying a higher fine per second and third offenses in connection with a Market Maker's quoting obligations [30] and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders. The Exchange believes this fine structure may serve to more effectively deter repeat-offenders while continuing to provide reasonable warning for a first offense during a rolling 24-month period. The Exchange notes that the proposed fine schedule for violations of a Market Maker's quoting obligations is identical to the fine schedule under the MRVP of Cboe Options for market maker violations of quoting obligations on Cboe Options, including a continuous quoting requirement and initial volume requirement. The Exchange further notes that the proposed change is intended to provide for consistency across the Exchange's MRVP and the MRVPs of its affiliated options exchanges, Cboe Options, BZX Options and C2 Options, as BZX Options and C2 Options also intend to file proposals to update their minor rule violation fines for violations of market maker quoting requirements on their exchanges in an identical manner.

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.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section

[21] The Exchange is not required to treat violations occurring in separate review periods (*e.g.,* a monthly review, a weekly review, etc.) as separate offenses and the Exchange is not required to treat violations occurring in the same review period as a single offense (including as proposed—in connection with removing the provision in Rule 25.3(d) that requires the Exchange to aggregate and sanction violations occurring in a month as a single offense).

[22] *See supra* note 16.

[23] *See* Rule 25.3, which states that a subsequent violation is calculated on the basis of a rolling 24-month period (''Period'').

[24] *See supra* note 21.

[25] *See supra* note 8.

[26] *See supra* note 23.

[27] As stated herein, the proposed rule change also updates the fine schedule heading to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

[28] Any fine imposed pursuant to the Exchange's MRVP that does not exceed $2,500 and is not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Act or as may be required by any other regulatory authority. *See* Rule 8.15(a).

[29] *See* Rule 8.15(a).

[30] The proposed fine amounts are also an increase from the fines in Rule 25.3(c) currently imposed for violations of Market Maker initial quote volume and two-sided requirements. The Exchange notes, however, that Rule 25.3(c) currently imposes fines per violation whereas Rule 25.3(d) imposes fines per offense, which may be cumulative violations of Market Maker quoting obligations, as proposed.

[31] 15 U.S.C. 78f(b).

6(b)(5) [32] 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. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [33] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to remove the firm quote requirement, which it no longer considers violations of which to be minor in nature, as eligible for a minor rule fine disposition under its MRVP, will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that violations of the firm quote requirement may directly impact trading on the Exchange, maintenance of a fair and orderly market, and customer protection. As such, the Exchange does not believe violations of this rule to be minor in nature and, instead, should be handled under its formal disciplinary rules, rather than imposing fines pursuant to its MRVP. Also, and as stated above, the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Options, which, for the same reasons provided herein, no longer includes violations of the firm quote requirement as eligible for a minor rule disposition on Cboe Options.[34]

The Exchange believes that the proposed rule change to apply the same MRVP fine schedule for violations of a Market Makers quoting obligations pursuant to Rule 22.6 (*i.e.,* Rules 22.6(b)–(d)) and the same process for imposing such fines—that is, permitting the Exchange to aggregate violations of such Market Maker obligations into a single offense—will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade by uniformly imposing penalties and procedures for failure to satisfy obligations governed by the same Rule. By allowing for the consistent application of the MRVP for the various Market Maker quoting obligations and the administration of discipline in a manner the Exchange deems most appropriate (*i.e.,* whether the violations are sanctioned separately or aggregation is warranted pursuant to Rule 8.15(a)), the Exchange believes the proposed rule change provides the Exchange with the flexibility to administer its enforcement program in a more uniform, effective and efficient manner, thereby removing impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Additionally, the Exchange believes the proposed rule change will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it is intended to harmonize the Exchange's MRVP in connection with Market Maker quoting obligations with that of Cboe Options, as well as BZX Options and C2 Options (to the extent possible),[35] thereby providing consistent structures and procedures across MRVP provisions applicable to market maker obligations on the affiliated options exchanges. The proposed rule change contributes to the protection of investors and the public interest by promoting regulatory consistency by increasing understanding of the Exchange's MRVP provisions for Trading Permit Holders (''TPHs'') that are also market participants on the Exchange's affiliated options exchanges, making it easier for participants across the affiliated options exchanges to adhere to the disciplinary rules.

The Exchange also believes that the proposed rule change, in connection with the fine schedule for violations of a Market Maker's quoting obligations in Rule 25.3(d), as proposed, to increase the fine amounts for a second and third offense [36] and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that applying a higher fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders which may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange believes that more effectively deterring repeat-offenders, while continuing to make first instance offenders aware of their quoting obligation violations and the subsequent consequences for continued failure, will, in turn, further motivate Market Makers to continue to uphold their quoting obligations, providing liquid markets to the benefit of all investors. The Exchange again notes that the proposed fine schedule is consistent with the fine schedule under Cboe Options' MRVP applicable to violations of Market Maker quoting requirements on Cboe Options, including a continuous quoting requirement and initial quote volume requirement. As described above, BZX Options and C2 Options intend to file proposals to update their minor rule violation fines applicable to violations of market maker quoting obligations in the same manner as Cboe Options and as proposed herein. As such, the proposed rule change is also designed to benefit investors by providing from consistent penalties across the MRVPs of the Exchange and its affiliated options exchanges.

The Exchange further believes that the proposed rule changes to Rule 25.3 are consistent with Section 6(b)(6) of the Act,[37] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change removes a Rule listed as eligible for a minor rule fine disposition under the Exchange's MRVP that the Exchange no longer believes violations of which are minor in nature and is more appropriately disciplined through

[32] 15 U.S.C. 78f(b)(5).

[33] *Id.*

[34] *See supra* note 10.

[35] *See supra* notes 13 and 14.

[36] *See supra* note 30.

[37] 15 U.S.C. 78f(b)(6).

the Exchange's formal disciplinary procedures, amends the MRVP provisions so that the same fine schedule, and process to impose such fines, uniformly applies to violations of a Market Maker's quoting obligations in Rule 22.6, and amends the fine schedule applicable to Market Maker failures to meet their quoting obligations in a manner that appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[38] Rule 25.3, currently and as amended, does not preclude an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending its MRVP in connection with rules eligible for a minor rule fine disposition and with the fine schedule for Market Maker failures to meet their quoting obligations. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[39] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[40] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal, as modified by Amendment No. 1, is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[41] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal, as modified by Amendment No. 1, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[42] which governs minor rule violation plans.

As stated above, the Exchange proposes to amend Rule 25.3 by eliminating violations of Rule 22.6(a) from Rule 25.3(c) and the Exchange's MRVP; relocating violations of Rule 22.6(b) and Rule 22.6(c) to proposed Rule 25.3(c) so that a single MRVP provision governs violations of a Market Maker's quoting obligations; amending the current manner of calculating violations of Market Marker rules, including deleting a provision that requires violations of Market Maker obligations occurring during a calendar month be aggregated and sanctioned as a single offense; and updating the fine schedule applicable to minor rule violations related to Market Maker quoting obligations.

The Commission believes that Rule 25.3 is an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission finds that the Exchange's proposal, as modified by Amendment No. 1, to eliminate Rule 22.6(a), a Market Maker quoting obligation rule, from the MRVP is consistent with the Act because it should help the Exchange enforce compliance with, and provide appropriate discipline for, violation of a rule that the Exchange no longer believes is minor in nature. Combining all the Market Maker quoting obligation rules together in one provision of Rule 25.3 will also bring clarity to the Rule. The Commission also finds that amending the current manner of calculating violations of Market Maker rules is appropriate because the Exchange can already aggregate violations under Rule 8.15 under certain circumstances. Finally, the Commission finds that amending the associated fee schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines on Market Makers for violations of the Market Marker rules.

In approving the propose rule change, as modified by Amendment No. 1, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 25.3. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rule 25.3 provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 25.3 or whether a violation requires formal disciplinary action.

IV. Solicitation of Comments on Amendment No. 1 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2021–052 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2021–052. This file number should be included on the subject line if email is used. To help the

[38] 15 U.S.C. 78f(b)(7) and 78f(d).

[39] 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).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[42] 17 CFR 240.19d–1(c)(2).

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–CboeEDGX–2021–052 and should be submitted on or before April 14, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 1 in the **Federal Register**. According to the Exchange, Amendment No. 1 supplements the proposal by, among other things: (1) Providing additional detail and clarification regarding the Exchange's current and proposed treatment of a Market Maker's quoting obligations, (2) correcting an inadvertent error in the Exhibit 5, and (3) removing a superfluous provision in the Exhibit 5 to provide for additional clarity. The Commission believes that Amendment No. 1 provides additional accuracy and clarity to the proposal and does not raise any novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[43] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–CboeEDGX–2021–052), as modified by Amendment No. 1 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06190 Filed 3–23–22; 8:45 am]

BILLING CODE 8011–01–P

[43] 15 U.S.C. 78s(b)(2).

[44] *Id.*

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34535; File No. 812–15259]

BlackRock Capital Investment Corporation, et al.

March 18, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order (''Order'') to permit certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with affiliated investment entities.

APPLICANTS: BlackRock Capital Investment Corporation (''BCIC''), BlackRock Credit Strategies Fund (''BCSF''), BlackRock Direct Lending Corp. (''BDLC''), BlackRock Private Credit Fund (''BPCF''), BlackRock Private Investments Fund (''BPIF''), BPIF Subsidiary, LLC, BlackRock Capital Investment Advisors, LLC (''BlackRock Capital Advisor''), BlackRock Advisors, LLC (''BAL''), Middle Market Senior Fund, L.P., 1824 Private Equity Feeder, L.P., 1824 Private Equity Fund, L.P., 1885 Private Opportunities Fund, L.P., ABR PEP I, Ltd., ABR PEP II, Ltd., APO Global Healthcare Cayman, Ltd., APO Global Healthcare HOLDCO SCSP, BEL45 Private Opportunities Fund, L.P., BlackRock 2019 Evergreen Private Opportunities Feeder SCSP, BlackRock 2019 Evergreen Private Opportunities Master SCSP, BlackRock APO Global Healthcare Private Equity Fund, S.C.A. SICAV–RAIF, BlackRock ASF Private Opportunities Fund, L.P., BlackRock Diversified Private Debt USPC Holdings LP, BlackRock Diversified Private Opportunities Fund, L.P., BlackRock Diversified Private Opportunities Fund II, L.P., BlackRock ERI Private Opportunities Feeder SCSP, BlackRock ERI Private Opportunities Master SCSP, BlackRock Gemini II Private Opportunities Fund, LP, BlackRock Gemini Private Opportunities Fund, L.P., BlackRock Growth Equity Fund Aggregator LP, BlackRock Growth Equity Fund LP, BlackRock Growth Equity Fund (LUX) SCSP, BlackRock Growth Equity Fund Holdings (LUX) SCSP, BlackRock GSA Private Opportunities Feeder Fund, L.P., BlackRock GSA Private Opportunities Fund, L.P., BlackRock HAJAR Feeder Fund, L.P., BlackRock HAJAR Fund, L.P., BlackRock Healthcare Opportunities Fund (Delaware), L.P., BlackRock Healthcare Opportunities Fund, L.P., BlackRock Heartland Private Opportunities Fund, L.P., BlackRock Inverwood Private Opportunities Fund, L.P, BlackRock JI Private Equity Solutions, L.P., BlackRock McKinney Opportunities Fund Cayman, Ltd., BlackRock MD POF Cayman, Ltd., BlackRock MD Private Opportunities Feeder Fund, L.P., BlackRock MD Private Opportunities Fund, L.P., BlackRock MSV Private Opportunities Fund, L.P., BlackRock Private Equity Co-Investments 2021 Aggregator LP, BlackRock Private Equity Co-Investments 2021 LP, BlackRock Private Equity Co-Investments 2021 (LUX) SCSP, BlackRock Private Equity Co-Investments 2021 Holdings (LUX) SCSP, BlackRock Private Equity Impact Capital 60–40 LP, BlackRock Private Equity Impact Capital 60–40 (LUX) SCSP, BlackRock Private Equity Impact Capital 100 LP, BlackRock Private Equity Impact Capital 100 (LUX) SCSP, BlackRock Private Equity Impact Capital Aggregator LP, BlackRock Private Equity Impact Capital Holdings (LUX) SCSP, BlackRock Private Equity Primaries 2021 Aggregator LP, BlackRock Private Equity Primaries 2021 Holdings (Cayman) LP, BlackRock Private Equity Primaries 2021 LP, BlackRock Private Equity Primaries 2021 (LUX) SCSP, BlackRock Private Opportunities Fund IV (Cayman), L.P., BlackRock Private Opportunities Fund IV (Employees),

L.P., BlackRock Private Opportunities Fund IV Feeder SCSP, BlackRock Private Opportunities Fund IV Master SCSP, BlackRock Private Opportunities Fund IV, L.P., BlackRock Secondaries & Liquidity Solutions—B Intermediary (Cayman) LP, BlackRock Secondaries & Liquidity Solutions—B LP, BlackRock Secondaries & Liquidity Solutions—C LP, BlackRock Secondaries & Liquidity Solutions (LUX) SCSP, BlackRock Secondaries & Liquidity Solutions Holdings (LUX) SCSP, BlackRock Secondaries & Liquidity Solutions LP, BlackRock Secondaries & Liquidity Solutions Subsidiary SCSP, BLK2018 Core Private Equity Feeder Fund, L.P., BLK2018 Core Private Equity Fund, L.P., BLK2019 Private Opportunities Feeder Fund, L.P., BLK2019 Private Opportunities Fund, L.P., BLK2020 Private Opportunities Feeder Fund, L.P., BLK2020 Private Opportunities Fund, L.P., BLK2021 Core Private Equity Feeder Fund, L.P., BLK2021 Core Private Equity Fund, L.P., BLK2021 Private Opportunities Feeder Fund, L.P., BLK2021 Private Opportunities Fund, L.P., BR POF IV Cayman Master Fund, L.P., BR/ERB Co-Investment Fund II, L.P., BV PE Opportunities Cayman Master Fund, Ltd., BV PE Opportunities Feeder Fund SCSP, BV PE Opportunities Master Fund SCSP, Coin Private Opportunities, L.P., FM Global Cayman, Ltd., FM Global Investment Partners, L.P., Gildi Lifeyrissjodur (Gildi Pension Fund), Gildi Lifeyrissjodur II (Gildi Pension Fund), Heathrow Forest Opportunities Fund, L.P., High Cedar Direct Fund, L.P., High Cedar Feeder, L.P., High Cedar Master Cayman, Ltd., High Cedar Master, L.P., High Rock Direct Fund, L.P., High Rock Feeder, L.P., High Rock Master, L.P., High Street Feeder, L.P., High Street Fund, L.P., Lincoln Pension Private Equity BR, L.P., Markwood Co-Investment Fund 1, L.P., MB BlackRock Holdings SCSP, MedioBanca BlackRock Master Fund SCSP, Mountain Research Fund—Private Equity, L.P., Mutual of Omaha of Cayman, Ltd., Mutual of Omaha Opportunities Fund, L.P., NDSIB Private Opportunities Fund, L.P., NMERB Sierra Blanca Fund, L.P., OV Private Opportunities, L.P., PEP ASGA Feeder L.P., PEP ASGA Master Cayman, Ltd., PEP ASGA Master L.P., PEP Tellco Investments 1 Cayman, Ltd., PEP Tellco Investments 1, L.P., PMH SPV Amber LP, PMH SPV Amber B LP, PMH SPV Basalt LP, PMH SPV Emerald LP, PMH SPV Garnet LP, PMH SPV Pearl LP, PMH SPV Pearl—B LP, PMH SPV Radar Holdings LP, PMH SPV Sapphire LP, Private Equity Opportunities ELTIF, Private Equity Partners VII (Delaware), L.P., Private Equity Partners VII (Scotland), L.P., Private Equity Partners VII Master Cayman, Ltd., Private Equity Partners VII Master L.P., Private Equity Partners VII US Cayman, Ltd., Private Equity Partners VII US, L.P., Private Market Holdings LP, Red River Direct Investment Fund III, L.P., Salam Private Opportunities Fund, L.P., Salam Private Opportunities Feeder, L.P., SC–BR Asia PE Feeder Fund, L.P., SC–BR Asia PE Fund, L.P., SONJ Private Opportunities Fund II, L.P., Sullivan Way POF Cayman, Ltd., Sullivan Way Private Opportunities Fund, L.P., Tango Capital Opportunities Fund, L.P., TFO Asia Private Opportunities Fund, L.P., The Lincoln National Life Insurance Company, Topanga Opportunities Fund Cayman, Ltd., Topanga Private Opportunities, L.P., Total Alternatives Fund—Private Equity LP, Total Alternatives Fund—Private Equity (B) LP, TSCL Private Markets Feeder Fund, L.P., TSCL Private Markets Fund, L.P., VFL Co Invest Partners, L.P., BlackRock 2019 Evergreen Private Opportunities Cayman Master Ltd., BlackRock Alternative Funds S.C.A., SICAV–RAIF—BlackRock Private Equity Impact Opportunities ELTIF, BlackRock Florida Cayman, L.P., BlackRock HMC GP, LLC, BlackRock McKinney Opportunities Fund, L.P., BlackRock POF V (GENPAR) LLC, BlackRock Private Equity Primaries 2021 (Cayman) LP, BlackRock Private Opportunities Fund V (LUX) SCSP. BlackRock Private Opportunities Fund V Aggregator LP, BlackRock Private Opportunities Fund V Holdings (LUX) SCSP, BlackRock Private Opportunities Fund V LP, BlackRock Secondaries & Liquidity Solutions—B SPV LP, BlackRock Secondaries & Liquidity Solutions Holdings II (LUX) SCSP, BlackRock Secondaries & Liquidity Solutions II—B LP, BlackRock Secondaries & Liquidity Solutions II—C LP, BlackRock Secondaries & Liquidity Solutions II (GENPAR) LLC, BlackRock Secondaries & Liquidity Solutions II (GENPAR) SARL, BlackRock Secondaries & Liquidity Solutions II (LUX) SCSP, BlackRock Secondaries & Liquidity Solutions II LP, BlackRock Secondaries & Liquidity Solutions Subsidiary II (LUX) SCSP, BLK TEEMO, L.P., BR Magnum Aggregator, Ltd., HMC Alpha Ventures Fund, L.P., NHRS Private Opportunities Fund, L.P., PEP TELLCO Investments 2, L.P., PMH Holdco II LP, PMH Holdco LP, PMH Newco II LLC, Private Equity Impact Opportunities Holdings SCSP, Private Market Holdings—C, LLC, Private Market Holdings II LLC, SLS II—C Holdco LP, SLS II—C Holdings LLC, SLS II—C Newco LLC, TSCL Private Markets Cayman Fund Ltd., BlackRock TCP Capital Corp. (''TCPC''), Special Value Continuation Partners LLC (''SVCP''), TCPC Funding I, LLC (''TCPC Funding''), TCPC Funding II, LLC (''TCPC Funding II''), TCPC SBIC, LP (''TCPC SBIC''), TCPC SBIC GP, LLC (''TCPC SBIC GP''), Tennenbaum Capital Partners, LLC (''TCP''), SVOF/MM, LLC (''SVOF/MM''), Tennenbaum Opportunities Partners V, LP, Tennenbaum Opportunities Fund V, LLC, Tennenbaum Heartland Co-Invest, LP, SEB DIP Investor, LP, Special Value Expansion Fund, LLC, Special Value Opportunities Fund, LLC, TCP Direct Lending Fund VIII–S, LLC, TCP Direct Lending Fund VIII–T, LLC, TCP DLF VIII 2018 CLO LLC, TCP Enhanced Yield Funding I, LLC, TCP Rainier, LLC, TCP Direct Lending Fund VIII, LLC, TCP Direct Lending Fund VIII–L, LLC, TCP Direct Lending Fund VIII–A, LLC, Tennenbaum Energy Opportunities Co., LLC, Tennenbaum Energy Opportunities Fund, LP, Tennenbaum Enhanced Yield Fund I, LLC, Tennenbaum Opportunities Fund VI, LLC, TCP Waterman Fund, LLC, Tennenbaum Senior Loan Fund III, LP, Tennenbaum Senior Loan Funding III, LLC, Tennenbaum Senior Loan Fund IV–A, LP, Tennenbaum Senior Loan Fund IV–B, LP, Tennenbaum Special Situations Fund IX, LLC, Tennenbaum Special Situations Fund IX–A, LLC, Tennenbaum Special Situations Fund IX–S, L.P., Tennenbaum Senior Loan Fund II, LP, Tennenbaum Senior Loan Fund V, LLC, Tennenbaum Enhanced Yield Operating I, LLC, TCP Waterman CLO, LLC, TCP Whitney CLO, LLC, TCP Whitney CLO, Ltd., Tennenbaum Senior Loan Operating III, LLC, Tennenbaum Senior Loan SPV IV–A, LLC, BlackRock Elbert CLO V Ltd., BlackRock DLF IX 2019 CLO, LLC, BlackRock DLF IX–G CLO, LLC, BlackRock DLF IX 2020–1 CLO, LLC, BlackRock Lisi Credit Fund, LP, Special Value Opportunities Feeder Fund, TCP CLO III, LLC, TCP Direct Lending Fund VIII MM, LLC, TCP Direct Lending Fund VIII–A MM, LLC, Tennenbaum DIP Opportunity Feeder, LP, Tennenbaum Energy Opportunities GP, LLC, Tennenbaum Enhanced Yield MM I, LLC, Tennenbaum Heartland GP, LLC, Tennenbaum Senior Loan GP III, LLC, Tennenbaum Senior Loan GP IV–A, LLC, Tennenbaum Senior Loan GP IV–B, LLC, Tennenbaum Senior Loan MM V, LLC, Tennenbaum SLF II GP, LLC, Tennenbaum Special Situations IX–S GP, LLC, Tennenbaum Special Situations MM IX, LLC, Tennenbaum Special Situations MM IX–A, LLC, Tennenbaum Waterman GP, LLC, Special Value Continuation Partners,

LP, ABR USPC Holdings I, Ltd., ABR USPC Holdings II, Ltd., BlackRock Baker CLO 2021–1, Ltd., BlackRock Baker CLO VIII, LLC, BlackRock Direct Lending Fund IX–U (Luxembourg) SCSP, BlackRock DLF IX CLO 2021–1, LLC, BlackRock DLF IX CLO 2021–2, LLC, BlackRock Rainier CLO VI, Ltd., BlackRock Shasta CLO VII, LLC, BlackRock Technology Credit Opportunities I, LP, BlackRock Technology Credit Opportunities I, Ltd., BlackRock Technology Credit Opportunities Non-US II Ltd., DLF IX–L Funding, LP, Loan Capital Direct LLC, Olympia Holdings I, Ltd., TCP DLF VIII–L Funding, LP, TCP DLF VIII–S Funding, LLC, TCP DLF VIII–T Funding, LLC, Middle Market Senior Master Fund S.À.R.L., Tennenbaum Special Situations IX–C, L.P., Tennenbaum Special Situations IX–O, L.P., TCP Direct Lending Fund VIII—L (Ireland), TCP Direct Lending Fund VIII—U (Ireland), BlackRock Direct Lending Fund IX–U (Ireland), and BlackRock Direct Lending Fund IX–L (Ireland) (collectively, the ''Applicants'').

FILING DATES: The application was filed on August 25, 2021, and amended on March 17, 2022.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by emailing the Commission's Secretary at *Secretarys-Office@sec.gov* and serving Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on April 13, 2022, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary at *Secretarys-Office@sec.gov.*

ADDRESSES: The Commission: *Secretarys-Office@sec.gov.* Applicants: *GroupBCIALSupport@blackrock.com.*

FOR FURTHER INFORMATION CONTACT: Jean E. Minarick, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated March 17, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at *https://www.sec.gov/edgar/searchedgar/legacy/companysearch.html.* You may also call the SEC's Public Reference Room at (202) 551–8090.

Introduction

1. The Applicants request an Order of the Commission under sections 17(d) and 57(i) of the Act and rule 17d–1 thereunder to permit, subject to the terms and conditions set forth in the application (the ''Conditions''), a Regulated Fund [1] and one or more other Regulated Funds and/or one or more Affiliated Funds [2] to enter into Co-Investment Transactions with each other. ''Co-Investment Transaction'' means any transaction in which a Regulated Fund (or its Wholly-Owned Investment Sub (as defined below)) participated together with one or more Affiliated Funds and/or one or more other Regulated Funds in reliance on the Order. ''Potential Co-Investment Transaction'' means any investment opportunity in which a Regulated Fund (or its Wholly-Owned Investment Sub) could not participate together with one or more Affiliated Funds and/or one or more other Regulated Funds without obtaining and relying on the Order.[3]

2. The Order sought by the application would supersede the Prior Order (as defined below) issued by the Commission to BlackRock Capital Investment Corporation, *et al.* on June 20, 2019 [4] under sections 17(d) and 57(i) of the Act and rule 17d–1 under the Act, with the result that no person will continue to rely on the Prior Order if the Order is granted.

Applicants

3. BCIC is a Delaware corporation organized as a closed-end management investment company that has elected to be regulated as a BDC under the Act.[5] BCIC is managed by a Board [6] currently

[1] ''Regulated Funds'' means BCIC, BCSF, BDLC, BPCF, BPIF, TCPC, the Future Regulated Funds and the BDC Downstream Funds. ''Future Regulated Fund'' means a closed-end management investment company (a) that is registered under the Act or has elected to be regulated as a BDC, (b) whose investment adviser or sub-adviser is an Adviser, and (c) that intends to participate in the proposed co-investment program (the ''Co-Investment Program'').

''Adviser'' means BlackRock Capital Advisor, TCP and SVOF/MM and any Future Adviser. The term Adviser does not include BAL or any other investment adviser to an Affiliated Fund or a Regulated Fund whose sub-adviser is an Adviser (a ''Sub-Advised Fund''), except that such investment adviser is deemed to be an Adviser for purposes of Conditions 2(c)(iv), 13 and 14 only. BAL and any investment adviser to a Sub-Advised Fund will not be the source of any Potential Co-Investment Transactions under the Order.

''Future Adviser'' means any future investment adviser that (i) is controlled by BlackRock Capital Advisor, (ii) (a) is registered as an investment adviser under the Advisers Act (as defined below) or (b) is a relying adviser of an investment adviser that is registered under the Advisers Act and that is controlled by BlackRock Capital Advisor, and (iii) is not a Regulated Fund or a subsidiary of a Regulated Fund.

[2] ''Affiliated Fund'' means any Existing Affiliated Fund (identified in Appendix A to the application) or any entity (a) whose investment adviser or sub-adviser is an Adviser, (b) that either (x) would be an investment company but for section 3(c)(1), 3(c)(5)(C) or 3(c)(7) of the Act or (y) relies on the rule 3a–7 exemption from investment company status, (c) that is not a BDC Downstream Fund (as defined below), and (d) that intends to participate in the Co-Investment Program; provided that an entity sub-advised by an Adviser is not included in this term if: (i) Such Adviser serving as sub-adviser does not control the entity, and (ii) the primary investment adviser is not an Adviser. Applicants represent that no Existing Affiliated Fund is a BDC Downstream Fund.

''BDC Downstream Fund'' means, with respect to any Regulated Fund that is a BDC, an entity (i) that the BDC directly or indirectly controls, (ii) that is not controlled by any person other than the BDC (except a person that indirectly controls the entity solely because it controls the BDC), (iii) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act, (iv) whose investment adviser or sub-adviser is an Adviser, (v) that is not a Wholly-Owned Investment Sub and (vi) that intends to participate in the Co-Investment Program.

[3] All existing entities that currently intend to rely on the Order have been named as Applicants and any existing or future entities that may rely on the Order in the future will comply with its terms and Conditions set forth in the application. No Regulated Fund or Affiliated Fund that relies on this Order will rely on any other order of the Commission authorizing co-investment transactions pursuant to sections 17(d) and 57(i) of the Act and not entity that relies on another such order of the Commission will rely on this Order.

[4] *BlackRock Capital Investment Corporation, et al.,* Investment Company Act Release Nos. 33480 (May 21, 2019) (notice) and 33515 (June 20, 2019) (order) (''Prior Order'').

[5] Section 2(a)(48) defines a BDC to be any closed-end investment company that operates for the purpose of making investments in securities described in section 55(a)(1) through 55(a)(3) and makes available significant managerial assistance with respect to the issuers of such securities.

[6] ''Board'' means (i) with respect to a Regulated Fund other than a BDC Downstream Fund, the board of directors (or the equivalent) of the Regulated Fund and (ii) with respect to a BDC Downstream Fund, the Independent Party of the BDC Downstream Fund.

''Independent Party'' means, with respect to a BDC Downstream Fund, (i) if the BDC Downstream Fund has a board of directors (or the equivalent), the board or (ii) if the BDC Downstream Fund does not have a board of directors (or the equivalent), a transaction committee or advisory committee of the BDC Downstream Fund.

comprised of seven persons, six of whom are Independent Directors.[7]

4. BCSF, a Delaware statutory trust, is registered as a non-diversified, closed-end management investment company under the Act. BCSF is managed by a Board, a majority of which are Independent Directors.

5. BDLC is a closed-end management investment company incorporated in Delaware that has elected to be regulated as a BDC under the Act. BDLC is managed by a five member board of directors, three of whom are Independent Directors.

6. BPCF is a Delaware statutory trust organized as a closed-end management investment company that intends to elect to be regulated as a BDC under the Act. BPCF currently is managed by its sole originating trustee.

7. BPIF, a Delaware statutory trust, is registered as a non-diversified, closed-end management investment company under the Act. BPIF is managed by a Board of trustees, a majority of which are Independent Directors.

8. TCPC is a BDC incorporated in Delaware and its common stock is traded on The NASDAQ Global Select Market. TCPC's business and affairs are managed under the direction of its Board. TCPC has an eight-member Board, six of whom are Independent Directors.

9. SVCP is a limited liability company under the laws of the State of Delaware. SVCP is a wholly-owned subsidiary of TCPC.

10. TCPC Funding and TCP Funding II are limited liability companies under the laws of the State of Delaware and are wholly-owned subsidiaries of TCPC.

10. TCPC SBIC is a limited partnership under the laws of the state of Delaware. SVCP directly owns a 100% limited partnership interest in TCPC SBIC. TCPC SBIC will not be registered under the Act based on the exclusion from the definition of investment company contained in section 3(c)(7). TCPC SBIC is a wholly-owned subsidiary that is licensed by the Small Business Administration (the ''SBA'') to operate under the Small Business Investment Act of 1958 (the ''SBA Act'') as a small business investment company (such a subsidiary, an ''SBIC Subsidiary'').

12. TCPC SBIC GP is a limited liability company under the laws of the state of Delaware, and is a wholly-owned subsidiary of SVCP, which is the sole member of the TCPC SBIC GP. TCPC SBIC GP is the sole general partner of TCPC SBIC.

13. TCPC effectively controls TCPC SBIC because TCPC SBIC GP is a wholly-owned subsidiary of SVCP.

14. BlackRock Capital Advisor is an indirect wholly-owned subsidiary of BlackRock, Inc., which is a New York based global investment management firm. BlackRock Capital Advisor is a Delaware limited liability company and an investment adviser that is registered with the Commission under the Investment Advisers Act of 1940, as amended (the ''Advisers Act''). BlackRock Capital Advisor serves as the investment adviser to BCIC and BDLC and sub-adviser to BCSF and BPIF.

15. BAL is a Delaware limited liability company that is registered with the Commission as an investment adviser under the Advisers Act. BAL serves as the investment adviser to BCSF and BPIF and may serve as the investment adviser to Future Regulated Funds and future Affiliated Funds that are sub-advised by an Adviser. BAL is an indirect wholly-owned subsidiary of BlackRock, Inc.

16. TCP is a wholly-owned subsidiary of BlackRock Capital Advisor. TCP, a Delaware limited liability company registered under the Advisers Act, serves as the investment adviser to TCPC, TCPC SBIC and certain Existing Affiliated Funds.

17. SVOF/MM is a controlled subsidiary of TCP. SVOF/MM is an investment adviser registered under the Advisers Act. Certain classes and series of SVOF/MM also serve as managing member, sub-adviser and/or investment adviser to certain Existing Affiliated Funds.

18. The Existing Affiliated Funds are the investment funds identified in Appendix A to the application. Applicants represent that each Existing Affiliated Fund is a separate and distinct legal entity and would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act. TCP is the investment adviser to 54 of the Existing Affiliated Funds. Series I of SVOF/MM is the investment adviser to 3 of the Existing Affiliated Funds and BlackRock Capital Advisor is the investment adviser or sub-adviser to 197 of the Existing Affiliated Funds. Series I of SVOF/MM also serves as sub-adviser to one Existing Affiliated Fund of which TCP is the investment adviser.

19. Applicants state that a Regulated Fund may, from time to time, form one or more Wholly-Owned Investment Subs.[8] Such a subsidiary may be prohibited from investing in a Co-Investment Transaction with a Regulated Fund (other than its parent) or any Affiliated Fund because it would be a company controlled by its parent Regulated Fund for purposes of section 57(a)(4) and rule 17d–1. Applicants request that each Wholly-Owned Investment Sub be permitted to participate in Co-Investment Transactions in lieu of the Regulated Fund that owns it and that the Wholly-Owned Investment Sub's participation in any such transaction be treated, for purposes of the Order, as though the parent Regulated Fund were participating directly.

Applicants' Representations

A. Allocation Process

20. Applicants represent that the Advisers have established processes for ensuring compliance with the Prior Order and for allocating initial investment opportunities, opportunities for subsequent investments in an issuer and dispositions of securities holdings reasonably designed to treat all clients fairly and equitably. Further, Applicants represent that these processes will be extended and modified in a manner reasonably designed to ensure that the additional transactions permitted under the Order will both (i) be fair and equitable to the Regulated Funds and the Affiliated Funds and (ii) comply with the Conditions.

21. Specifically, Applicants state that the Advisers are organized and managed such that the individual portfolio managers, as well as the teams and committees of portfolio managers, analysts and senior management (''Investment Teams'' and ''Investment Committees''), responsible for evaluating investment opportunities and making investment decisions on behalf of clients are promptly notified of the opportunities. If the Order is granted, the Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that, when such opportunities arise, the Advisers to the relevant Regulated

[7] ''Independent Director'' means a director or trustee of the Board of any relevant entity who is not an ''interested person'' as defined in section 2(a)(19) of the Act. No Independent Director of a Regulated Fund (including any non-interested member of an Independent Party) will have a financial interest in any Co-Investment Transaction, other than indirectly through share ownership in one of the Regulated Funds.

[8] ''Wholly-Owned Investment Sub'' means an entity (i) that is wholly-owned by a Regulated Fund (with such Regulated Fund at all times holding, beneficially and of record, directly or indirectly, 100% of the voting and economic interests); (ii) whose sole business purpose is to hold one or more investments on behalf of such Regulated Fund (and, in the case of an SBIC Subsidiary, maintain a license under the SBA Act and issue debentures guaranteed by the SBA); (iii) with respect to which such Regulated Fund's Board has the sole authority to make all determinations with respect to the entity's participation under the Conditions; and (iv) that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act.

Funds are promptly notified and receive the same information about the opportunity as any other Advisers considering the opportunity for their clients. The Advisers will undertake to perform these duties regardless of whether the Advisers serve as investment adviser or sub-adviser to the Regulated Fund or Affiliated Funds. In particular, consistent with Condition 1, if a Potential Co-Investment Transaction falls within the then-current Objectives and Strategies [9] and any Board-Established Criteria [10] of a Regulated Fund, the policies and procedures will require that the relevant portfolio managers, Investment Teams and/or Investment Committees responsible for that Regulated Fund receive sufficient information to allow the Regulated Fund's Adviser to make its independent determination and recommendations under the Conditions.

22. The Adviser to each applicable Regulated Fund will then make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances. If the Adviser to a Regulated Fund deems the Regulated Fund's participation in such Potential Co-Investment Transaction to be appropriate, then it will formulate a recommendation regarding the proposed order amount for the Regulated Fund.

23. Applicants state that, for each Regulated Fund and Affiliated Fund whose Adviser recommends participating in a Potential Co-Investment Transaction, the Adviser will formulate a proposed order amount. Prior to the External Submission (as defined below), each proposed order amount may be reviewed and adjusted, in accordance with the Advisers' written allocation policies and procedures, by an allocation committee for the area in question (*e.g.,* credit, private equity, real estate) on which senior management, legal and compliance personnel from that area participate or, in the case of issues involving multiple areas, an Adviser-wide allocation committee on which senior management, legal and compliance personnel for the Advisers participate.[11] The order of a Regulated Fund or Affiliated Fund resulting from this process is referred to as its ''Internal Order''. The Internal Order will be submitted for approval by the Required Majority of any participating Regulated Funds in accordance with the Conditions.[12]

24. If the aggregate Internal Orders for a Potential Co-Investment Transaction do not exceed the size of the investment opportunity immediately prior to the submission of the orders to the underwriter, broker, dealer or issuer, as applicable (the ''External Submission''), then each Internal Order will be fulfilled as placed. If, on the other hand, the aggregate Internal Orders for a Potential Co-Investment Transaction exceed the size of the investment opportunity immediately prior to the External Submission, then the allocation of the opportunity will be made pro rata on the basis of the size of the Internal Orders.[13] If, subsequent to such External Submission, the size of the opportunity is increased or decreased, or if the terms of such opportunity, or the facts and circumstances applicable to the Regulated Funds' or the Affiliated Funds' consideration of the opportunity, change, the participants will be permitted to submit revised Internal Orders in accordance with written allocation policies and procedures that the Advisers will establish, implement and maintain.[14]

B. Follow-On Investments

25. Applicants state that from time to time the Regulated Funds and Affiliated Funds may have opportunities to make Follow-On Investments [15] in an issuer in which a Regulated Fund and one or more other Regulated Funds and/or Affiliated Funds previously have invested.

26. Applicants propose that Follow-On Investments would be divided into two categories depending on whether the prior investment was a Co-Investment Transaction or a Pre-Boarding Investment.[16] If the Regulated Funds and Affiliated Funds had

[9] ''Objectives and Strategies'' means (i) with respect to any Regulated Fund other than a BDC Downstream Fund, its investment objectives and strategies, as described in its most current registration statement on Form N–2, other current filings with the Commission under the Securities Act of 1933 (the ''Securities Act'') or under the Securities Exchange Act of 1934, as amended, and its most current report to stockholders, and (ii) with respect to any BDC Downstream Fund, those investment objectives and strategies described in its disclosure documents (including private placement memoranda and reports to equity holders) and organizational documents (including operating agreements).

[10] ''Board-Established Criteria'' means criteria that the Board of a Regulated Fund may establish from time to time to describe the characteristics of Potential Co-Investment Transactions regarding which the Adviser to the Regulated Fund should be notified under Condition 1. The Board-Established Criteria will be consistent with the Regulated Fund's Objectives and Strategies. If no Board-Established Criteria are in effect, then the Regulated Fund's Adviser will be notified of all Potential Co-Investment Transactions that fall within the Regulated Fund's then-current Objectives and Strategies. Board-Established Criteria will be objective and testable, meaning that they will be based on observable information, such as industry/sector of the issuer, minimum EBITDA of the issuer, asset class of the investment opportunity or required commitment size, and not on characteristics that involve a discretionary assessment. The Adviser to the Regulated Fund may from time to time recommend criteria for the Board's consideration, but Board-Established Criteria will only become effective if approved by a majority of the Independent Directors. The Independent Directors of a Regulated Fund may at any time rescind, suspend or qualify their approval of any Board-Established Criteria, though Applicants anticipate that, under normal circumstances, the Board would not modify these criteria more often than quarterly.

[11] The reason for any such adjustment to a proposed order amount will be documented in writing and preserved in the records of the Advisers.

[12] ''Required Majority'' means a required majority, as defined in section 57(o) of the Act. In the case of a Regulated Fund that is a registered closed-end fund, the Board members that make up the Required Majority will be determined as if the Regulated Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a board of directors (or the equivalent), the members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o). In the case of a BDC Downstream Fund with a transaction committee or advisory committee, the committee members that make up the Required Majority will be determined as if the BDC Downstream Fund were a BDC subject to section 57(o) and as if the committee members were directors of the fund.

[13] The Advisers will maintain records of all proposed order amounts, Internal Orders and External Submissions in conjunction with Potential Co-Investment Transactions. Each applicable Adviser will provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with the Conditions.

''Eligible Directors'' means, with respect to a Regulated Fund and a Potential Co-Investment Transaction, the members of the Regulated Fund's Board eligible to vote on that Potential Co-Investment Transaction under section 57(o) of the Act (treating any registered investment company or series thereof as a BDC for this purpose).

[14] The Board of the Regulated Fund will then either approve or disapprove of the investment opportunity in accordance with Condition 2, 6, 7, 8 or 9, as applicable.

[15] ''Follow-On Investment'' means (i) with respect to a Regulated Fund, an additional investment in the same issuer in which the Regulated Fund is currently invested; or (ii) with respect to an Affiliated Fund (x) an additional investment in the same issuer in which the Affiliated Fund and at least one Regulated Fund are currently invested; or (y) an investment in an issuer in which at least one Regulated Fund is currently invested but in which the Affiliated Fund does not currently have an investment. An investment in an issuer includes, but is not limited to, the exercise of warrants, conversion privileges or other rights to purchase securities of the issuer.

[16] ''Pre-Boarding Investments'' are investments in an issuer held by a Regulated Fund as well as one or more Affiliated Funds and/or one or more other Regulated Funds that were acquired prior to participating in any Co-Investment Transaction: (i) In transactions in which the only term negotiated by or on behalf of such funds was price in reliance on one of the JT No-Action Letters; or (ii) in transactions occurring at least 90 days apart and without coordination between the Regulated Fund and any Affiliated Fund or other Regulated Fund.

previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Follow-On Investment would be subject to the Standard Review Follow-Ons described in Condition 8. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Follow-On Investment would be subject to the Enhanced-Review Follow-Ons described in Condition 9. All Enhanced Review Follow-Ons require the approval of the Required Majority. For a given issuer, the participating Regulated Funds and Affiliated Funds would need to comply with the requirements of Enhanced-Review Follow-Ons only for the first Co-Investment Transaction. Subsequent Co-Investment Transactions with respect to the issuer would be governed by the requirements of Standard Review Follow-Ons.

27. A Regulated Fund would be permitted to invest in Standard Review Follow-Ons either with the approval of the Required Majority under Condition 8(c) or without Board approval under Condition 8(b) if it is (i) a Pro Rata Follow-On Investment [17] or (ii) a Non-Negotiated Follow-On Investment.[18] Applicants believe that these Pro Rata and Non-Negotiated Follow-On Investments do not present a significant opportunity for overreaching on the part of any Adviser and thus do not warrant the time or the attention of the Board. Pro Rata Follow-On Investments and Non-Negotiated Follow-On Investments remain subject to the Board's periodic review in accordance with Condition 10.

C. Dispositions

28. Applicants propose that Dispositions [19] would be divided into two categories. If the Regulated Funds and Affiliated Funds holding investments in the issuer had previously participated in a Co-Investment Transaction with respect to the issuer, then the terms and approval of the Disposition would be subject to the Standard Review Dispositions described in Condition 6. If the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer but hold a Pre-Boarding Investment, then the terms and approval of the Disposition would be subject to the Enhanced Review Dispositions described in Condition 7. Subsequent Dispositions with respect to the same issuer would be governed by Condition 6 under the Standard Review Dispositions.[20]

29. A Regulated Fund may participate in a Standard Review Disposition either with the approval of the Required Majority under Condition 6(d) or without Board approval under Condition 6(c) if (i) the Disposition is a Pro Rata Disposition [21] or (ii) the securities are Tradable Securities [22] and the Disposition meets the other requirements of Condition 6(c)(ii). Pro Rata Dispositions and Dispositions of a Tradable Security remain subject to the Board's periodic review in accordance with Condition 10.

D. Delayed Settlement

30. Applicants represent that under the terms and Conditions of the application, all Regulated Funds and Affiliated Funds participating in a Co-Investment Transaction will invest at the same time, for the same price and with the same terms, conditions, class, registration rights and any other rights, so that none of them receives terms more favorable than any other. However, the settlement date for an Affiliated Fund in a Co-Investment Transaction may occur up to ten business days after the settlement date for the Regulated Fund, and vice versa. Nevertheless, in all cases, (i) the date on which the commitment of the Affiliated Funds and Regulated Funds is made will be the same even where the settlement date is not and (ii) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other.

E. Holders

31. Under Condition 15, if an Adviser, its principals, or any person controlling, controlled by, or under common control with the Adviser or its principals, and the Affiliated Funds (collectively, the ''Holders'') own in the aggregate more than 25 percent of the outstanding voting shares of a Regulated Fund (the ''Shares''), then the Holders will vote such Shares in the same percentage as the Regulated Fund's other shareholders (not including the Holders) when voting on matters specified in the Condition.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit participation by a registered investment company and an affiliated person in any ''joint enterprise or other joint arrangement or profit-sharing plan,'' as defined in the rule, without prior

[17] A ''Pro Rata Follow-On Investment'' is a Follow-On Investment (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investments in the issuer or security, as appropriate, immediately preceding the Follow-On Investment, and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in the pro rata Follow-On Investments as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Follow-On Investments, in which case all subsequent Follow-On Investments will be submitted to the Regulated Fund's Eligible Directors in accordance with Condition 8(c).

[18] A ''Non-Negotiated Follow-On Investment'' is a Follow-On Investment in which a Regulated Fund participates together with one or more Affiliated Funds and/or one or more other Regulated Funds (i) in which the only term negotiated by or on behalf of the funds is price and (ii) with respect to which, if the transaction were considered on its own, the funds would be entitled to rely on one of the JT No-Action Letters.

''JT No-Action Letters'' means SMC Capital, Inc., SEC No-Action Letter (pub. avail. Sept. 5, 1995) and Massachusetts Mutual Life Insurance Company, SEC No-Action Letter (pub. avail. June 7, 2000).

[19] ''Disposition'' means the sale, exchange or other disposition of an interest in a security of an issuer.

[20] However, with respect to an issuer, if a Regulated Fund's first Co-Investment Transaction is an Enhanced Review Disposition, and the Regulated Fund does not dispose of its entire position in the Enhanced Review Disposition, then before such Regulated Fund may complete its first Standard Review Follow-On in such issuer, the Eligible Directors must review the proposed Follow-On Investment not only on a stand-alone basis but also in relation to the total economic exposure in such issuer (*i.e.,* in combination with the portion of the Pre-Boarding Investment not disposed of in the Enhanced Review Disposition), and the other terms of the investments. This additional review would be required because such findings would not have been required in connection with the prior Enhanced Review Disposition, but they would have been required had the first Co-Investment Transaction been an Enhanced Review Follow-On.

[21] A ''Pro Rata Disposition'' is a Disposition (i) in which the participation of each Affiliated Fund and each Regulated Fund is proportionate to its outstanding investment in the security subject to Disposition immediately preceding the Disposition; and (ii) in the case of a Regulated Fund, a majority of the Board has approved the Regulated Fund's participation in pro rata Dispositions as being in the best interests of the Regulated Fund. The Regulated Fund's Board may refuse to approve, or at any time rescind, suspend or qualify, its approval of Pro Rata Dispositions, in which case all subsequent Dispositions will be submitted to the Regulated Fund's Eligible Directors.

[22] ''Tradable Security'' means a security that meets the following criteria at the time of Disposition: (i) It trades on a national securities exchange or designated offshore securities market as defined in rule 902(b) under the Securities Act; (ii) it is not subject to restrictive agreements with the issuer or other security holders; and (iii) it trades with sufficient volume and liquidity (findings as to which are documented by the Advisers to any Regulated Funds holding investments in the issuer and retained for the life of the Regulated Fund) to allow each Regulated Fund to dispose of its entire position remaining after the proposed Disposition within a short period of time not exceeding 30 days at approximately the value (as defined by section 2(a)(41) of the Act) at which the Regulated Fund has valued the investment.

approval by the Commission by order upon application. Section 17(d) of the Act and rule 17d–1 under the Act are applicable to Regulated Funds that are registered closed-end investment companies.

2. Similarly, with regard to BDCs, section 57(a)(4) of the Act generally prohibits certain persons specified in section 57(b) from participating in joint transactions with the BDC or a company controlled by the BDC in contravention of rules as prescribed by the Commission. Section 57(i) of the Act provides that, until the Commission prescribes rules under section 57(a)(4), the Commission's rules under section 17(d) of the Act applicable to registered closed-end investment companies will be deemed to apply to transactions subject to section 57(a)(4). Because the Commission has not adopted any rules under section 57(a)(4), rule 17d–1 also applies to joint transactions with Regulated Funds that are BDCs.

3. Co-Investment Transactions are prohibited by either or both of rule 17d–1 and section 57(a)(4) without a prior exemptive order of the Commission to the extent that the Affiliated Funds and the Regulated Funds participating in such transactions fall within the category of persons described by rule 17d–1 and/or section 57(b), as modified by rule 57b–1 thereunder, as applicable, vis-à-vis each participating Regulated Fund. Each of the participating Regulated Funds and Affiliated Funds may be deemed to be affiliated persons vis-à-vis a Regulated Fund within the meaning of section 2(a)(3) by reason of common control to the extent that (i) an Existing Adviser or an entity that controls, is controlled by, or under common control with an Existing Adviser, is the investment adviser (and sub-adviser, if any) to each of the Regulated Funds and the Affiliated Funds, and may be deemed to control, each of the Existing Affiliated Funds; (ii) an Adviser to Future Affiliated Funds will be the investment adviser (and sub-adviser, if any) to, and may be deemed to control, any other Affiliated Fund; (iii) an Existing Adviser is the investment adviser (and sub-adviser, if any) to, and may be deemed to control, the existing Regulated Fund and (iv) an Adviser will be the investment adviser (and sub-adviser, if any) to, and may be deemed to control any other Future Regulated Funds; and (v) each BDC Downstream Fund [23] will be deemed to be controlled by its parent BDC and/or its BDC parent's Adviser or certain of its parent BDC's subsidiaries. Thus, each Regulated Fund and each Affiliated Fund may be deemed to be a person related to a BDC or BDC Downstream Fund in a manner described by section 57(b) (or section 17(d) in the case of Regulated Funds that are registered under the Act) and therefore would be prohibited by section 57(a)(4) (or section 17(d) in the case of Regulated Funds that are registered under the Act) and rule 17d–1 from participating in Co-Investment Transactions with the Regulated Funds without the Order. Further, because the BDC Downstream Funds and Wholly-Owned Investment Subsidiaries will be controlled by the Regulated Funds, the BDC Downstream Funds and Wholly-Owned Investment Subsidiaries would be subject to section 57(a)(4) (or section 17(d) in the case of Wholly-Owned Investment Subsidiaries controlled by Regulated Funds that are registered under the Act) and thus would also be subject to the provisions of rule 17d–1, and therefore, would be prohibited from participating in Co-Investment Transactions without the Order. Finally, the Advisers are under common control.

4. In passing upon applications under rule 17d–1, the Commission considers whether the company's participation in the joint transaction is consistent with the provisions, policies, and purposes of the Act and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. Applicants state that in the absence of the requested relief, in many circumstances the Regulated Funds would be limited in their ability to participate in attractive and appropriate investment opportunities. Applicants state that, as required by rule 17d–1(b), the Conditions ensure that the terms on which Co-Investment Transactions may be made will be consistent with the participation of the Regulated Funds being on a basis that it is neither different from nor less advantageous than other participants, thus protecting the equity holders of any participant from being disadvantaged. Applicants further state that the Conditions ensure that all Co-Investment Transactions are reasonable and fair to the Regulated Funds and their shareholders and do not involve overreaching by any person concerned, including the Advisers. Applicants state that the Regulated Funds' participation in the Co-Investment Transactions in accordance with the Conditions will be consistent with the provisions, policies, and purposes of the Act and would be done in a manner that is not different from, or less advantageous than, that of other participants.

Applicants' Conditions

Applicants agree that the Order will be subject to the following Conditions:

1. *Identification and Referral of Potential Co-Investment Transactions.*

(a) The Advisers will establish, maintain and implement policies and procedures reasonably designed to ensure that each Adviser is promptly notified of all Potential Co-Investment Transactions that fall within the then-current Objectives and Strategies and Board-Established Criteria of any Regulated Fund the Adviser manages.

(b) When an Adviser to a Regulated Fund is notified of a Potential Co-Investment Transaction under Condition 1(a), the Adviser will make an independent determination of the appropriateness of the investment for the Regulated Fund in light of the Regulated Fund's then-current circumstances.[24]

2. *Board Approvals of Co-Investment Transactions.*

(a) If the Adviser deems a Regulated Fund's participation in any Potential Co-Investment Transaction to be appropriate for the Regulated Fund, it will then determine an appropriate level of investment for the Regulated Fund.

(b) If the aggregate amount recommended by the Advisers to be invested in the Potential Co-Investment Transaction by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, the investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application. Each Adviser to a participating Regulated Fund will promptly notify and provide the Eligible Directors with information concerning the Affiliated Funds' and Regulated Funds' order sizes to assist the Eligible Directors with their review of the applicable Regulated Fund's investments for compliance with these Conditions.

(c) After making the determinations required in Condition 1(b) above, each Adviser to a participating Regulated Fund will distribute written information concerning the Potential Co-Investment Transaction (including the amount proposed to be invested by each participating Regulated Fund and each participating Affiliated Fund) to the Eligible Directors of its participating Regulated Fund(s) for their consideration. A Regulated Fund will

[23]

[24] BAL and any investment adviser to a Sub-Advised Fund will not be the source of any Potential Co-Investment Transactions under the Order.

enter into a Co-Investment Transaction with one or more other Regulated Funds or Affiliated Funds only if, prior to the Regulated Fund's participation in the Potential Co-Investment Transaction, a Required Majority concludes that:

(i) The terms of the transaction, including the consideration to be paid, are reasonable and fair to the Regulated Fund and its equity holders and do not involve overreaching in respect of the Regulated Fund or its equity holders on the part of any person concerned;

(ii) the transaction is consistent with:

(A) The interests of the Regulated Fund's equity holders; and

(B) the Regulated Fund's then-current Objectives and Strategies;

(iii) the investment by any other Regulated Fund(s) or Affiliated Fund(s) would not disadvantage the Regulated Fund, and participation by the Regulated Fund would not be on a basis different from, or less advantageous than, that of any other Regulated Fund(s) or Affiliated Fund(s) participating in the transaction; provided that the Required Majority shall not be prohibited from reaching the conclusions required by this Condition 2(c)(iii) if:

(A) The settlement date for another Regulated Fund or an Affiliated Fund in a Co-Investment Transaction is later than the settlement date for the Regulated Fund by no more than ten business days or earlier than the settlement date for the Regulated Fund by no more than ten business days, in either case, so long as: (x) The date on which the commitment of the Affiliated Funds and Regulated Funds is made is the same; and (y) the earliest settlement date and the latest settlement date of any Affiliated Fund or Regulated Fund participating in the transaction will occur within ten business days of each other; or

(B) any other Regulated Fund or Affiliated Fund, but not the Regulated Fund itself, gains the right to nominate a director for election to a portfolio company's board of directors, the right to have a board observer or any similar right to participate in the governance or management of the portfolio company so long as: (x) The Eligible Directors will have the right to ratify the selection of such director or board observer, if any; (y) the Adviser agrees to, and does, provide periodic reports to the Regulated Fund's Board with respect to the actions of such director or the information received by such board observer or obtained through the exercise of any similar right to participate in the governance or management of the portfolio company; and (z) any fees or other compensation that any other Regulated Fund or Affiliated Fund or any affiliated person of any other Regulated Fund or Affiliated Fund receives in connection with the right of one or more Regulated Funds or Affiliated Funds to nominate a director or appoint a board observer or otherwise to participate in the governance or management of the portfolio company will be shared proportionately among any participating Affiliated Funds (who may, in turn, share their portion with their affiliated persons) and any participating Regulated Fund(s) in accordance with the amount of each such party's investment; and

(iv) the proposed investment by the Regulated Fund will not involve compensation, remuneration or a direct or indirect [25] financial benefit to the Advisers, any other Regulated Fund, the Affiliated Funds or any affiliated person of any of them (other than the parties to the Co-Investment Transaction), except (A) to the extent permitted by Condition 14, (B) to the extent permitted by section 17(e) or 57(k), as applicable, (C) indirectly, as a result of an interest in the securities issued by one of the parties to the Co-Investment Transaction, or (D) in the case of fees or other compensation described in Condition 2(c)(iii)(B)(z).

3. *Right to Decline.* Each Regulated Fund has the right to decline to participate in any Potential Co-Investment Transaction or to invest less than the amount proposed.

4. *General Limitation.* Except for Follow-On Investments made in accordance with Conditions 8 and 9 below,[26] a Regulated Fund will not invest in reliance on the Order in any issuer in which a Related Party has an investment.[27]

5. *Same Terms and Conditions.* A Regulated Fund will not participate in any Potential Co-Investment Transaction unless (i) the terms, conditions, price, class of securities to be purchased, date on which the commitment is entered into and registration rights (if any) will be the same for each participating Regulated Fund and Affiliated Fund and (ii) the earliest settlement date and the latest settlement date of any participating Regulated Fund or Affiliated Fund will occur as close in time as practicable and in no event more than ten business days apart. The grant to one or more Regulated Funds or Affiliated Funds, but not the respective Regulated Fund, of the right to nominate a director for election to a portfolio company's board of directors, the right to have an observer on the board of directors or similar rights to participate in the governance or management of the portfolio company will not be interpreted so as to violate this Condition 5, if Condition 2(c)(iii)(B) is met.

6. *Standard Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of an interest in a security and one or more Regulated Funds and Affiliated Funds have previously participated in a Co-Investment Transaction with respect to the issuer, then:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition.

(b) *Same Terms and Conditions.* Each Regulated Fund will have the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and conditions as those applicable to the Affiliated Funds and any other Regulated Fund.

(c) *No Board Approval Required.* A Regulated Fund may participate in such a Disposition without obtaining prior approval of the Required Majority if:

(i)(A) The participation of each Regulated Fund and Affiliated Fund in such Disposition is proportionate to its then-current holding of the security (or securities) of the issuer that is (or are) the subject of the Disposition; [28] (B) the

[25] For example, procuring the Regulated Fund's investment in a Potential Co-Investment Transaction to permit an affiliate to complete or obtain better terms in a separate transaction would constitute an indirect financial benefit.

[26] This exception applies only to Follow-On Investments by a Regulated Fund in issuers in which that Regulated Fund already holds investments.

[27] ''Related Party'' means (i) any Close Affiliate and (ii) in respect of matters as to which any Adviser has knowledge, any Remote Affiliate.

''Close Affiliate'' means the Advisers, the other Regulated Funds, the Affiliated Funds and any other person described in section 57(b) (after giving effect to rule 57b–1) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) except for limited partners included solely by reason of the reference in section 57(b) to section 2(a)(3)(D).

''Remote Affiliate'' means any person described in section 57(e) in respect of any Regulated Fund (treating any registered investment company or series thereof as a BDC for this purpose) and any limited partner holding 5% or more of the relevant limited partner interests that would be a Close Affiliate but for the exclusion in that definition.

[28] In the case of any Disposition, proportionality will be measured by each participating Regulated

Continued

Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in such Dispositions on a pro rata basis (as described in greater detail in the application); and (C) the Board of the Regulated Fund is provided on a quarterly basis with a list of all Dispositions made in accordance with this Condition; or

(ii) each security is a Tradable Security and (A) the Disposition is not to the issuer or any affiliated person of the issuer; and (B) the security is sold for cash in a transaction in which the only term negotiated by or on behalf of the participating Regulated Funds and Affiliated Funds is price.

(d) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that it is in the Regulated Fund's best interests.

7. *Enhanced Review Dispositions.*

(a) *General.* If any Regulated Fund or Affiliated Fund elects to sell, exchange or otherwise dispose of a Pre-Boarding Investment in a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds an investment in the issuer of the proposed Disposition at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to participation by such Regulated Fund in the Disposition; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Disposition solely to the extent that a Required Majority determines that:

(i) The Disposition complies with Condition 2(c)(i), (ii), (iii)(A), and (iv).

(ii) the making and holding of the Pre-Boarding Investments were not prohibited by section 57 or rule 17d–1, as applicable, and records the basis for the finding in the Board minutes.

(c) *Additional Requirements.* The Disposition may only be completed in reliance on the Order if:

(i) *Same Terms and Conditions.* Each Regulated Fund has the right to participate in such Disposition on a proportionate basis, at the same price and on the same terms and Conditions as those applicable to the Affiliated Funds and any other Regulated Fund;

(ii) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(iii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iv) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial [29] in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(v) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

8. *Standard Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer and the Regulated Funds and Affiliated Funds holding investments in the issuer previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time; and

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund.

(b) *No Board Approval Required.* A Regulated Fund may participate in the Follow-On Investment without obtaining prior approval of the Required Majority if:

(i)(A) The proposed participation of each Regulated Fund and each Affiliated Fund in such investment is proportionate to its outstanding investments in the issuer or the security at issue, as appropriate,[30] immediately preceding the Follow-On Investment; and (B) the Board of the Regulated Fund has approved as being in the best interests of the Regulated Fund the ability to participate in Follow-On Investments on a pro rata basis (as described in greater detail in the application); or

(ii) it is a Non-Negotiated Follow-On Investment.

(c) *Standard Board Approval.* In all other cases, the Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority makes the

Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Disposition.

[29] In determining whether a holding is ''immaterial'' for purposes of the Order, the Required Majority will consider whether the nature and extent of the interest in the transaction or arrangement is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement.

[30] To the extent that a Follow-On Investment opportunity is in a security or arises in respect of a security held by the participating Regulated Funds and Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the security in question immediately preceding the Follow-On Investment using the most recent available valuation thereof. To the extent that a Follow-On Investment opportunity relates to an opportunity to invest in a security that is not in respect of any security held by any of the participating Regulated Funds or Affiliated Funds, proportionality will be measured by each participating Regulated Fund's and Affiliated Fund's outstanding investment in the issuer immediately preceding the Follow-On Investment using the most recent available valuation thereof.

determinations set forth in Condition 2(c). If the only previous Co-Investment Transaction with respect to the issuer was an Enhanced Review Disposition the Eligible Directors must complete this review of the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms of the investment.

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity,

then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

9. *Enhanced Review Follow-Ons.*

(a) *General.* If any Regulated Fund or Affiliated Fund desires to make a Follow-On Investment in an issuer that is a Potential Co-Investment Transaction and the Regulated Funds and Affiliated Funds holding investments in the issuer have not previously participated in a Co-Investment Transaction with respect to the issuer:

(i) The Adviser to each such Regulated Fund or Affiliated Fund will notify each Regulated Fund that holds securities of the portfolio company of the proposed transaction at the earliest practical time;

(ii) the Adviser to each Regulated Fund that holds an investment in the issuer will formulate a recommendation as to the proposed participation, including the amount of the proposed investment, by such Regulated Fund; and

(iii) the Advisers will provide to the Board of each Regulated Fund that holds an investment in the issuer all information relating to the existing investments in the issuer of the Regulated Funds and Affiliated Funds, including the terms of such investments and how they were made, that is necessary for the Required Majority to make the findings required by this Condition.

(b) *Enhanced Board Approval.* The Adviser will provide its written recommendation as to the Regulated Fund's participation to the Eligible Directors, and the Regulated Fund will participate in such Follow-On Investment solely to the extent that a Required Majority reviews the proposed Follow-On Investment both on a stand-alone basis and together with the Pre-Boarding Investments in relation to the total economic exposure and other terms and makes the determinations set forth in Condition 2(c). In addition, the Follow-On Investment may only be completed in reliance on the Order if the Required Majority of each participating Regulated Fund determines that the making and holding of the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable. The basis for the Board's findings will be recorded in its minutes.

(c) *Additional Requirements.* The Follow-On Investment may only be completed in reliance on the Order if:

(i) *Original Investments.* All of the Affiliated Funds' and Regulated Funds' investments in the issuer are Pre-Boarding Investments;

(ii) *Advice of counsel.* Independent counsel to the Board advises that the making and holding of the investments in the Pre-Boarding Investments were not prohibited by section 57 (as modified by rule 57b–1) or rule 17d–1, as applicable;

(iii) *Multiple Classes of Securities.* All Regulated Funds and Affiliated Funds that hold Pre-Boarding Investments in the issuer immediately before the time of completion of the Co-Investment Transaction hold the same security or securities of the issuer. For the purpose of determining whether the Regulated Funds and Affiliated Funds hold the same security or securities, they may disregard any security held by some but not all of them if, prior to relying on the Order, the Required Majority is presented with all information necessary to make a finding, and finds, that: (x) Any Regulated Fund's or Affiliated Fund's holding of a different class of securities (including for this purpose a security with a different maturity date) is immaterial in amount, including immaterial relative to the size of the issuer; and (y) the Board records the basis for any such finding in its minutes. In addition, securities that differ only in respect of issuance date, currency, or denominations may be treated as the same security; and

(iv) *No control.* The Affiliated Funds, the other Regulated Funds and their affiliated persons (within the meaning of section 2(a)(3)(C) of the Act), individually or in the aggregate, do not control the issuer of the securities (within the meaning of section 2(a)(9) of the Act).

(d) *Allocation.* If, with respect to any such Follow-On Investment:

(i) The amount of the opportunity proposed to be made available to any Regulated Fund is not based on the Regulated Funds' and the Affiliated Funds' outstanding investments in the issuer or the security at issue, as appropriate, immediately preceding the Follow-On Investment; and

(ii) the aggregate amount recommended by the Advisers to be invested in the Follow-On Investment by the participating Regulated Funds and any participating Affiliated Funds, collectively, exceeds the amount of the investment opportunity, then the Follow-On Investment opportunity will be allocated among them pro rata based on the size of the Internal Orders, as described in section III.A.1.b. of the application.

(e) *Other Conditions.* The acquisition of Follow-On Investments as permitted by this Condition will be considered a Co-Investment Transaction for all purposes and subject to the other Conditions set forth in the application.

10. *Board Reporting, Compliance and Annual Re-Approval.*

(a) Each Adviser to a Regulated Fund will present to the Board of each Regulated Fund, on a quarterly basis, and at such other times as the Board may request, (i) a record of all investments in Potential Co-Investment Transactions made by any of the other Regulated Funds or any of the Affiliated Funds during the preceding quarter that fell within the Regulated Fund's then-current Objectives and Strategies and Board-Established Criteria that were not made available to the Regulated Fund, and an explanation of why such investment opportunities were not made available to the Regulated Fund; (ii) a record of all Follow-On Investments in and Dispositions of investments in any issuer in which the Regulated Fund holds any investments by any Affiliated Fund or other Regulated Fund during the prior quarter; and (iii) all information concerning Potential Co-Investment Transactions and Co-Investment Transactions, including investments made by other Regulated Funds or Affiliated Funds that the Regulated Fund considered but declined to participate in, so that the

Independent Directors, may determine whether all Potential Co-Investment Transactions and Co-Investment Transactions during the preceding quarter, including those investments that the Regulated Fund considered but declined to participate in, comply with the Conditions.

(b) All information presented to the Regulated Fund's Board pursuant to this Condition will be kept for the life of the Regulated Fund and at least two years thereafter, and will be subject to examination by the Commission and its staff.

(c) Each Regulated Fund's chief compliance officer, as defined in rule 38a–1(a)(4), will prepare an annual report for its Board each year that evaluates (and documents the basis of that evaluation) the Regulated Fund's compliance with the terms and Conditions of the application and the procedures established to achieve such compliance. In the case of a BDC Downstream Fund that does not have a chief compliance officer, the chief compliance officer of the BDC that controls the BDC Downstream Fund will prepare the report for the relevant Independent Party.

(d) The Eligible Directors will consider at least annually: (i) The continued appropriateness for the Regulated Fund of participating in new and existing Co-Investment Transactions; and (ii) the continued appropriateness of any Board-Established Criteria.

11. *Record Keeping.* Each Regulated Fund will maintain the records required by section 57(f)(3) of the Act as if each of the Regulated Funds were a BDC and each of the investments permitted under these Conditions were approved by the Required Majority under section 57(f).

12. *Director Independence.* No Independent Director (including the non-interested members of any Independent Party) of a Regulated Fund will also be a director, general partner, managing member or principal, or otherwise be an ''affiliated person'' (as defined in the Act) of any Affiliated Fund.

13. *Expenses.* The expenses, if any, associated with acquiring, holding or disposing of any securities acquired in a Co-Investment Transaction (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act) will, to the extent not payable by the Advisers under their respective advisory agreements with the Regulated Funds and the Affiliated Funds, be shared by the Regulated Funds and the participating Affiliated Funds in proportion to the relative amounts of the securities held or being acquired or disposed of, as the case may be.

14. *Transaction Fees.*[31] Any transaction fee (including break-up, structuring, monitoring or commitment fees but excluding brokerage or underwriting compensation permitted by section 17(e) or 57(k)) received in connection with any Co-Investment Transaction will be distributed to the participants on a pro rata basis based on the amounts they invested or committed, as the case may be, in such Co-Investment Transaction. If any transaction fee is to be held by an Adviser pending consummation of the transaction, the fee will be deposited into an account maintained by the Adviser at a bank or banks having the qualifications prescribed in section 26(a)(1), and the account will earn a competitive rate of interest that will also be divided pro rata among the participants. None of the Advisers, the Affiliated Funds, the other Regulated Funds or any affiliated person of the Affiliated Funds or the Regulated Funds will receive any additional compensation or remuneration of any kind as a result of or in connection with a Co-Investment Transaction other than (i) in the case of the Regulated Funds and the Affiliated Funds, the pro rata transaction fees described above and fees or other compensation described in Condition 2(c)(iii)(B)(z), (ii) brokerage or underwriting compensation permitted by section 17(e) or 57(k) or (iii) in the case of the Advisers, investment advisory compensation paid in accordance with investment advisory agreements between the applicable Regulated Fund(s) or Affiliated Fund(s) and its Adviser.

15. *Independence.* If the Holders own in the aggregate more than 25 percent of the Shares of a Regulated Fund, then the Holders will vote such Shares in the same percentages as the Regulated Fund's other shareholders (not including the Holders) when voting on (1) the election of directors; (2) the removal of one or more directors; or (3) any other matter under either the Act or applicable State law affecting the Board's composition, size or manner of election.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

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[31] Applicants are not requesting and the Commission is not providing any relief for transaction fees received in connection with any Co-Investment Transaction.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94474; File No. SR–CboeBZX–2021–083]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines

March 18, 2022.

I. Introduction

On December 6, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend Rule 25.3, which governs the Exchange's Minor Rule Violation Plan (''MRVP''), in connection with certain minor rule violations and applicable fines. The proposed rule change was published for comment in the **Federal Register** on December 23, 2021.[4] 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.[5] On March 8, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change as originally filed. On March 11, 2022, the Exchange filed Amendment No. 2 to the proposed rule change, which replaced and superseded the proposed rule change as modified by Amendment No. 1.[6] The Commission received no comments on the proposed rule change. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 93834 (December 20, 2021), 86 FR 73072.

[5] *See* Securities Exchange Act Release No. 94142, 87 FR 7518 (February 9, 2022) (extending the time period to March 23, 2022).

[6] In Amendment No. 2, the Exchange revised the proposal to: (1) Provide additional detail and clarification regarding the Exchange's current and proposed treatment of violations of a Market Maker's quoting obligations, (2) correct an inadvertent error in the Exhibit 5, and (3) remove a superfluous provision in the Exhibit 5 to provide for additional clarity. Amendment No. 2 to the proposed rule change is available at: *https://www.sec.gov/comments/sr-cboebzx-2021-083/srcboebzx2021083.htm.*

solicit comments on Amendment No. 2 from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 2

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its MRVP in Rule 25.3 in connection with certain minor rule violations and applicable fines. Rule 25.3 provides for disposition of specific violations through assessment of fines in lieu of conducting a formal disciplinary proceeding.[7] Current Rule 25.3(a)–(g) sets forth a list of specific Exchange Rules under which an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member may be subject to a fine for violations of such Rules and the applicable fines that may be imposed by the Exchange.

Specifically, the proposed rule change amends Rule 25.3 by: (1) Eliminating violations of Rule 22.6(a) (regarding Market Maker firm quotes) in Rule 25.3(c), which currently imposes fines for violations of Rules 22.6(a) through (c) (Market Maker Quotations); (2) relocating violations of Rule 22.6(b) (regarding Market Maker initial quote volume requirements) and Rule 22.6(c) (regarding Market Maker two-sided quote requirements) to Rule 25.3(d),[8] which currently imposes fines for violations of Rule 22.6(d) (regarding Market Maker continuous quoting obligations) so that a single MRVP provision governs violations of a Market Maker's quoting obligations; and (3) updating the fine schedule applicable to minor rule violations related to Market Maker quoting obligations (*i.e.,* Rules 22.6(b)–(d), as proposed) in Rule 25.3(d).

First, the proposed rule change eliminates the violation of 22.6(a) currently in Rule 25.3(c) of the MRVP. Specifically, Rule 22.6(a) requires a Market Maker to submit bids and offers that are firm for all orders. The Exchange no longer believes violations of Rule 22.6(a) to be minor in nature and therefore proposes to remove it from the list of rules in Rule 25.3 eligible for a minor rule fine disposition. Particularly, the Exchange believes that violations of Rule 22.6(a), to the extent they would occur,[9] may directly impact trading on the Exchange, the maintenance of a fair and orderly market and customer protections because honoring firm quotations is vital in promoting efficient functioning of intermarket price priority and trading in general. Pursuant to Rule 25.3, the Exchange is not required to proceed under said Rules as to any rule violation and may, whenever such action is deemed appropriate, commence a disciplinary proceeding under Chapter VIII (Discipline) rules as to any such violation. The Exchange notes that the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Exchange, Inc. (''Cboe Options''), which recently filed a proposal, approved by the Commission,[10] to no longer include such violations as eligible for a minor rule disposition on Cboe Options for the same reason—it no longer believed violations of the firm quote requirement to be minor in nature.

The proposed rule change next relocates violations of Rules 22.6(b) and (c), currently in Rule 25.3(c) of the MRVP, to Rule 25.3(d) (Rule 25.3(c), as amended)[11] of the MRVP. The Exchange notes that Rule 22.6 governs Market Maker quoting obligations on the Exchange and, more specifically, Rule 22.6(b) requires a Market Maker to submit initial quotes that contain a minimum size (currently, at least one contract) and Rule 22.6(c) requires a Market Maker to submit two-sided quotes. As stated above, Rule 25.3(d) currently imposes certain fines for a Market Maker's failure to meet the continuous quoting obligations in Rule 22.6(d). By relocating violations of Rules 22.6(b) and (c) to join violations of Rule 22.6(d) in Rule 25.3(d) of the MRVP, the proposed rule change amends the MRVP to impose the same fine schedule for violations of a Market Maker's quoting obligations. As a result of combining these into Rule 25.3(d), the proposed rule change subsequently renames Rule 25.3(d) as ''Market Maker Quoting Obligations''. The Exchange notes that the proposed rule change is consistent, and intended to harmonize to the extent possible, with the MRVP of the Exchange's affiliated options exchange, Cboe Options, which imposes one fine schedule for a market maker's failure to meet its quoting obligations on Cboe Options, including failure to meet continuous quoting requirements and failure to meet initial quote volume requirements.[12] The Exchange's other affiliated options exchanges, Cboe EDGX Exchange, Inc. (''EDGX Options'') and Cboe C2 Exchange, Inc. (''C2 Options''), have also filed proposals to update their MRVPs in connection with the violations of market maker quoting requirements on EDGX Options and C2 Options, to the extent possible, in an identical manner.[13]

The Exchange notes that, under current Rule 25.3(c), violations of the Market Maker initial quote volume requirement (Rule 22.6(b)) and violations of the Market Maker two-sided quote requirement (Rule 22.6(c)) are to be treated separately for purposes of determining the number of cumulative violations under the applicable fine schedule. For example,

[7] The Exchange may, with respect to any such violation, proceed under Rule 8.15 (Imposition of Fines for Minor Violation(s) of Rules) and impose the fine set forth in Rule 25.3(a)–(g).

[8] As a result of the proposed elimination or relocation of the rule violations listed under Rule 25.3(c), the proposed rule change ultimately eliminates Rule 25.3(c) from the MRVP and subsequently renumbers current Rules 25.3(d), 25.3(e), 25.3(f) and 25.3(g) to Rules 25.3(c), 25.3(d), 25.3(e) and 25.3(f), respectively. In addition to this, the proposed rule change makes a nonsubstantive formatting change to Rule 25.3(e) (25.3(d), as amended) to denote with a ''(2)'' where subparagraph (2) begins, which is titled ''American-Style, Cash-Settled Index Options''.

[9] The Exchange notes that Market Maker bids and offers entered on the Exchange's all-electronic trading platform are firm for all orders for the number of contracts specified in the bid and offer, subject to the exceptions noted in Rule 22.6(a) and in Rule 602 of Regulation NMS under the Exchange Act of 1934 (the ''Act''), and that the electronic execution of marketable orders against resting bids and offers is system-enforced by the Exchange as provided in the Exchange Rules.

[10] *See* Securities Exchange Act Release No. 92702 (August 18, 2021), 86 FR 47346 (August 24, 2021) (SR–CBOE–2021–045) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Amend Rule 13.15, Which Governs the Exchange's Minor Rule Violation Plan).

[11] *See supra* note 9.

[12] *See* Cboe Options Rule 13.15(g)(9).

[13] The Exchange notes that C2 Option's proposal has been approved by the Commission and EDGX Option's proposal is currently pending approval by the Commission. *See* Securities Exchange Act Release Nos. 93887 (December 30, 2021), 87 FR 504 (January 5, 2022) (SR–C2–2021–019) (Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Relating to Certain Fine Amounts in Rule 13.15, Which Governs the Exchange's Minor Rule Violation Plan, and Non-Substantive Clarifying Changes); *and* 93815 (December 17, 2021), 86 FR 73029 (December 23, 2021) (SR–CboeEDGX–2021–052) (Notice of Filing of a Proposed Rule Change To Amend Rule 25.3, Which Governs the Exchange's Minor Rule Violation Plan, in Connection With Certain Minor Rule Violations and Applicable Fines).

if during the same period, a Market Maker violates the initial quote volume requirement five times and also violates the two-sided quote requirement four times, the current provision would provide for two separate Letters of Caution (one for the initial quote size violations and one for the two-sided quote violations).[14] The Cboe Options MRVP applicable to violations of market maker quoting obligations does not contain this language and, as proposed, the amended MRVP language would not include this ''separate treatment'' provision for Market-Maker quoting obligations to be consistent with corresponding Cboe Options MRVP provision. Additionally, while current Rule 25.3(c) provides that Rules 22.6(b) and (c) shall be treated separately for purposes of determining the number of cumulative violations, pursuant to Rule 8.15(a), the Exchange, like Cboe Options, is permitted to ''aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected.'' [15] The Exchange, like Cboe Options, considers violations of a Market Maker's quoting obligations Rule 22.6(b), (c) and (d)) to be similar in nature.[16] The Exchange believes moving violations of Rule 22.6(b) and (c) from Rule 25.3(c) to Rule 25.3(d) and removing the language to treat each paragraph separately for purposes of determining the cumulative violations aligns with how the Exchange generally surveils for and sanctions violations across market maker quoting obligations while still allowing the flexibility to treat the violations separately, if necessary. By aligning the fine schedule across each of the Market Maker quoting obligations the proposed rule change will allow for consistent application of the MRVP for the various Market Maker quoting obligations whether the violations are sanctioned separately or aggregation is warranted pursuant to Rule 8.15(a).

Further, the Exchange notes that Rule 25.3(d) currently provides that violations occurring during a calendar month are aggregated and sanctioned as a single offense. In line with the proposed change to allow the Exchange the flexibility to choose to aggregate violations across different sections governing market maker quoting obligations (upon the proposed relocation of the Market Maker two-sided quote and initial quote volume requirements to Rule 25.3(d)), the proposed rule change removes this language.[17] Without the explicit requirement that the Exchange must aggregate and sanction violations as a single offense, the Exchange is free to determine whether or not violations of a Market Maker's quoting obligations across different sections, and across different review periods (*e.g.,* calendar months),[18] should be aggregated and sanctioned as a single offense pursuant to Rule 8.15(a); [19] just as the Exchange may choose to aggregate violations, pursuant to Rule 8.15(a), across different sections without time constraints (*e.g.,* in a calendar month) under other MRVP provisions that otherwise do not contain any explicit aggregation requirement.[20] Moreover, the Exchange believes that, notwithstanding the relocation of the two-sided quote and initial quote volume requirements to Rule 25.3(d), the aggregation requirement in Rule 25.3(d) currently conflicts with Rule 22.6(d) and a Market Maker's continuous quoting obligations. Specifically, Rule 22.6(d)(1) provides that the Exchange determines compliance by a Market Maker with the continuous quoting obligation in Rule 22.6(d) on a monthly basis. Rule 22.6(d)(1) goes on to provide that determining compliance with the continuous quoting obligations on a monthly basis does not relieve a Market Maker from meeting this obligation on a daily basis, nor does it prohibit the Exchange from taking disciplinary action against a Market Maker for failing to meet this obligation each trading day. Therefore, the Exchange believes that it should have the flexibility to be able to separately charge for violations of a Market Maker's continuous quoting obligations on a monthly basis and a daily basis.

The proposed rule change also updates the fine schedule heading in Rule 25.3(d) to reflect that fines may be imposed per the number of offenses, rather than violations, within one period (*i.e.,* any rolling 24-month period), which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed, and further harmonizes Rule 25.3(d) with that of Cboe Options corresponding MRVP provision, which also counts the number of offenses in connection with market maker violations of quoting obligations in any rolling 24-month period.

Ultimately, the Exchange believes that the proposed flexibility to choose whether to aggregate violations of a Market Maker's quoting obligations across sections will allow it to administer discipline in a manner it deems most appropriate. For example, if a Market Maker violates its continuous quoting obligation pursuant to Rule 22.6(d) on multiple trading days, January 27, 28 and 31, 2022, due to a systemic error, and also violates the initial quote volume requirement pursuant to Rule 22.6(b) multiple times during the next trading day, February 1, 2022,[21] due to the same systemic error that has since been corrected, the

[14] The Exchange notes that Rule 22.6(b) requires the best bid and best offer entered by a Market Maker to have a size of at least one contract. The System requires a bid or offer to include a size of at least one contract, as a bid or offer with a size of zero results in any existing bid/offer quote for that series to be cancelled. As a result, the Exchange does not observe violations of Rule 22.6(b), but retains the provision in MRVP should the minimum size requirement be greater than one in the future.

[15] Cboe Options Rule 13.15(a) contains the same language. The Exchange, like Cboe Options, may consider violations of a Market Maker's quoting obligations under Rule 22.6(b), (c), and (d) to be similar in nature.

[16] The Exchange notes that Rule 22.6(d) requires a Market Maker to provide continuous bids and offers in accordance with, among other things, the Rule 22.6(c) requirement to provide two-sided quotes. Because two-sided quotes are an element of the continuous electronic quote obligation, and violations of continuous quoting requirements can be the direct result of failure to provide two-sided quotes, the Exchange commonly cites Rule 22.6(d) in connection with two-sided quote violations. However, depending on the particular facts and circumstances, a Market Maker may be cited for a violation of continuous electronic quotes under Rule 22.6(d) or two-sided quotes under Rule 22.6(c) or both.

[17] Amendment No. 2 corrects an inadvertent error made to the rule text in the Exhibit 5. Amendment No. 1 inadvertently did not delete the proposed rule text changes to the Exhibit 5 made by the Initial Rule Filing to the sentence that provides that ''Violations occurring during a calendar month are aggregated and sanctioned as a single offense'' before making proposed rule text changes to remove this entire sentence. As such, Amendment No. 2 corrects this inadvertent error by removing the rule text changes to the Exhibit 5 made by the Initial Rule Filing to this sentence and updating the Exhibit 5 to correctly reflect the deletion of the entire sentence, as made pursuant to Amendment No. 1.

[18] *See infra* note 22.

[19] *See supra* note 16.

[20] If the current provision were to be maintained in Rule 25.3(d) upon the relocation of the initial quote volume requirement and the two-sided quote requirement to Rule 25.3(d), then violations of a Market Maker's quoting obligations would never amount to more than one offense if they occurred in the same month. For example, if a Market Maker were to violate Rule 22.6(d) in February 2022 and violate Rule 22.6(b) and/or Rule 22.6(c) during the same month, then, pursuant to the current provision, such violations would have to be treated as a single offense and could not constitute more than one offense.

[21] The Exchange is not required to treat violations occurring in separate review periods (*e.g.,* a monthly review, a weekly review, etc.) as separate offenses and the Exchange is not required to treat violations occurring in the same review period as a single offense (including as proposed—in connection with removing the provision in Rule 25.3(d) that requires the Exchange to aggregate and sanction violations occurring in a month as a single offense).

Exchange may deem it appropriate to treat such violations as a single offense [22] and issue a Letter of Caution, which is applicable to a first offense pursuant to Rule 25.3(d). This would be in lieu of treating such violations as two separate offenses—the violation of the Market Maker's continuous quoting obligations (22.6(d)) as a first offense, for which the Exchange would issue a Letter of Caution, and the violations of its initial quote volume requirement aggregated into a separate, second offense, for which the Exchange would then issue a fine applicable to a second offense pursuant to Rule 25.3(d) (as proposed and described in detail below). If, in June 2022 (*i.e.,* within the same 24-month period as the above referenced violations),[23] the Market Maker violates the initial quote volume requirement multiple times throughout the month due to another systemic error, and also violates the continuous quote requirement pursuant to Rule 22.6(d) on multiple days throughout June 2022 due to the same systemic error, the Exchange may again deem it appropriate to treat these violations as a single offense, constituting the Market Maker's second offense within the previous rolling 24-month period for which the Exchange would then issue a fine applicable to a second offense pursuant to Rule 25.3(d) (as proposed). The Exchange could, alternatively, choose to aggregate the June 2022 violations of the initial quote volume requirement as one offense and the June 2022 violations of the continuous quote requirement as another offense, which would result in the issuance of two offenses stemming from the same review period (*i.e.,* a review of June 2022) [24] to which the Exchange would then issue a fine applicable to a second and third offense within the previous rolling 24-month period pursuant to Rule 25.3(d) (as proposed).

The proposed rule change next amends the fine schedule in Rule 25.3(d) (Rule 25.3(c), as amended) [25] applicable to Market Makers for violations of their quoting obligations (Rules 22.6(b)–(d), as proposed) in order to harmonize, to the extent possible, this MRVP provision with the corresponding Cboe Options MRVP provision applicable to violations of a market maker's quoting obligations on Cboe Options. The current fine schedule in Rule 25.3(d), currently applicable to violations of a Market Maker's continuous quoting obligations, sets forth the following:

For the first violation during any rolling 24-month period (*i.e.,* one period),[26] the fine schedule imposed by Rule 25.3(d) currently permits the Exchange to give a Letter of Caution. For a second violation during the same period, the fine schedule currently permits the Exchange to apply a fine of $1,000. For a third violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $2,500. For a fourth violation in the same period, the fine schedule currently permits the Exchange to apply a fine of $5,000. Finally, for five or more violations in the same period, the fine schedule currently permits the Exchange to proceed with formal disciplinary action.

The proposed rule change updates the fine schedule to provide that, during any rolling 24-month period, the Exchange may continue to give a Letter of Caution for a first offense,[27] may apply a fine of $1,500 for a second offense,[28] may apply a fine of $3,000 for a third offense, and may proceed with formal disciplinary action for subsequent offenses. As described above, and as is the case for all rule violations covered under Rule 25.3, the Exchange may determine that it is appropriate to commence a formal disciplinary proceeding for a violation of Market Maker quoting obligations and may choose to proceed under the Exchange's formal disciplinary rules rather than its MRVP. The Exchange may continue to aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors, or the violations resulted from a single systemic problem or cause that has been corrected, and treat such violations as a single offense.[29]

The Exchange believes it is appropriate to increase the fine amounts for a second and third offense and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense. Particularly, the Exchange believes that applying a higher fine per second and third offenses in connection with a Market Maker's quoting obligations [30] and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders. The Exchange believes this fine structure may serve to more effectively deter repeat-offenders while continuing to provide reasonable warning for a first offense during a rolling 24-month period. The Exchange notes that the proposed fine schedule for violations of a Market Maker's quoting obligations is identical to the fine schedule under the MRVP of Cboe Options for market maker violations of quoting obligations on Cboe Options, including a continuous quoting requirement and initial volume requirement. The Exchange further notes that the proposed change is intended to provide for consistency across the Exchange's MRVP and the MRVPs of its affiliated options exchanges, Cboe Options, EDGX Options and C2 Options, as EDGX Options and C2 Options also intend to file proposals to update their minor rule violation fines for violations of market maker quoting requirements on their exchanges in an identical manner.

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.[31] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [32] 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

[22] *See supra* note 16.

[23] *See* Rule 25.3, which states that a subsequent violation is calculated on the basis of a rolling 24-month period (''Period'').

[24] *See supra* note 22.

[25] *See supra* note 9.

[26] *See supra* note 24.

[27] As stated herein, the proposed rule change also updates the fine schedule heading to reflect that fines may be imposed per the number of offenses, rather than violations, which more accurately reflects the manner in which the Exchange aggregates violations as a single offense under Rule 25.3(d), currently and as proposed.

[28] Any fine imposed pursuant to the Exchange's MRVP that does not exceed $2,500 and is not contested shall not be publicly reported, except as may be required by Rule 19d–1 under the Act or as may be required by any other regulatory authority. *See* Rule 8.15(a).

[29] *See* Rule 8.15(a).

[30] The proposed fine amounts are also an increase from the fines in Rule 25.3(c) currently imposed for violations of Market Maker initial quote volume and two-sided requirements. The Exchange notes, however, that Rule 25.3(c) currently imposes fines per violation whereas Rule 25.3(d) imposes fines per offense, which may be cumulative violations of Market Maker quoting obligations, as proposed.

[31] 15 U.S.C. 78f(b).

[32] 15 U.S.C. 78f(b)(5).

and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [33] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to remove the firm quote requirement, which it no longer considers violations of which to be minor in nature, as eligible for a minor rule fine disposition under its MRVP, will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that violations of the firm quote requirement may directly impact trading on the Exchange, maintenance of a fair and orderly market, and customer protection. As such, the Exchange does not believe violations of this rule to be minor in nature and, instead, should be handled under its formal disciplinary rules, rather than imposing fines pursuant to its MRVP. Also, and as stated above, the proposed rule change is consistent with the MRVP of its affiliated options exchange, Cboe Options, which, for the same reasons provided herein, no longer includes violations of the firm quote requirement as eligible for a minor rule disposition on Cboe Options.[34]

The Exchange believes that the proposed rule change to apply the same MRVP fine schedule for violations of a Market Makers quoting obligations pursuant to Rule 22.6 (*i.e.,* Rules 22.6(b)–(d)) and the same process for imposing such fines—that is, permitting the Exchange to aggregate violations of such Market Maker obligations into a single offense—will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade by uniformly imposing penalties and procedures for failure to satisfy obligations governed by the same Rule. By allowing for the consistent application of the MRVP for the various Market Maker quoting obligations and the administration of discipline in a manner the Exchange deems most appropriate (*i.e.,* whether the violations are sanctioned separately or aggregation is warranted pursuant to Rule 8.15(a)), the Exchange believes the proposed rule change provides the Exchange with the flexibility to administer its enforcement program in a more uniform, effective and efficient manner, and, as described above, in a manner that aligns with how the Exchange generally surveils for and sanctions violations across market maker quoting obligations, thereby removing impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

Additionally, the Exchange believes the proposed rule change will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest because it is intended to harmonize the Exchange's MRVP in connection with Market Maker quoting obligations with that of Cboe Options, as well as EDGX Options and C2 Options (to the extent possible),[35] thereby providing consistent structures and procedures across MRVP provisions applicable to market maker obligations on the affiliated options exchanges. The proposed rule change contributes to the protection of investors and the public interest by promoting regulatory consistency by increasing understanding of the Exchange's MRVP provisions for Trading Permit Holders (''TPHs'') that are also market participants on the Exchange's affiliated options exchanges, making it easier for participants across the affiliated options exchanges to adhere to the disciplinary rules.

The Exchange also believes that the proposed rule change, in connection with the fine schedule for violations of a Market Maker's quoting obligations in Rule 25.3(d), as proposed, to increase the fine amounts for a second and third offense [36] and to remove the fine imposed for a fourth offense and proceed with formal disciplinary proceedings for subsequent offenses following a third offense will assist the Exchange in preventing fraudulent and manipulative acts and practices and promoting just and equitable principles of trade, and will serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest. Particularly, the Exchange believes that applying a higher fine per second and third offenses and, ultimately, formal disciplinary proceedings for any subsequent offenses during a rolling 24-month period, will allow the Exchange to levy progressively larger fines and greater penalties (*i.e.,* formal disciplinary proceedings following a third offense) against repeat-offenders which may serve to more effectively deter repeat-offenders while providing reasonable warning for a first offense during a rolling 24-month period. The Exchange believes that more effectively deterring repeat-offenders, while continuing to make first instance offenders aware of their quoting obligation violations and the subsequent consequences for continued failure, will, in turn, further motivate Market Makers to continue to uphold their quoting obligations, providing liquid markets to the benefit of all investors. The Exchange again notes that the proposed fine schedule is consistent with the fine schedule under Cboe Options' MRVP applicable to violations of Market Maker quoting requirements on Cboe Options, including a continuous quoting requirement and initial quote volume requirement. As described above, EDGX Options and C2 Options intend to file proposals to update their minor rule violation fines applicable to violations of market maker quoting obligations in the same manner as Cboe Options and as proposed herein. As such, the proposed rule change is also designed to benefit investors by providing from consistent penalties across the MRVPs of the Exchange and its affiliated options exchanges.

The Exchange further believes that the proposed rule changes to Rule 25.3 are consistent with Section 6(b)(6) of the Act,[37] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change removes a Rule listed as eligible for a minor rule fine disposition under the Exchange's MRVP that the Exchange no longer believes violations of which are minor in nature and is more appropriately disciplined through the Exchange's formal disciplinary procedures, amends the MRVP provisions so that the same fine schedule, and process to impose such fines, uniformly applies to violations of a Market Maker's quoting obligations in Rule 22.6, and amends the fine schedule

[33] *Id.*

[34] *See supra* note 11.

[35] *See supra* notes 13 and 14.

[36] *See supra* note 31.

[37] 15 U.S.C. 78f(b)(6).

applicable to Market Maker failures to meet their quoting obligations in a manner that appropriately sanctions such failures.

The Exchange also believes that the proposed change is designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[38] Rule 25.3, currently and as amended, does not preclude an Options Member, associated person of an Options Member, or registered or non-registered employee of an Options Member from contesting an alleged violation and receiving a hearing on the matter with the same procedural rights through a litigated disciplinary proceeding.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not intended to address competitive issues but rather is concerned solely with amending its MRVP in connection with rules eligible for a minor rule fine disposition and with the fine schedule for Market Maker failures to meet their quoting obligations. The Exchange believes the proposed rule changes, overall, will strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

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. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[39] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[40] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal, as modified by Amendment No. 2, is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[41] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal, as modified by Amendment No. 2, is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[42] which governs minor rule violation plans.

As stated above, the Exchange proposes to amend Rule 25.3 by eliminating violations of Rule 22.6(a) from Rule 25.3(c) and the Exchange's MRVP; relocating violations of Rule 22.6(b) and Rule 22.6(c) to proposed Rule 25.3(c) so that a single MRVP provision governs violations of a Market Maker's quoting obligations; amending the current manner of calculating violations of Market Marker rules, including deleting a provision that requires violations of Market Maker obligations occurring during a calendar month be aggregated and sanctioned as a single offense; and updating the fine schedule applicable to minor rule violations related to Market Maker quoting obligations.

The Commission believes that Rule 25.3 is an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission finds that the Exchange's proposal, as modified by Amendment No. 2, to eliminate Rule 22.6(a), a Market Maker quoting obligation rule, from the MRVP is consistent with the Act because it should help the Exchange enforce compliance with, and provide appropriate discipline for, violation of a rule that the Exchange no longer believes is minor in nature. Combining all the Market Maker quoting obligation rules together in one provision of Rule 25.3 will also bring clarity to the Rule. The Commission also finds that amending the current manner of calculating violations of Market Maker rules is appropriate because the Exchange can already aggregate violations under Rule 8.15 under certain circumstances. Finally, the Commission finds that amending the associated fee schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines on Market Makers for violations of the Market Marker rules.

In approving the propose rule change, as modified by Amendment No. 2, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rule 25.3. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rule 25.3 provides a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rule 25.3 or whether a violation requires formal disciplinary action.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written views, data, and arguments concerning whether Amendment No. 2 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–083 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–083. 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

[38] 15 U.S.C. 78f(b)(7) and 78f(d).

[39] 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).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[42] 17 CFR 240.19d–1(c)(2).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–083 and should be submitted on or before April 14, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. According to the Exchange, Amendment No. 2 supplements the proposal by, among other things: (1) Providing additional detail and clarification regarding the Exchange's current and proposed treatment of a Market Maker's quoting obligations, (2) correcting an inadvertent error in the Exhibit 5, and (3) removing a superfluous provision in the Exhibit 5 to provide for additional clarity. The Commission believes that Amendment No. 2 provides additional accuracy and clarity to the proposal and does not raise any novel regulatory issues. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[43] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[44] that the proposed rule change (SR–CboeBZX–2021–083), as modified by Amendment No. 2 thereto, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

J. Matthew DeLesDernier,

Assistant Secretary.

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[43] 15 U.S.C. 78s(b)(2).

[44] *Id.*

[45] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94476; File No. SR–CboeBZX–2022–006]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

March 18, 2022.

On January 25, 2022, Cboe BZX Exchange, Inc. (''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the WisdomTree Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on February 14, 2022.[3] The Commission has received no comments on the proposed rule change.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is March 31, 2022. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and any comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates May 15, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–CboeBZX–2022–006).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06195 Filed 3–23–22; 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. 94184 (Feb. 8, 2022), 87 FR 8318.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94465; File No. SR–LTSE–2021–08]

Self-Regulatory Organizations; Long-Term Stock Exchange, Inc.; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Modify and Expand the Package of Products and Services Provided to Companies and Clarify Existing Practice Under Rule 14.602

March 18, 2022.

I. Introduction

On December 2, 2021, Long-Term Stock Exchange, Inc. (''LTSE'' 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 modify and expand the package of products and services provided to Companies and clarify existing practice under Exchange Rule 14.602 with respect to providing Company-specific web pages on the Exchange's website in connection with listing on the Exchange. The proposed rule change was published for comment in the **Federal Register** on December 21, 2021.[3] On February 3, 2022, pursuant to Section 19(b)(2) of the Act,[4] the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93787 (December 15, 2021), 86 FR 72296 (December 21, 2021) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On March 9, 2022, the Exchange filed Amendment No. 1 to the proposed rule change, which replaced and superseded the proposed rule change in its entirety.[6] The Commission has received no comments on the proposed rule change. This order provides notice of the filing of Amendment No. 1 to the proposed rule change, and grants approval to the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

The Exchange proposes to modify and expand the package of products and services provided to Companies and clarify existing practice under Exchange Rule 14.602 with respect to providing Company-specific web pages on the Exchange's website in connection with listing on the Exchange.[7]

Currently, in connection with a Company's approval for listing, the Exchange offers complimentary promotional services (including press releases, articles, videos, and podcasts) and invites the Company to participate in listing ceremonies.[8] According to LTSE, as part of these promotional services, the Exchange provides each listed Company with a dedicated section on the Exchange's website featuring information about the Company, including publicly available data and links to each Company's long-term policies.[9] The Exchange first proposes to clarify under Exchange Rule 14.602 that such Company-specific web pages are included as part of the Exchange's complimentary promotional services in connection with listing on the Exchange.[10] The Exchange also proposes to offer these services on an ongoing basis to listed Companies at no charge, in a manner generally consistent with what was done at the time of initial listing.[11] The Exchange states that these ongoing promotional services could be discontinued at the Company's discretion at any time.[12] According to the Exchange, these services have a retail value of approximately $5,000 per year.[13]

Next, the Exchange proposes to provide each listed Company with complimentary ''Capital Market Reports'' on an ongoing basis.[14] The Exchange states that these Capital Market Reports would provide tailored investor and capital markets insights and analytics that are relevant to each listed Company and its market sector, including a summary evaluation of the Company's current institutional investor base that provides specific metrics analyzing the Environmental, Social, and Governance (''ESG'') profile of each underlying institutional investor, and would highlight investor behavior and provide insights on their likely strategic priorities so that Companies can better understand their current status.[15] The Capital Markets Reports would be issued periodically, at a minimum of one report and at most four reports each calendar year.[16] The Exchange states that the Capital Markets Reports could be discontinued at the Company's discretion at any time.[17] According to the Exchange, an annual subscription to the Capital Markets reports has a retail value of approximately $5,000 per year on a flat fee basis, regardless of the number of reports issued.[18]

Lastly, the Exchange proposes to provide each listed Company with up to one year of complimentary Capital Market Solutions (''CM Solutions'').[19] According to the Exchange, CM Solutions has two components: (i) The Investor Alignment Solution; and (ii) the Long-Term Investor Platform (''LTIP'').[20]

The Exchange states that the Investor Alignment Solution would provide recipient Companies with detailed institutional investor analytics and insights into investor behavior to enable them to evaluate the behaviors of select investors and provide them with a deeper understanding of the ESG landscape and their positioning, with LTSE Services analyzing the ESG profile of institutional investors in order to understand and identify relevant sources of capital to aid the Company in honing and achieving strategic priorities, deploying a highly-experienced, multi-disciplinary team to support this long-term governance and capital markets strategy.[21] According to the Exchange, the Investor Alignment Solution has a retail value of approximately $150,000 per year.[22]

The Exchange states that the LTIP is a platform that would provide listed Companies with a means to upload and effectively manage and use their registered shareholder data received from their transfer agent.[23] Registered shareholders are listed directly on the records of an issuer or the issuer's

[5] *See* Securities Exchange Act Release No. 94140 (January 19, 2022), 87 FR 7521 (February 9, 2022). The Commission designated March 21, 2022, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] In Amendment No. 1 to the proposed rule change, the Exchange: (i) Removed provisions related to a proposed optional credit for certain products and services utilized by Companies prior to listing on the Exchange; (ii) proposed timelines for Companies (whether newly or currently listed Companies) to exercise their option to request and commence receiving certain complimentary products and services offered by the Exchange; (iii) added justification for offering such products and services to currently listed Companies; and (iv) made minor technical changes to improve the clarity of the proposed rule change. Amendment No. 1 is available on the Commission's website at *https://www.sec.gov/comments/sr-ltse-2021-08/srltse202108-20119645-272512.pdf.*

[7] *See* Amendment No. 1, *supra* note 6, at 3. ''Company'' means the issuer of a security listed or applying to list on the Exchange. For purposes of Chapter 14 of the LTSE Rules, the term ''Company'' includes an issuer that is not incorporated, such as, for example, a limited partnership. *See* Exchange Rule 14.002(a)(5).

[8] *See* Exchange Rule 14.602; Amendment No. 1, *supra* note 6, at 6–7. *See also* Release No. 91054 (February 3, 2021), 86 FR 8812 (February 9, 2021) (SR–LTSE–2020–22) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Adopt Rule 14.602 Related to Promotional Services and Listing Ceremonies for Listed Companies). Each Company may elect whether or not to receive these services or whether or not to participate in any listing ceremonies. *See* Exchange Rule 14.602.

[9] *See* Amendment No. 1, *supra* note 6, at 6–7. Exchange Rule 14.425(a) requires Companies to adopt and publish various ''Long-Term Policies,'' which must be consistent with certain principles articulated in Exchange Rule 14.425(b). *See id.* at 9 n.12.

[10] *See* proposed Exchange Rule 14.602(a); Amendment No. 1, *supra* note 6, at 6–7.

[11] *See* proposed Exchange Rule 14.602(b); Amendment No. 1, *supra* note 6, at 6–7. According to the Exchange, as is the case with the current promotional services, all updates to Company-specific web pages on the Exchange's website would be managed by an affiliate, LTSE Services, Inc. (''LTSE Services''), subject to review and approval by the Exchange and the listed Company. *See* Amendment No. 1, *supra* note 6, at 5, 7.

[12] *See* Amendment No. 1, *supra* note 6, at 12.

[13] *See id.* at 7. The Exchange states that this retail value is based on market rate estimates by LTSE Services. *See id.* at 7 n.10.

[14] *See* proposed Exchange Rule 14.602(b); Amendment No. 1, *supra* note 6, at 7. These Capital Markets Reports would be provided by LTSE Services. *See* Amendment No. 1, *supra* note 6, at 7.

[15] *See* Amendment No. 1, *supra* note 6, at 7–8.

[16] *See id.* at 7.

[17] *See id.* at 12.

[18] *See id.* at 8. The Exchange states that this retail value is based on market rate estimates by LTSE Services. *See id.* at 8 n.11.

[19] *See* proposed Exchange Rule 14.602(b); Amendment No. 1, *supra* note 6, at 8. CM Solutions would be provided by LTSE Services. *See id.* Amendment No. 1, *supra* note 6, at 8.

[20] *See id.* Amendment No. 1, *supra* note 6, at 8.

[21] *See id.* at 8–9.

[22] *See id.* at 9. The Exchange states this retail value reflects LTSE Services' current price list. *See id.* at 9 n.13.

[23] *See id.* at 10.

transfer agent under their own names.[24] Because their ownership of shares is listed on records maintained by the issuer or its transfer agent, registered shareholders have a direct relationship with the issuer.[25] Relatedly, Exchange Rule 14.208 requires that (subject to certain exceptions) all securities listed on the Exchange must be eligible for a ''Direct Registration Program'' operated by a clearing agency registered under Section 17A of the Act,[26] defined as any program by a Company (directly or through its transfer agent) whereby a shareholder may have securities registered in the shareholder's name on the books of the Company or its transfer agent without the need for a physical certificate to evidence ownership.[27] In this regard, the Exchange states that the primary means by which shareholders become registered shareholders is through the Direct Registration System (''DRS'') operated by the Depository Trust Company (''DTC'').[28]

According to the Exchange, the LTIP would allow Companies to more easily track, analyze, and utilize registered shareholder data in support of their investor relations, strategic initiatives, board review, and governance functions.[29] As part of the LTIP, the Exchange states that LTSE Services would also assist Companies with methods of outreach to and education of existing or potential investors regarding the process for becoming a registered shareholder, including the need for an investor to work with their broker-dealer to complete a submission to the ''DRS Profile System'' maintained by the DTC.[30] According to the Exchange, the LTIP has a retail value of approximately $150,000 per year if purchased on an individual basis.[31]

The Exchange proposes that newly and currently listed Companies would have the option of receiving CM Solutions on a complimentary basis for a continuous one-year term.[32] A newly listed Company that wishes to receive the complimentary CM Solutions would be required to request and commence receiving the CM Solutions within 90 days of its initial listing date.[33] A currently listed Company that wishes to receive the complimentary CM Solutions would be required to request and commence receiving the CM Solutions within 90 days of the effectiveness of this proposed rule change.[34] The start date for the continuous complimentary one-year period for both newly and currently listed Companies would begin on the date of first use by a Company, subject to the 90-day periods noted above, as applicable.[35] At the end of the one-year complimentary period for CM Solutions, Companies could choose to renew these services on a contractual basis with LTSE Services and pay for them in the regular course, or discontinue them.[36] If a Company ceases to be listed on the Exchange, the complimentary CM Solutions would end as of the date of de-listing, even if less than a one-year period has elapsed.[37]

The Exchange states that Companies are not required to use the products and services proposed above as a condition of listing, and may choose not to avail themselves of any of these products and services or only a subset of them.[38] If a listed Company chooses to discontinue receiving any of these products or services, the Exchange states that there would be no effect on the Company's continued listing on the Exchange.[39] Moreover, the Exchange represents that no listed Company will be required to pay higher fees as a result of this proposed rule change; that providing the proposed products and services will have no impact on the resources available for the Exchange's regulatory programs; and that no confidential trading or regulatory information generated or received by the Exchange will be shared with LTSE Services or leveraged for the provision of its products and services.[40]

III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change, as modified by Amendment No. 1, and finds that it is consistent with the requirements of Section 6 of the Act.[41] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(4)[42] and 6(b)(5) of the Act[43] in particular, in that the proposed rule is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members, issuers, and other persons using the Exchange's facilities, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Moreover, the Commission finds that the proposal is consistent with Section 6(b)(8) of the Act[44] in that it does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Exchange proposes to modify and expand the package of products and services provided to Companies and clarify existing practice under Exchange Rule 14.602 with respect to providing Company-specific web pages on the Exchange's website in connection with listing on the Exchange. The Commission believes that by describing and clarifying in its Rules the complimentary products and services available to listed Companies, the Exchange is adding greater transparency to its rules and the fees applicable to such Companies.[45] This will help to ensure that individual listed Companies are not given specially negotiated packages of products and services to list

[24] *See* Securities Exchange Act Release No. 76743 (December 22, 2015), 80 FR 81947, 81957 (December 31, 2015) (File No. S7–27–15).

[25] *See* Securities Exchange Act Release No. 62495 (July 14, 2010), 75 FR 42981, 42985 (June 22, 2010) (File No. S7–14–10).

[26] *See* Amendment No. 1, *supra* note 6, at 10.

[27] *See* Exchange Rule 14.002(a)(8).

[28] *See* Amendment No. 1, *supra* note 6, at 10.

[29] *See id.* at 10–11. The Exchange states that registered shareholder information in LTIP is proprietary to the Company and viewable only by the Company and its authorized agents. *See id.* at 11 n.18.

[30] *See id.* at 11. The Exchange states that any outreach to existing or potential investors would be entirely at the discretion of the Company and would be conducted exclusively by the Company, and that no personnel from LTSE Services or the Exchange would have any role in communicating with investors on behalf of the Company. Based on customer demand, the LTIP would also provide a means for a Company to communicate with registered shareholders who choose to participate via the Company's LTIP account. *See id.* at 11 n.19.

[31] *See id.* at 11. The Exchange states that this retail value reflects LTSE Services' current price list. *See id.* at 11 n.20.

[32] *See* proposed Exchange Rule 14.602(b)(2); Amendment No. 1, *supra* note 6, at 11. The Exchange states that Companies may elect to receive either the Investor Alignment Solution, the LTIP, or both during this complimentary one-year period. However, these services cannot be utilized during separate one-year periods on a complimentary basis. *See* Amendment No. 1, *supra* note 6, at 12.

[33] *See* proposed Exchange Rule 14.602(b)(2)(a); Amendment No. 1, *supra* note 6, at 11.

[34] *See* proposed Exchange Rule 14.602(b)(2)(b); Amendment No. 1, *supra* note 6, at 11.

[35] *See* proposed Exchange Rule 14.602(b)(2); Amendment No. 1, *supra* note 6, at 11.

[36] *See* Amendment No. 1, *supra* note 6, at 12.

[37] *See id.*

[38] *See id.*

[39] *See id.*

[40] *See id.* at 12–13.

[41] 15 U.S.C. 78f. 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).

[42] 15 U.S.C. 78f(b)(4).

[43] 15 U.S.C. 78f(b)(5).

[44] 15 U.S.C. 78f(b)(8).

[45] The Commission views complimentary products and services provided by exchanges to listed companies as a discount on the ultimate listing fees paid by such companies. *See, e.g.,* Securities Exchange Act Release Nos. 91054 (February 3, 2021), 86 FR 8812 (February 9, 2021) (order approving SR–LTSE–2020–22); 81872 (October 13, 2017), 82 FR 48733 (October 19, 2017) (order approving SR–IEX–2017–20); 65127 (August 12, 2011), 76 FR 51449 (August 18, 2011) (order approving SR–NYSE–2011–20); and 65963 (December 15, 2011), 76 FR 79262 (December 21, 2011) (order approving SR–NASDAQ–2011–122).

or remain listed that would raise unfair discrimination issues under the Act.

Moreover, the Commission notes the Exchange's representations that the proposed complimentary products and services will be offered to all listed Companies on the same terms and conditions without differentiation.[46] In this respect, the Commission notes that the Exchange would offer all currently and newly listed Companies complimentary periodic Capital Markets Reports and Company-specific web page updates on the Exchange's website on an ongoing basis.[47] All currently and newly listed Companies would also be provided the same one-year term of complimentary CM Solutions to be utilized at their discretion, provided such complimentary services are requested and commenced within the 90-day periods noted above, as applicable.[48] According to the Exchange, these 90-day opt-in periods for newly and currently listed Companies offer them sufficient flexibility and autonomy in requesting and commencing receiving CM Solutions.[49] The Commission believes that these timeframes would provide only a short window of time to allow companies to avail themselves of these complimentary products and services, and notes that these timeframes would only be available to Companies that have already determined to list or are already listed on the Exchange.[50] Accordingly, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and, in particular, that the services are equitably allocated among issuers consistent with Section 6(b)(4) of the Act,[51] and the rule does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.[52]

The Commission also acknowledges that the Exchange is responding to competitive pressures in the market for listings in making this proposal. Specifically, according to LTSE, the Exchange expects to face competition as a new entrant in the market for exchange listings, and it believes the complimentary products and services that it proposes to offer to listed companies will facilitate LTSE's ability to attract and retain listings.[53] In addition, the Exchange states that comparable complimentary products and services are already provided by other listing exchanges.[54] Accordingly, the Commission believes that the proposed rule change, as modified by Amendment No. 1, reflects the current competitive environment for exchange listings among national securities exchanges, and is appropriate and consistent with Section 6(b)(8) of the Act.[55]

IV. Solicitation of Comments on Amendment No. 1

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–LTSE–2021–08 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 No. SR–LTSE–2021–08. The file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File No. SR–LTSE–2021–08 and should be submitted on or before April 14, 2022.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of the amended proposal in the **Federal Register**. As discussed above, in Amendment No. 1, the Exchange: (i) Removed provisions related to a proposed optional credit for certain products and services utilized by Companies prior to listing on the Exchange; (ii) proposed timelines for Companies (whether newly or currently listed Companies) to exercise their option to request and commence receiving certain complimentary products and services offered by the Exchange; (iii) added justification for offering such products and services to currently listed Companies; and (iv) made minor technical changes to improve the clarity of the proposed rule change. The Commission believes that these changes will help to ensure that individual listed Companies are not given specially negotiated packages of products and services to list or remain listed, as well as to ensure that the services are equitably allocated among issuers consistent with Section 6(b)(4) of the Act[56] and that the proposed rule change does not unfairly discriminate between issuers consistent with Section 6(b)(5) of the Act.[57] In addition, Amendment No. 1 does not alter any substantive provisions of the remaining parts of the proposed rule change from what is set forth in the Notice, which was subject to a full comment period. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[58] to approve the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[59] that the proposed rule change (SR–LTSE–2021–08), as modified by Amendment No. 1,

[46] *See* Amendment No. 1, *supra* note 6, at 15–16.

[47] *See* proposed Exchange Rule 14.602(b)(1).

[48] *See* Amendment No. 1, *supra* note 6, at 15.

[49] *See id.* at 11–12.

[50] The Commission expects the Exchange to track the start (and end) date of each free service.

[51] 15 U.S.C. 78f(b)(4).

[52] 15 U.S.C. 78f(b)(5).

[53] *See* Amendment No. 1, *supra* note 6, at 13–15.

[54] *See id.* at 16–17. *See also* New York Stock Exchange LLC Listed Company Manual Section 907 and The Nasdaq Stock Market LLC Rule IM–5900–7.

[55] 15 U.S.C. 78f(b)(8).

[56] 15 U.S.C. 78f(b)(4).

[57] 15 U.S.C. 78f(b)(5).

[58] 15 U.S.C. 78s(b)(2).

[59] 15 U.S.C. 78s(b)(2).

be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06186 Filed 3–23–22; 8:45 am]

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[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94473; File No. SR–NASDAQ–2022–022]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction.

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 amend General 3, Rule 1002, Qualifications of Exchange Members and Associated Persons; Registration of Branch Offices and Designation of Office of Supervisory Jurisdiction. Specifically, General 3, Rule 1002(b) provides for ineligibility of certain persons for Membership or Association. General 3, Rule 1002(b)(2) provides,

> Subject to such exceptions as may be explicitly provided elsewhere in the Rules, no person shall become associated with a Member, continue to be associated with a Member, or transfer association to another Member, if such person fails or ceases to satisfy the qualification requirements established by the Rules, or if such person is or becomes subject to a statutory disqualification; and no broker or dealer shall be admitted to membership, and no Member shall be continued in membership, if any person associated with it is ineligible to be an Associated Person under this subsection.

For purposes of statutory disqualification, as such term is defined in Section 3(a)(39) of the Act,[3] the Exchange proposes to specifically define the terms ''person associated with a member'' and ''associated person'' to align those terms with FINRA's By-Laws. FINRA defines the terms ''person associated with a member'' or ''associated person of a member'' at paragraph (ee) of Article I, Definitions, of those By-Laws.[4] Nasdaq currently defines an ''Associated Person'' within General 3, Section 1011(b) to mean any partner, officer, director, or branch manager of a Member or Applicant (or person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such Member or Applicant, or any employee of such Member or Applicant, except that any person associated with a Member or Applicant whose functions are solely clerical or ministerial shall not be included in the meaning of such term for purposes of the Rules.

At this time, Nasdaq proposes to adopt FINRA's definitions of ''person associated with a member'' and ''associated person'' as provided within FINRA By-Law Article I(ee), for purposes of statutory disqualification, within new Nasdaq General 3, Rule 1002(b)(2)(A). As proposed, General 3, Rule 1002(b)(2)(A) would provide,

> For purposes of ''statutory disqualification'' as such term is defined in Section 3(a)(39) of the Exchange Act the terms ''person associated with a member'' and ''associated person'' shall mean (1) a natural person who is registered or has applied for registration under the Rules of the Exchange; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the Exchange under its Rules; and (3) for purposes of Nasdaq General 5, Rule 8210, any other person listed in Schedule A of Form BD of a member.

By defining the terms ''person associated with a member'' and ''associated person'' substantively identical[5] to FINRA, for purposes of statutory disqualification, the Exchange would align its application of statutory disqualification with FINRA's process. This proposal would avoid potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association.

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 and to protect investors and the public interest. The Exchange's proposal to adopt FINRA's definitions of ''person

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78c(a)(39).

[4] FINRA By-Law Article I(ee) provides, ''person associated with a member'' or ''associated person of a member'' means: (1) A natural person who is registered or has applied for registration under the Rules of the Corporation; (2) a sole proprietor, partner, officer, director, or branch manager of a member, or other natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with FINRA under these By-Laws or the Rules of the Corporation; and (3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member.

[5] References to ''Corporation'' within FINRA By-Law Article I(ee) were amended to ''Exchange'' and references to ''By-Laws and Rules of FINRA'' were amended to reference Nasdaq's Rules.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

associated with a member'' and ''associated person'' as provided within FINRA By-Law Article I(ee), for purposes of statutory disqualification pursuant to Section 3(a)(39) of Act,[8] within new Nasdaq General 3, Rule 1002(b)(2)(A) is consistent with the Act. Aligning the terms ''person associated with a member'' and ''associated person'' with paragraph (ee) of Article I, Definitions, of FINRA's By-Laws would avoid potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association as a result of statutory disqualification.

The Exchange believes its proposal will promote just and equitable principles of trade and protect investors and the public interest by ensuring market participants that are members of both FINRA and Nasdaq are held to the same standard with respect to statutory disqualification.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to adopt FINRA's definitions of ''person associated with a member'' and ''associated person'' as provided within FINRA By-Law Article I(ee) within General 3, Rule 1002(b)(2)(A), for purposes of statutory disqualification pursuant to Section 3(a)(39) of Act,[9] does not impose an undue burden on competition. Aligning the terms ''person associated with a member'' and ''associated person'' with paragraph (ee) of Article I, Definitions, of FINRA's By-Laws would avoid potentially different outcomes for members of both FINRA and Nasdaq with respect to ineligibility for membership and association as a result of statutory disqualification and ensure that all FINRA and Nasdaq members are held to the same standard with respect to statutory disqualification. Today, all Nasdaq members are subject to the General 3 rules.

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.

[8] 15 U.S.C. 78c(a)(39).

[9] 15 U.S.C. 78c(a)(39).

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[10] and subparagraph (f)(6) of Rule 19b–4 thereunder.[11]

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–NASDAQ–2022–022 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–2022–022. 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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2022–022 and should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06192 Filed 3–23–22; 8:45 am]

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[10] 15 U.S.C. 78s(b)(3)(A)(iii).

[11] 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.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94462; File No. SR–CboeEDGX–2022–019]

Self-Regulatory Organizations; Cboe EDGX 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 11.16 to April 18, 2022

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 EDGX Exchange, Inc. (''EDGX'' 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 11.16 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/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

EDGX Rules 11.16(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 11.16 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 11.16 to extend the pilot's effectiveness to October 18, 2020,[8] October 18, 2021,[9] and March 18, 2022.[10] 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 market-wide circuit breaker under Rule 11.16 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 11.16, 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.

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

[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. 85667 (April 16, 2019), 84 FR 16736 (April 22, 2019) (SR–CboeEDGX–2019–023).

[8] *See* Securities Exchange Act Release No. 87339 (October 17, 2019), 84 FR 56882 (October 23, 2019) (SR–CboeEDGX–2019–061).

[9] *See* Securities Exchange Act Release No. 90147 (October 9, 2020), 85 FR 65453 (October 15, 2020) (SR–CboeEDGX–2020–047).

[10] *See* Securities Exchange Act Release No. 93353 (October 15, 2021), 86 FR 58349 (October 21, 2021) (SR–CboeEDGX–2021–046).

[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'').

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 11.16 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 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 11.16 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 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.

[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).

[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).

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–CboeEDGX–2022–019 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–019. 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–CboeEDGX–2022–019 and should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

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[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. 34–94475; File No. SR–NYSEArca–2021–67]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Designation of a Longer Period for Commission Action on Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To List and Trade Shares of the One River Carbon Neutral Bitcoin Trust Under NYSE Arca Rule 8.201–E

March 18, 2022.

On September 20, 2021, NYSE Arca, Inc. (''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares of the One River Carbon Neutral Bitcoin Trust under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares). The proposed rule change was published for comment in the **Federal Register** on October 5, 2021.[3]

On November 10, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On December 21, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.[7]

Section 19(b)(2) of the Act[8] provides that, after initiating proceedings, the Commission shall issue an order approving or disapproving the proposed rule change not later than 180 days after the date of publication of notice of filing of the proposed rule change. The Commission may extend the period for issuing an order approving or disapproving the proposed rule change, however, by not more than 60 days if the Commission determines that a longer period is appropriate and publishes the reasons for such determination. The proposed rule change was published for comment in the **Federal Register** on October 5, 2021.[9] The 180th day after publication of the proposed rule change is April 3, 2022. The Commission is extending the time period for approving or disapproving the proposed rule change for an additional 60 days.

The Commission finds that it is appropriate to designate a longer period within which to issue an order approving or disapproving the proposed rule change so that it has sufficient time to consider the proposed rule change and the issues raised in the comments that have been submitted in connection therewith. Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act,[10] designates June 2, 2022, as the date by which the Commission shall either approve or disapprove the proposed rule change (File No. SR–NYSEArca–2021–67).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 93171 (Sept. 29, 2021), 86 FR 55073. Comments on the proposed rule change can be found at: *https://www.sec.gov/comments/sr-nysearca-2021-67/srnysearca202167.htm.*

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93553, 86 FR 64276 (Nov. 17, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93840, 86 FR 73826 (Dec. 28, 2021).

[8] 15 U.S.C. 78s(b)(2).

[9] *See supra* note 3.

[10] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06194 Filed 3–23–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94464; File No. SR–CboeBZX–2022–023]

Self-Regulatory Organizations; Cboe BZX 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 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 17, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I 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 BZX Exchange, Inc. (''BZX'' 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/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[11] 17 CFR 200.30–3(a)(57).

[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).

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

BZX 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] The Exchange now 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 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

[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. 85689 (April 18, 2019), 84 FR 17217 (April 24, 2019) (SR–CboeBZX–2019–028).

[8] *See* Securities Exchange Act Release No. 87336 (October 17, 2019), 84 FR 56868 (October 23, 2019) (SR–CboeBZX–2019–088).

[9] *See* Securities Exchange Act Release No. 90126 (October 8, 2020), 85 FR 65119 (October 14, 2020) (SR–CboeBZX–2020–074).

[10] *See* Securities Exchange Act Release No. 93365 (October 15, 2021) 86 FR 58342 (October 21, 2022) (SR–CboeBZX–2021–071).

[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'').

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.

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.

[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).

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–CboeBZX–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–CboeBZX–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 (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions.

You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–023 and should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06185 Filed 3–23–22; 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. 34–94466; File No. SR–NASDAQ–2022–024]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Create a Monthly Media Enterprise License for the Distribution of Nasdaq Basic to the General Investing Public for Display Usage

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the Exchange's fees to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.

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

[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

The purpose of the Proposal is to create a monthly Media Enterprise License for the distribution of Nasdaq Basic to the general investing public for Display Usage.[3]

Nasdaq Basic

Nasdaq Basic is a real-time market data product that offers best bid and offer and last sale information for all U.S. exchange-listed securities based on liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq Trade Reporting Facilities at Chicago and Carteret (''TRFs''). It is a subset of the core quotation and last sale data provided by securities information processors (''SIPs''), which distribute consolidated data pursuant to the CTA/CQ Plan and the UTP Plan.

Nasdaq Basic is separated into three components, which may be purchased individually or in combination: (i) Nasdaq Basic for Nasdaq, which contains the best bid and offer on the Nasdaq Market Center and last sale transaction reports for Nasdaq and the FINRA/Nasdaq TRFs for Nasdaq-listed stocks; (ii) Nasdaq Basic for NYSE, which covers NYSE-listed stocks, and (iii) Nasdaq Basic for NYSE American, which provides data on stocks listed on NYSE American and other listing venues that disseminate quotes and trade reports on Tape B. The specific data elements available through Nasdaq Basic are: (i) Nasdaq Basic Quotes (''QBBO''), the best bid and offer and associated size available in the Nasdaq Market Center, as well as last sale transaction reports;[4] (ii) Nasdaq opening and closing prices, as well as IPO and trading halt cross prices; and (iii) general exchange information, including systems status reports, trading halt information, and a stock directory.

Proposed Changes

Media Enterprise License

Nasdaq proposes to introduce a Media Enterprise License that will allow any External Distributor[5] to disseminate Nasdaq Basic, or any subset thereof,[6] to the general investing public for Display Usage[7] for a monthly fee of $100,000.[8] Information may be distributed via television, websites, mobile devices, or any other unrestricted means of transmission to an unlimited number of Users.[9] A Hosted Display Solution[10] may be used to distribute data under this license, provided that the External Distributor purchases a separate Media Enterprise License for each such Hosted Display Solution.

Distribution of Nasdaq Basic through the Media Enterprise License will be subject to two primary restrictions. First, distribution of Derived Data[11] is not permitted. The purpose of the license is to disseminate accurate market information to the general investing public. Derived Data—which cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information—does not serve that purpose.

Second, data may only be used for informational and non-trading purposes. Nasdaq Basic information may only be distributed on platforms pre-approved by the Exchange as providing a reasonable basis to conclude that all Users of such Information are either Non-Professionals[12] or Professionals[13] whom the Distributor has no reason to believe are using Nasdaq Basic in their professional capacity. A Distributor has ''no reason to believe'' that Nasdaq Basic is being used in a professional capacity when, for example, the data is made available to the general investing public in a format that would be ''unlikely to be of significant use to Professionals acting in a professional capacity.''[14]

The proposed Media Enterprise License does not cover the Distributor Fee for Nasdaq Basic set forth in subparagraph (c)(1).

Extension to Broker-Dealer Enterprise Licenses

Nasdaq also proposes to provide the Media Enterprise License at no additional cost to broker-dealers that purchase either of the following two enterprise licenses: (i) The license to distribute Nasdaq Basic to natural persons in a brokerage relationship with

[3] The Exchange initially filed the proposed pricing changes on January 31, 2022 (SR–NASDAQ–2022–014). On February 14, 2022, the Exchange withdrew that filing and submitted a new filing (SR–NASDAQ–2022–016). The second filing was withdrawn on February 28, 2022, and replaced with another filing (SR–NASDAQ–2022–018). This last filing was withdrawn on March 9, 2022, and replaced with this filing.

[4] Last sale transaction reports are available from both Nasdaq Last Sale and Nasdaq Last Sale Plus. *See* Equity 7, Section 139(e) (''NLS Plus may be received by itself or in combination with Nasdaq Basic.''). The customer that purchases Nasdaq Basic will also receive Nasdaq Last Sale because it is a component of Nasdaq Basic.

[5] The term ''Distributor'' refers to any entity that receives Nasdaq Basic data directly from Nasdaq or indirectly through another entity and then distributes it to one or more Subscribers. Equity 7, Section 147(d)(1). ''External Distributors'' are Distributors that receive Nasdaq Basic data and then distribute that data to one or more Subscribers outside the Distributor's own entity. Equity 7, Section 147(d)(1)(B).

[6] The Exchange expects most purchasers of the proposed license to distribute last sale transaction reports and best bid and offer information. Firms will have the discretion, however, to distribute less than the full set of information available—for example, some firms may distribute last sale information only—or to distribute all of the information available on Nasdaq Basic.

[7] ''Display Usage'' means any method of accessing Nasdaq Basic data that involves the display of such data on a screen or other visualization mechanism for access or use by a natural person or persons. Equity 7, Section 147(d)(2).

[8] The proposed license will not cover the Distributor Fee for Nasdaq Basic set forth in Equity 7, Section 147(c)(1).

[9] The Exchange proposes to define a ''User'' as ''a natural person who has access to Exchange information.'' Equity 7, Section 147(d)(7).

[10] A ''Hosted Display Solution'' is a product, solution or capability provided by a Distributor in which the Distributor makes available Nasdaq data or Derived Data to an application branded or co-branded with the third-party brand for use by external subscribers of the third-party entity or Distributor. The Distributor maintains control of the data, entitlements and display of the product, solution or capability. Hosted Display Solutions include, but are not limited to: (1) ''Widgets'' (such as an iframe, applet, or other solution), in which the Hosted Display Solution is a part or a subset of a website or platform hosted or maintained by the third-party entity; and (2) ''White Labels,'' in which the Distributor hosts or maintains the website or platform on behalf of the third-party entity. Equity 7, Section 147(d)(5).

[11] ''Derived Data'' is pricing data or other information that is created in whole or in part from Nasdaq information; it cannot be reverse engineered to recreate Nasdaq information, or be used to create other data that is recognizable as a reasonable substitute for Nasdaq information. Equity 7, Section 147(d)(6).

[12] A ''Non-Professional Subscriber'' is a natural person who is not: (A) Registered or qualified in any capacity with the Securities and Exchange Commission, the Commodity Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (B) engaged as an 'investment adviser' as that term is defined in Section 202(a)(11) of the Investment Advisers Act of 1940 (whether or not registered or qualified under that Act); or (C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt. Equity 7, Section 147(d)(4)(A).

[13] A ''Professional Subscriber'' is any Subscriber other than a Non-Professional Subscriber. Equity 7, Section 147(d)(4)(B).

[14] Securities Exchange Act Release No. 34–82723 (February 15, 2018), 83 FR 7812 (February 22, 2018) (SR–NASDAQ–2018–010) (discussing when a distributor of NLS has ''no reason to believe'' that it is being used by Professionals acting in their professional capacity).

the broker-dealer at Equity 7, Section 147(b)(5); or (ii) the Market Data Enterprise License for Display Usage at Equity 7, Section 132. All of the terms and conditions set forth in Equity 7, Section 147(b)(6) will apply to any broker-dealer obtaining the license pursuant to either of these subsections.

The enterprise license at Equity 7, Section 147(b)(5), allows a broker-dealer to distribute Nasdaq Basic, or Derived Data therefrom, through any electronic system approved by Nasdaq, to an unlimited number of Professional and Non-Professional Subscribers who are natural persons and with whom the broker-dealer has a brokerage relationship for a monthly fee of $100,000.[15] That license currently includes the right to distribute Nasdaq Last Sale (''NLS'')[16] data to the general investing public for Display Usage without paying the fees set forth in Equity 7, Section 139(b), subject to all of the provisions set forth therein, excluding those related to the payment of fees.[17]

Nasdaq proposes to add a reference to the Media Enterprise License to Equity 7, Section 147(b)(5). If a customer chooses to continue to distribute NLS it may do so without change.

The Market Data Enterprise License for Display Usage at Equity 7, Section 132, allows a Distributor that is also a broker-dealer or an investment adviser to distribute, for Display Usage only, Depth-of-Book data and Nasdaq Basic to an unlimited number of internal and external recipients, to be used only in the context of a brokerage relationship with a broker-dealer or an engagement with an Investment Adviser. The license currently allows unlimited external distribution of NLS and NLS Plus through one of the mechanisms for the general investing public identified at Equity 7, Section 139(b), provided that platforms distributing such information are pre-approved by the Exchange as reasonably designed to meet the requirements with respect to each of the products identified. This license may be purchased for a monthly fee of $600,000, or the Distributor may purchase a full twelve months of the license in advance for a monthly fee of $500,000.

The Exchange proposes to add a reference to Nasdaq Basic for the Market Data Enterprise License. If the purchaser wishes to continue to distribute NLS after the Proposal, it may do so without change.

Extension to Short Interest Report

Nasdaq distributes a Short Interest Report under a fee schedule set forth at Equity 7, Section 122(c). Distributors that currently purchase enterprise licenses at Equity 7, Section 123(c)(3) or Equity 7, Section 147(b)(5), or that expend $5,000 or more on any product offered at Equity 7, Section 139 in a particular month, excluding distributor fees at Equity 7, Section 139(c), may distribute the Short Interest Report to an unlimited number of external Subscribers, or on an open website, for $1,500 per month. The Exchange proposes to add the Media Enterprise License at Equity 7, Section 147(b)(6) to the list of licenses which will allow distribution of the Short Interest Report to an unlimited number of external Subscribers or on an open website for $1,500 per month.[18]

Discussion

This Proposal is a response to customer requests. A number of firms, including financial media firms, mobile application vendors, and data vendors, have informed Nasdaq that they have observed an increase in demand for bid and offer information from the general investing public, and requested that Nasdaq create the proposed enterprise license. These potential customers compared Nasdaq's market data fee schedule to that of one of its competitors, which already allows general news websites to distribute real-time quote and trade information on open public websites and applications,[19] and concluded that overall market transparency would be improved if Nasdaq Basic Quotes were distributed on open public websites and applications as well.

Upon consideration of these requests, Nasdaq has determined that distribution of best bid and offer information is in the best interest of our customers and the market as a whole. When NLS was introduced in 2007, it was a significant leap forward for Retail Investors. NLS allowed, for the first time, a cost-effective method for the retail audience to gain insights into the real time price movements of US securities on open websites. The release of pre-trade information on a similar basis is the next step in expanding the availability and accessibility of accurate and reliable trading information, increasing overall transparency.

Nasdaq believes that there is little risk that the proposed license will change the way that Professionals use pre-trade data. Although the new license may occasionally result in incidental professional use, data that is generally available to online customers via television, open websites, mobile devices, or any other unrestricted means of transmission is unlikely to have the breadth or depth of information, or desktop applications, used by professionals. Information for professional use is typically distributed through firewall-protected websites, intranet sites, secured terminals, or is otherwise protected from widespread dissemination.[20] As an additional safeguard, Nasdaq proposes that any platform used to distribute data under this license contain sufficient controls to ensure that the feeds cannot be modified into a data feed or otherwise made suitable for professional use.

The Exchange expects the new license to be attractive to financial media outlets, search engines and firms engaged in the development and sale of new financial applications. Based on Nasdaq's familiarity with the market, it

[15] Equity 7 Section 147(b)(5).

[16] NLS provides real-time last sale information for executions occurring within the Nasdaq market center and trades reported to the jointly-operated FINRA/Nasdaq TRFs. The NLS data feed, which provides price, volume and time of execution data for last sale transactions, includes transaction information for Nasdaq-listed stocks (''NLS for Nasdaq'') and for stocks listed on NYSE, NYSE American, and other Tape B listing venues (''NLS for NYSE/NYSE American''). It is, like Nasdaq Basic, a non-core product that provides a subset of the core data provided by the SIPs under the CTA and UTP plans. *See, e.g.,* Securities Exchange Act Release No. 91874 (May 12, 2021), 86 FR 26985 (May 18, 2021) (SR–Nasdaq–2021–036).

[17] The Nasdaq Basic enterprise license also includes a number of other provisions and restrictions, including but not limited to: (i) A limitation that the use of the data by a Professional Subscriber shall be limited to the brokerage relationship, except that Nasdaq Basic data may be made available for up to 4,500 internal Subscribers without incurring additional fees; (ii) a requirement for a separate enterprise license for each discrete electronic system; (iii) a requirement that the broker-dealer pay distributor fees under paragraph (c)(1); and (iv) a requirement that the broker-dealer report the number of Subscribers receiving Nasdaq Basic under this license. Equity 7, Section 147(b)(5).

[18] In addition, Nasdaq proposes to correct current references to ''NYSE MKT,'' which no longer exists, to ''NYSE American,'' and revise numbering to accommodate the addition of new Subsection 147(b)(6).

[19] *See, e.g.,* Securities Exchange Act Release No. 79699 (December 28, 2016), 82 FR 892 (January 4, 2017) (SR–BatsEDGA–2016–32) (introducing the digital media license for Bats EDGA); *see also* Cboe One Feed, Digital Media License, available at *https://www.cboe.com/us/equities/market_data_services/cboe_one/*(allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

[20] Professionals are also subject to regulatory requirements not applicable to the general investing public that require different sets of information to be displayed. SEC Rule 603(c), for example, requires Professionals to provide consolidated information, rather than proprietary data, under certain circumstances. *See* 17 CFR 242.603(c).

also believes that broker-dealers that currently distribute last sale transaction reports to the general investing public would similarly be interested in distributing QBBO information on their open websites to generate traffic and attract customers.

Any firm that is interested in distributing Nasdaq Basic to the general investing public under the conditions set forth in the proposed rule would be able to do so. The Exchange expects financial media firms, firms engaged in the development and sale of new financial applications, broker-dealers, and data vendors in particular to benefit from the proposed license. The Proposal will promote competition as it is similar to a media license already offered by another exchange.[21]

2. Statutory Basis

The Exchange believes that its Proposal is consistent with Section 6(b) of the Act,[22] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[23] 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 an Equitable Allocation of Reasonable Dues, Fees and Other Charges

As the Commission and courts [24] have recognized, ''[i]f competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [25] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [26] Competition among exchanges in the sale of top-of-book data is a powerful competitive force that constrains the price of top-of-book data products.

Nasdaq Basic provides choices to broker-dealers and other data consumers by offering less than the quantum of data provided through the consolidated tape feeds, but at a lower price. All of the top-of-book proprietary products offered by the exchanges are readily substitutable for each other.

Top-of-book data can be used for many purposes—from a retail investor casually surveying the market to sophisticated market participants using it for a variety of applications, such as investment analysis, risk management, or portfolio valuation.

All major exchange groups compete to sell top-of-book data. Nasdaq Basic provides data derived from liquidity within the Nasdaq market center and trades reported to the FINRA/Nasdaq TRFs. The NYSE BQT feed disseminates top-of-book information from the NYSE, NYSE American, NYSE Arca, NYSE National and NYSE Chicago exchanges.[27] The Cboe One Summary Feed provides data from the four Cboe equities exchanges: BZX Exchange, BYX Exchange, EDGX Exchange and EDGA Exchange.[28]

Nasdaq, NYSE and Cboe compete on price and quality. Like Nasdaq, both NYSE [29] and Cboe [30] offer enterprise licenses for their top-of book feeds. All of these top-of-book data feeds are substitutes. The value of the data depends on its quality, which is in large part determined by the amount of order flow attracted by the exchange—the more order flow, the more quotes and trades, and the better the exchange data will be able to match the NBBO.

Competition among exchanges for order flow has long been recognized by the courts. As the D.C. Circuit stated in *NetCoalition* v. *Securities and Exchange Commission,* ''[n]o one disputes that competition for order flow is 'fierce.' . . . 'In 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' . . . .'' [31]

The proposed Media Enterprise License is an element of the competition among exchanges for the sale of top-of-book feeds. As explained above, it was drafted in response to requests from potential customers, including financial media firms, mobile application vendors, and data vendors, and also as a response to the license offered by one of Nasdaq's competitors allowing general news websites to distribute real-time quote and trade information.[32] The Exchange expects the new license to be attractive to financial media outlets, search engines, and firms engaged in the development and sale of new financial applications, as well as broker-dealers, and expects that the increased dissemination of Nasdaq data will enhance Nasdaq's ability to compete with other exchanges in the sale of top-of-book data.

In addition to the new Media Enterprise License, Nasdaq proposes to expand the broker-dealer enterprise license at Equity 7, Section 147(b)(5), and the Market Data Enterprise License for Display Usage at Equity 7, Section 132, to include the Media Enterprise License at no additional cost. The Exchange also proposes to add the Media Enterprise License at Equity 7,

[21] *See* Cboe One Feed, Digital Media License, available at *https://www.cboe.com/us/equities/market_data_services/cboe_one/* (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

[22] *See* 15 U.S.C. 78f(b).

[23] *See* 15 U.S.C. 78f(b)(4) and (5).

[24] The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed and that the SEC wield its regulatory power in those situations where competition may not be sufficient, such as in the creation of a consolidated transactional reporting system.'' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323) (internal quotation marks omitted). The court agreed with the Commission's conclusion that ''Congress intended that competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.'' *Id.* (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74,771 (December 9, 2008) (SR–NYSEArca–2006–21)).

[25] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21).

[26] *Id.*

[27] *See* New York Stock Exchange, NYSE Best Quote & Trades (BQT), available at *https://www.nyse.com/market-data/real-time/nyse-bqt.*

[28] *See* Cboe Market Data Services, U.S. Equities, U.S. Equities Market Data Products, available at: *https://markets.cboe.com/us/equities/market_data_services/#:~:text=Cboe%20Top%20is%20a%20real,time%20on%20a%20Cboe%20book.&text=It%20is%20a%20real%2Dtime,time%20on%20a%20Cboe%20book.*

[29] *See* New York Stock Exchange, NYSE Best Quote & Trades (BQT), available at *https://www.nyse.com/market-data/real-time/nyse-bqt.*

[30] *See* Cboe, Market Data Services, Cboe One Feed, available at *https://markets.cboe.com/us/equities/market_data_services/cboe_one/.*

[31] *See 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)).

[32] *See, e.g.,* Securities Exchange Act Release No. 79699 (December 28, 2016), 82 FR 892 (January 4, 2017) (SR–BatsEDGA–2016–32) (introducing the digital media license for Bats EDGA); *see also* Cboe One Feed, Digital Media License, available at *https://www.cboe.com/us/equities/market_data_services/cboe_one/* (allowing general news websites to distribute real-time quote and trade information on open public websites and applications; information may be distributed via television, websites and mobile devices for informational and non-trading purposes only).

Section 147(b)(6) to the list of licenses which will allow distribution of the Short Interest Report to an unlimited number of external Subscribers or on an open website for a monthly fee. All of these changes will expand existing services at no additional cost to the purchaser.

The fact that the new Media Enterprise License is subject to competition provides a substantial basis for a finding that the terms of the proposal are equitable, fair, and reasonable.

The Proposal Does Not Permit Unfair Discrimination

The Proposal is not unfairly discriminatory. The proposed license will be available to any External Distributor to disseminate Nasdaq Basic to the general investing public for Display Usage. Broker-dealers that purchase the enterprise licenses at Equity 7, Sections 147(b)(5) and 132 will be able to distribute the same data to the general investing public at no additional charge, beyond the fees for the underlying licenses, and, as discussed above, these broker-dealers may continue to distribute NLS as they did before this change. Any firm that is interested in distributing Nasdaq Basic to the general investing public under the conditions set forth in the proposed rule would be able to do so on a non-discriminatory basis.

With respect to the Short Interest Report at Equity 7, Section 122(c), there is no unfair discrimination in allowing customers another means to qualify for purchase of the Short Interest Report for a reduced fee.

For all of the reasons set forth herein, the proposed Media Enterprise License will be subject to significant competition, and that competition will ensure that there is no unfair discrimination. The Proposal will also benefit the general investing public by lowering the cost of distributing Nasdaq Basic, thereby enhancing overall market transparency.

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. With respect to inter-market competition—the competition among SROs—the Exchange's ability to price market data products is constrained by competition among exchanges for top-of-book data. The proposed Media Enterprise License is itself a response to a similar product offered by another exchange, and other exchanges are free to follow Nasdaq in offering their own version of the product. With respect to intra-market competition—the competition among consumers of exchange data—the Exchange expects the Proposal to promote competition by making Nasdaq Basic freely available to any External Distributor willing to distribute it to the general investing public under the terms set forth in this license.

Intermarket Competition

As discussed in detail under Statutory Basis, Nasdaq competes with other exchanges in the sale of top-of-book products.

Nasdaq is offering the proposed Media Enterprise License to gain new customers and to compete with a similar product offered by another exchange. The Proposal will not cause any unnecessary or inappropriate burden on intermarket competition, as other exchanges are free to respond with a similar license of their own.

Intramarket Competition

The Proposal will not cause any unnecessary or inappropriate burden on intramarket competition. Indeed, it will foster competition by providing External Distributors—including financial media firms, search engines, vendors, and broker-dealers—with more options to deliver top-of-book information to the general investing public. The Proposal will also promote competition by increasing market transparency through greater dissemination of QBBO information to the general investing public. The license is available to all market participants that meet the terms set forth in the license, and nothing in the Proposal will place any unnecessary or inappropriate burden on intramarket 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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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–2022–024 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–2022–024. 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–2022–024 and

[33] 15 U.S.C. 78s(b)(3)(A)(ii).

should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06187 Filed 3–23–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94468; File No. SR–ISE–2022–07]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Qualifications for the Market Maker Plus Program in Options 7, Section 3

March 18, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 4, 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 and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the qualifications for the Exchange's Market Maker Plus program in its Pricing Schedule at Options 7, Section 3.

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 purpose of the proposed rule change is to amend the qualifications for the Exchange's Market Maker Plus program in its Pricing Schedule at Options 7, Section 3. The Exchange initially filed the proposed pricing changes on February 23, 2022 (SR–ISE–2022–05). On March 4, 2022, the Exchange withdrew that filing and submitted this filing.

Today, the Exchange operates a Market Maker Plus program for regular orders in Select Symbols[3] and Non-Select Symbols[4] that provides the below tiered incentives to Market Makers[5] based on time spent quoting at the National Best Bid or National Best Offer (''NBBO''). This program is designed to reward Market Makers that contribute to market quality by maintaining tight markets in Select and Non-Select Symbols.

SELECT SYMBOLS OTHER THAN SPY, QQQ, IWM, AMZN, FB, AND NVDA

Market Maker Plus tier (specified percentage)	Maker rebate
Tier 1 (80% to less than 85%)	($0.15)
Tier 2 (85% to less than 95%)	(0.18)
Tier 3 (95% or greater)	(0.22)

SPY, QQQ, AND IWM

Market Maker Plus tier (specified percentage)	Regular Maker rebate	Linked Maker rebate
Tier 1a (50% to less than 65%)	($0.00)	N/A
Tier 1b (65% to less than 80%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.10% of Customer Total Consolidated Volume)	(0.05)	N/A
Tier 2 (80% to less than 85%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.20% of Customer Total Consolidated Volume)	(0.18)	($0.15)
Tier 3 (85% to less than 90%) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.25% of Customer Total Consolidated Volume)	(0.22)	(0.19)
Tier 4 (90% or greater) or (over 50% and adds liquidity in the qualifying symbol that is executed at a volume of greater than 0.50% of Customer Total Consolidated Volume)	(0.26)	(0.23)

AMZN, FB, AND NVDA

Market Maker Plus tier (specified percentage)	Maker rebate
Tier 1 (70% to less than 85%)	($0.15)
Tier 2 (85% to less than 95%)	(0.18)

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Select Symbols'' are options overlying all symbols listed on the Exchange that are in the Penny Interval Program.

[4] ''Non-Select Symbols'' are options overlying all symbols excluding Select Symbols.

[5] The term ''Market Makers'' refers to Competitive Market Makers and Primary Market Makers, collectively.

AMZN, FB, AND NVDA—Continued

Market Maker Plus tier (specified percentage)	Maker rebate
Tier 3 (95% or greater)	(0.22)

NON-SELECT SYMBOLS (EXCLUDING INDEX OPTIONS)

Market Maker Plus tier (specified percentage)	Maker fee/ rebate
Tier 1 (80% to less than 90%)	$0.50
Tier 2 (90% to less than 98%)	0.30
Tier 3 (98% or greater)	(0.40)

Market Makers are evaluated each trading day for the percentage of time spent on the NBBO for qualifying series that expire in two successive thirty calendar day periods beginning on that trading day. A Market Maker Plus is a Market Maker who is on the NBBO a specified percentage of the time on average for the month based on daily performance in the qualifying series for each of the two successive periods described above.[6] A Market Maker's worst quoting day each month for each of the two successive periods described above, on a per symbol basis, is excluded in calculating whether a Market Maker qualifies for this fee or rebate. In addition, a Market Maker who qualifies for Market Maker Plus Tiers 2 or higher in at least four of the previous six months are eligible to receive a reduced Tier 2 incentive in a given month where the Market Maker does not qualify for any Market Maker Plus tiers. For Select Symbols, this rebate is the applicable Tier 2 rebate reduced by $0.08 per contract. For Non-Select Symbols, this fee is the Tier 2 fee increased by $0.08 per contract.

The Exchange now proposes to amend existing language around the reduced Tier 2 incentive to provide that a Market Maker who qualifies for Market Maker Plus Tier 2 or higher in at least four of the previous six months will be eligible to receive a reduced Tier 2 incentive in a given month where the Market Maker does not qualify for Market Maker Plus Tier 2 or higher. The Exchange also proposes to add that for the avoidance of doubt, if a Market Maker has achieved Tier 2 or higher in at least four of the previous six months, but does not achieve Tier 2 or higher in the current month, that Market Maker will receive the better of the reduced Tier 2 incentive or any applicable Tier 1 incentive the Market Maker qualified for in the current month. The Exchange is proposing this language to avoid inadvertently penalizing Market Makers that qualify for a Market Maker Plus Tier 1 incentive in a given month, yet receive a lower incentive than if that Market Maker achieved no Market Maker Plus tier in the same time frame. Specifically, a Market Maker that qualifies for the SPY, QQQ, and IWM Market Maker Plus Tier 1b incentive in a given month would receive a rebate of $0.05 per contract today. If that Market Maker did not qualify for any tier in the same month, but had qualified for SPY, QQQ, and IWM Market Maker Plus Tiers 2 or higher in four of the prior six months, the Market Maker would receive a reduced Tier 2 incentive of $0.10 (*i.e.,* $0.18 Tier 2 rebate minus $0.08).[7] The Exchange believes that providing a lower rebate in such instances where the Market Maker had better performance by percentage of time spent at the NBBO versus paying a higher rebate solely due to the four month lookback protection is contrary to the intent of the Market Maker Plus program, which is to reward Market Makers that contribute to market quality by maintaining tight markets in symbols traded on the Exchange. The proposed language will therefore make clear that in the foregoing instance, the Exchange would provide the qualifying Market Maker with the higher incentive of $0.10 versus the $0.05 incentive.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange's proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options 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'. . . .''[10]

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

[6] Qualifying series are series trading between $0.03 and $3.00 (for options whose underlying stock's previous trading day's last sale price was less than or equal to $100) and between $0.10 and $3.00 (for options whose underlying stock's previous trading day's last sale price was greater than $100) in premium.

[7] The Exchange has found an instance where a Market Maker fell into this category.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4) and (5).

[10] *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)).

broader forms that are most important to investors and listed companies.'' [11]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options security transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. As such, the proposal represents a reasonable attempt by the Exchange to increase its liquidity and market share relative to its competitors.

As discussed above, the Exchange's proposal is intended to avoid inadvertently penalizing Market Makers that qualify for the SPY, QQQ, and IWM Market Maker Plus Tier 1b incentive in a given month, yet receive a lower incentive than if that Market Maker achieved no Market Maker Plus tier in the same time frame (*i.e.,* $0.05 versus $0.10 per contract rebate). The Exchange believes that providing a lower rebate in such instances where the Market Maker had better performance by percentage of time spent at the NBBO versus paying a higher rebate solely due to the four month lookback protection is contrary to the intent of the Market Maker Plus program to reward Market Makers that maintain tight markets in symbols traded on the Exchange. The Exchange believes that the proposed language reasonably addresses this unintended gap and will continue to encourage Market Makers to post tight markets by rewarding Market Makers with higher incentives to achieve better performance.

The Exchange believes that the proposed language is equitable and not unfairly discriminatory as all Market Makers are subject to the same qualification criteria for Market Maker Plus. The Exchange also believes that it is not unfairly discriminatory to offer this program's incentives to Market Makers only. Market Makers, and in particular, those Market Makers that participate in and qualify for the Market Maker Plus program, add value through continuous quoting, and are subject to additional requirements and obligations (such as quoting obligations) that other market participants are not. Lastly, the proposed language will continue to encourage Market Makers to post tight markets in symbols traded on the Exchange, thereby increasing liquidity and attracting additional order flow to the Exchange, which benefits all market participants in the quality of order interaction.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In terms of intra-market competition, while the proposed language would apply directly to Market Makers that participate in the Market Maker Plus program, the Exchange believes that the proposed changes will continue to fortify participation in the program, ultimately to the benefit of all market participants. As discussed above, continuing to encourage participation in the Market Maker Plus program will improve market quality by incentivizing Market Makers to provide significant quoting at the NBBO. This, in turn, improves trading conditions for all market participants through narrower bid-ask spreads and increased depth of liquidity available at the inside market, thereby attracting additional order flow to the Exchange.

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 fees and rebates to remain competitive with other 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.

In sum, if the changes proposed herein are 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 changes 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 [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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–ISE–2022–07 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–2022–07. 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

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

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–2022–07 and should be submitted on or before April 14, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–06189 Filed 3–23–22; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0349]

Main Street Capital III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Capital III, L.P., 1300 Post Oak Blvd., Suite 800, Houston, TX 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with a financing involving small concern Charps, LLC located at 453 Tower St. NW, Clearbrook, MN 56634, provided notice of this transaction to the Small Business Administration (''SBA'') pursuant to the Regulations found at 13 CFR 107.730–13 CFR 107.730—Financings which constitute conflicts of interests. Charps, LLC is an Associate of Main Street Capital III, L.P. because Associate Main Street Equity Investment, Inc. owns a greater than ten percent interest in the Charps, LLC.

This financing is pursuant to § 107.730(f) of the Regulations because Main Street Capital III, L.P.'s parent corporation, Main Street Capital Corporation, is registered under the Investment Company Act of 1940 and received an exemption from the Securities and Exchange Commission for the transaction and fulfilled its requirement to notify SBA.

Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication, to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

U.S. Small Business Administration.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022–06218 Filed 3–23–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 04/04–0308]

Plexus Fund II, L.P.; Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, as amended, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 04/04–0308 issued to Plexus Fund II, L.P. said license is hereby declared null and void.

United States Small Business Administration.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022–06216 Filed 3–23–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

[License No. 06/06–0349]

Main Street Capital III, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Main Street Capital III, L.P., 1300 Post Oak Blvd., Suite 800, Houston, TX 77056, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the ''Act''), in connection with a financing involving small concern NuStep, LLC located at 511 Venture Drive, Ann Arbor, MI 48108, provided notice of this transaction to the Small Business Administration (''SBA'') pursuant to the Regulations found at 13 CFR 107.730—13 CFR 107.730—Financings which constitute conflicts of interests. NuStep, LLC is an Associate of Main Street Capital III, L.P. because Associate Main Street Equity Investment, Inc. owns a greater than ten percent interest in the NuStep, LLC.

This financing is pursuant to § 107.730(f) of the Regulations because Main Street Capital III, L.P.'s parent corporation, Main Street Capital Corporation, is registered under the Investment Company Act of 1940 and received an exemption from the Securities and Exchange Commission for the transaction and fulfilled its requirement to notify SBA.

Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication, to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

U.S. Small Business Administration.

Bailey DeVries,

Associate Administrator, Office of Investment and Innovation.

[FR Doc. 2022–06219 Filed 3–23–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 11689]

Imposition of Nonproliferation Measures Against Foreign Persons, Including a Ban on U.S. Government Procurement

AGENCY: Bureau of International Security and Nonproliferation, State Department.

ACTION: Notice.

SUMMARY: A determination has been made that a number of foreign persons have engaged in activities that warrant the imposition of measures pursuant to Section 3 of the Iran, North Korea, and Syria Nonproliferation Act. The Act provides for sanctions on foreign entities and individuals for the transfer to or acquisition from Iran since January 1, 1999; the transfer to or acquisition from Syria since January 1, 2005; or the transfer to or acquisition from the DPRK since January 1, 2006, of goods, services, or technology controlled under multilateral control lists (Missile Technology Control Regime, Australia Group, Chemical Weapons Convention, Nuclear Suppliers Group, Wassenaar

Arrangement) or otherwise having the potential to make a material contribution to the development of weapons of mass destruction (WMD) or cruise or ballistic missile systems. The latter category includes (a) items of the same kind as those on multilateral lists but falling below the control list parameters when it is determined that such items have the potential of making a material contribution to WMD or cruise or ballistic missile systems, (b) items on U.S. national control lists for WMD/missile reasons that are not on multilateral lists, and (c) other items with the potential of making such a material contribution when added through case-by-case decisions.

DATES: Effective March 14, 2022.

FOR FURTHER INFORMATION CONTACT: On general issues: Pam Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930. For U.S. Government procurement ban issues: Eric Moore, Office of the Procurement Executive, Department of State, Telephone: (703) 875–4079.

SUPPLEMENTARY INFORMATION: On March 14, 2022, the U.S. Government applied the measures authorized in Section 3 of the Iran, North Korea, and Syria Nonproliferation Act (Pub. L. 109–353) against the following foreign persons identified in the report submitted pursuant to Section 2(a) of the Act:

Zhengzhou Nanbei Instrument Equipment Co. Ltd (People's Republic of China) and any successor, sub-unit, or subsidiary thereof;

Second Academy of Natural Science Foreign Affairs Bureau (SANS FAB) (DPRK) and any successor, sub-unit, or subsidiary thereof;

Ri Sung Chol (aka Ri Su'ng-ch'o'l) (DPRK individual);

Ardis Group of Companies LLC (Russia) and any successor, sub-unit, or subsidiary thereof;

PFK Profpodshipnik, LLC (Russia) and any successor, sub-unit, or subsidiary thereof;

Igor Aleksandrovich Michurin (Russian individual).

Accordingly, pursuant to Section 3 of the Act, the following measures are imposed on these persons:

1. No department or agency of the U.S. government may procure or enter into any contract for the procurement of any goods, technology, or services from these foreign persons, except to the extent that the Secretary of State otherwise may determine;

2. No department or agency of the U.S. government may provide any assistance to these foreign persons, and these persons shall not be eligible to participate in any assistance program of the U.S. government, except to the extent that the Secretary of State otherwise may determine;

3. No U.S. government sales to these foreign persons of any item on the United States Munitions List are permitted, and all sales to these persons of any defense articles, defense services, or design and construction services under the Arms Export Control Act are terminated; and

4. No new individual licenses shall be granted for the transfer to these foreign persons of items the export of which is controlled under the Export Control Reform Act of 2018 or the Export Administration Regulations, and any existing such licenses are suspended.

These measures shall be implemented by the responsible departments and agencies of the U.S. government and will remain in place for two years from the effective date, except to the extent that the Secretary of State may subsequently determine otherwise. These measures are independent of and in addition to any other sanctions imposed on such entities and/or individuals by other federal agencies under separate legal authorities.

Choo S. Kang,

Acting Assistant Secretary for International Security and Nonproliferation, Department of State.

[FR Doc. 2022–06200 Filed 3–23–22; 8:45 am]

BILLING CODE 4710–25–P

SUSQUEHANNA RIVER BASIN COMMISSION

Actions Taken at March 17, 2022 Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: As part of its regular business meeting held on March 17, 2022, Harrisburg, Pennsylvania, the Commission approved the applications of certain water resources projects, and took additional actions, as set forth in the **SUPPLEMENTARY INFORMATION** below.

DATES: March 17, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 N Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary, telephone: (717) 238–0423, ext. 1312, fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address. See also Commission website at *www.srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the actions taken on projects identified in the summary above and the listings below, the following items were also acted upon at the business meeting: (1) Approved one grant agreement, a land acquisition agreement and a lease agreement; and (2) accepted staff recommendations for waiver of regulatory requirements related to renewal application deadlines for two projects.

Project Applications Approved

1. *Project Sponsor and Facility:* Artesian Water Company, Inc., New Garden Township, Chester County, Pa. Application for renewal of the transfer of water of up to 3.000 mgd (30-day average) from the Chester Water Authority (Docket No. 19961105).

2. *Project Sponsor and Facility:* Columbia Water Company, West Hempfield Township, Lancaster County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.474 mgd from Chickies Well 2 and 0.596 mgd from Chickies Well 3.

3. *Project Sponsor and Facility:* Commonwealth Environmental Systems L.P., Foster, Frailey and Reilly Townships, Schuylkill County, Pa. Application for renewal of consumptive use of up to 0.150 mgd (peak day) (Docket No. 20070304).

4. *Project Sponsor:* Compass Quarries, Inc. Project Facility: Allan Myers Materials—Paradise Quarry, Paradise Township, Lancaster County, Pa. Modification to increase consumptive use (peak day) by an additional 0.068 mgd, for a total consumptive use of up to 0.150 mgd (Docket No. 20040608).

5. *Project Sponsor:* Corning Incorporated. Project Facility: Sullivan Park, Town of Erwin, Steuben County, N.Y. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.800 mgd from Well 2 and 0.800 mgd from Well 3, and consumptive use of up to 0.350 mgd (peak day) (Docket No. 19970705).

6. *Project Sponsor and Facility:* Coterra Energy Inc. (Meshoppen Creek), Lemon Township, Wyoming County, Pa. Application for renewal of surface water withdrawal of up to 1.000 mgd (peak day) (Docket No. 20170302).

7. *Project Sponsor:* County of Lycoming. Project Facility: Lycoming County Resource Management Services, Brady Township, Lycoming County, Pa. Application for renewal of consumptive use of up to 0.099 mgd (30-day average) (Docket No. 20070302).

8. *Project Sponsor and Facility:* Deep Woods Lake LLC, Dennison Township, Luzerne County, Pa. Applications for groundwater withdrawal of up to 0.200

mgd (30-day average) from Well SW–5 and consumptive use of up to 0.467 mgd (peak day).

9. *Project Sponsor and Facility:* Eagles Mere Country Club, Eagles Mere Borough and Shrewsbury Township, Sullivan County, Pa. Application for renewal of consumptive use of up to 0.120 mgd (peak day) (Docket No. 19970302).

10. *Project Sponsor and Facility:* EQT ARO LLC (West Branch Susquehanna River), Nippenose Township, Lycoming County, Pa. Application for renewal of surface water withdrawal of up to 0.720 mgd (peak day) (Docket No. 20170301).

11. *Project Sponsor:* Farmers Pride, Inc. Project Facility: Bell & Evans Plant 3, Bethel Township, Lebanon County, Pa. Applications for groundwater withdrawals (30-day averages) of up to 0.108 mgd from Well PW–1, 0.139 mgd from Well PW–2, and 0.179 mgd from Well PW–4.

12. *Project Sponsor and Facility:* Geisinger Health System, Mahoning Township, Montour County, Pa. Applications for renewal of consumptive use of up to 0.499 mgd (peak day) and groundwater withdrawal of up to 0.075 mgd (30-day average) from Well 3, as well as recognizing, assessing, and regulating historical withdrawals from the Mine Shaft Well (Docket No. 19910103).

13. *Project Sponsor:* Hampden Township. Project Facility: Armitage Golf Club, Hampden Township, Cumberland County, Pa. Application for renewal of consumptive use of up to 0.290 mgd (peak day) (Docket No. 19920101).

14. *Project Sponsor and Facility:* Millersburg Area Authority, Upper Paxton Township, Dauphin County, Pa. Application for renewal of groundwater withdrawal of up to 0.117 mgd (30-day average) from Well 14 (Docket No. 19930301).

15. *Project Sponsor and Facility:* Repsol Oil & Gas USA, LLC (Sugar Creek), West Burlington Township, Bradford County, Pa. Application for renewal of surface water withdrawal of up to 0.750 mgd (peak day) (Docket No. 20170308).

Project Scheduled for Action Involving a Diversion

1. *Project Sponsor and Facility:* Chester Water Authority, New Garden Township, Chester County, Pa. Applications for renewal of consumptive use and for an out-of-basin diversion of up to 3.000 mgd (30-day average) (Docket No. 19961104).

Project Tabled

17. *Project Sponsor and Facility:* Municipal Authority of the Township of East Hempfield dba Hempfield Water Authority, East Hempfield Township, Lancaster County, Pa. Applications for renewal of groundwater withdrawals (30-day averages) of up to 0.353 mgd from Well 6, 0.145 mgd from Well 7, 1.447 mgd from Well 8, and 1.800 mgd from Well 11, and Commission-initiated modification to Docket No. 20120906, which approves withdrawals from Wells 1, 2, 3, 4, and 5 and Spring S–1 (Docket Nos. 19870306, 19890503, 19930101, and 20120906).

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806, 807, and 808.

Dated: March 21, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission.

[FR Doc. 2022–06229 Filed 3–23–22; 8:45 am]

BILLING CODE 7040–01–P

TENNESSEE VALLEY AUTHORITY

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Correction

AGENCY: Tennessee Valley Authority.

ACTION: 60-Day notice of submission of information collection renewal approval and request for comments; correction.

SUMMARY: The Tennessee Valley Authority published a document in the **Federal Register** of March 17, 2022, concerning a proposed information collection renewal that will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. The Tennessee Valley Authority is soliciting public comments on this proposed collection renewal. A form in said document was incorrectly referenced.

FOR FURTHER INFORMATION CONTACT: Public Information Collection Clearance Officer: Jennifer A. Wilds, Specialist, Records Compliance, Tennessee Valley Authority, 400 W Summit Hill Dr., CLK–320, Knoxville, TN 37902–1401; telephone (865) 632–6580 or by email *pra@tva.gov.*

SUPPLEMENTARY INFORMATION:

Correction: In the **Federal Register** of March 17, 2022, in FR Doc. 2022–05647, on page 15300, in the 3rd column, in the ''Need for and Use of Information Section'', correct the title of form ''Tennessee Valley Authority Floating Cabin Electrical Inspection Form (TVA Form 21382)'' to read: ''Tennessee Valley Authority Floating Cabin Electrical Certification Form (TVA Form 21382)''.

Dated: March 17, 2022.

Rebecca L. Coffey,

Agency Records Officer.

[FR Doc. 2022–06244 Filed 3–23–22; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2021–0012]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Request for Comment; Fatal Crash Seat Belt Use Reporting and Awareness

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice and request for comments on a request for approval of a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below will be submitted to the Office of Management and Budget (OMB) for review and approval. The ICR describes the nature of the information collection and its expected burden. This document describes a new collection of information for which NHTSA intends to seek OMB approval on Fatal Crash Seat Belt Use Reporting and Awareness, a one-time voluntary experiment to understand whether the inclusion of seat belt status in a fatal crash news report could affect seat belt use. A **Federal Register** notice with a 60-day comment period soliciting comments on the following information collection was published on September 28, 2021. No comments were received.

DATES: Comments must be submitted on or before April 25, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection, including suggestions for reducing burden, should be submitted to the Office of Management and Budget at *www.reginfo.gov/public/do/PRAMain.* To find this particular information collection, select ''Currently under Review—Open for Public Comment'' or use the search function.

FOR FURTHER INFORMATION CONTACT: For additional information or access to

background documents, contact Jordan A. Blenner, JD, Ph.D., Office of Behavioral Safety Research (NPD–320), (202) 366–9982, National Highway Traffic Safety Administration, W46–470, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501 *et seq.*), a Federal agency must receive approval from the Office of Management and Budget (OMB) before it collects certain information from the public and a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. In compliance with these requirements, this notice announces that the following information collection request will be submitted OMB.

A **Federal Register** notice with a 60-day comment period soliciting public comments on the following information collection was published on September 28, 2021. No comments were received.

Title: Fatal Crash Seat Belt Use Reporting and Awareness.

OMB Control Number: New.

Form Numbers: NHTSA Forms 1599, 1600, 1601, and 1604.

Type of Request: Approval of a new information collection.

Type of Review Requested: Regular.

Length of Approval Requested: Three years from date of approval.

Summary of the Collection of Information: The National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation is seeking approval to collect information from 1,500 participants from two seat belt user groups, 750 who are full-time and 750 who are occasional or non-users, for a one-time voluntary experiment to understand whether the inclusion of seat belt status in a fatal crash news report could affect seat belt use. NHTSA will contact a sample of 20,850 potential participants from a marketing research firm's panel with an invitation email and screening questions to identify adult volunteers who regularly drive a passenger vehicle. Recruiting participants for the experiment has an estimated burden of 348 hours for the invitation email and 70 hours for the screening questions. (An estimated 20% of the invited potential participants will be interested in participating in the study and will complete the screener form, *i.e.,* 4,170 potential participants.) An estimated 1,668 potential participants will read the consent form with an estimated burden of 139 hours. The 1,500 participants will complete the experiment with an estimated burden of 500 hours. The experiment involves a 40-question online survey that participants will complete in their own homes using their personal computers. Participants will read one of three fictitious news reports of crashes (some of which involve fatalities) to gauge whether including seat belt use in news reports has the potential to increase belt use by occasional and non-seat belt users. After reading the news report, participants will report their recollection of belt use in the news report they read, self-reported seat belt use, intentions to use belts, attitudes about seat belts, and demographic information. The total estimated burden associated with reporting is 1,057 hours. The collection does not involve recordkeeping or disclosure. An approved Institutional Review Board (IRB), Advarra, has reviewed the study and determined that the research project is exempt from IRB oversight. NHTSA will summarize the results of the collection using aggregate statistics in a final report to be distributed to NHTSA program and regional offices, State Highway Safety Offices, and other traffic safety stakeholders. This collection will inform the development of countermeasures, particularly in the areas of communications and outreach, for increasing seat belt use and reducing fatalities and injuries associated with the lack of seat belt use.

Description of the Need for the Information and Proposed Use of the Information: NHTSA's mission is to reduce deaths, injuries, and economic losses resulting from motor vehicle crashes on the Nation's highways. To further this mission, NHTSA conducts research for the development of traffic safety programs. Title 23, United States Code, Section 403, gives the Secretary of Transportation (NHTSA by delegation) authorization to use funds appropriated to conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information, with respect to all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics; accident causation and investigations; and human behavioral factors and their effect on highway and traffic safety.

In 2019, 22,215 occupants of passenger vehicles (passenger cars, pickup trucks, vans, and SUVs) died in motor vehicle crashes in the United States. Of those killed where restraint status was known, 47% were unrestrained at the time of the fatal crash. NHTSA estimates that seat belts saved the lives of 14,955 passenger vehicle occupants age 5 and older in 2017 (latest data available), and, if all passenger vehicle occupants age 5 and older had worn seat belts, an additional 2,549 lives could have been saved.[1]

This project supports NHTSA's efforts to increase occupant protection by examining factors related to seat belt use. Previous research in this area indicated that news organizations may not report seat belt use in many of the driving fatalities they cover.[2] That said, the research conducted previously involved data from 1999 through 2002, which may be out of date with current practices. Many stakeholders assume that increased reporting of seat belt usage in fatal crashes, especially when seat belts were not worn, could increase seat belt use. In addition, when seat belt status has been reported in a news report, it is not clear individuals are paying attention. Improving awareness of seat belt status, particularly involving unbelted fatalities, may be an effective countermeasure that may encourage individuals to wear seat belts.

The information from this collection will assist NHTSA in (a) planning seat belt program activities; (b) supporting groups involved in improving public safety; and (c) identifying countermeasure strategies that are most acceptable and effective in increasing seat belt use.

Affected Public: Participants will be U.S. adults (18 years and older, except for those from Nebraska or Alabama (who will need to be 19 years or older), or those from Mississippi (who will need to be 21 years or older)) with fluency in reading and writing in English, who have driven a passenger vehicle (car, van, SUV, or pickup truck) at least once in the past month, and whose main form of transportation is a passenger vehicle.

Estimated Number of Respondents: 20,850 total respondents, with 1,500 participating in the full experiment.

The experiment will invite up to 20,850 people to participate. The

[1] National Center for Statistics and Analysis. (September 2021). *Occupant protection in passenger vehicles: 2019 data* (Traffic Safety Facts. Report No. DOT HS 813 176). National Highway Traffic Safety Administration. *https://crashstats.nhtsa.dot.gov/Api/Public/ViewPublication/813176.*

[2] Connor, S.M., & Wesolowski, K. (2004). Newspaper framing of fatal motor vehicle crashes in four Midwestern cities in the United States, 1999–2000. *Inj Prev. 10*(3),149–153. *http://dx.doi.org/10.1136/ip.2003.003376.*

Rosales, M., & Stallones, L. (2008). Coverage of motor vehicle crashes with injuries in U.S. newspapers, 1999–2002. *Journal of Safety Research, 39(5),* 477–82. *https://doi.org/10.1016/j.jsr.2008.08.001.*

number of invitations is based on the need to recruit 1,500 participants, 750 of whom are either non- or part-time seat belt users. Based on corporate experience with online panels, the marketing research firm providing access to their panel of participants estimates a participation rate of 20%. Furthermore, NHTSA research has shown that while most drivers reported wearing their seat belts every time they drive, approximately 20% are either non-users or part-time users.[3] Finally, NHTSA estimates that 90% who qualify and read the consent form will provide consent and complete the study. To obtain a sample of 750 consenting participants in the non/part user group, requires a universe of 20,850 potential respondents. Of the 20,850 invited panelists, we expect 20% or 4,170 volunteers who are interested and qualify. Of the 4,170 who are interested, we expect 20% or 834 volunteers will be non- or part-time seat belt users. Of the 834 volunteers who are non- or part-time seat belt users, we expect 90% or 750 to consent and complete the study. The marketing research firm will provide a link to the consent form to the first 834 non- or part-time seat belt users and to the first 834 full-time seat belt users who are interested and qualify. (Once the firm reaches 750 completions from full-time users, which is expected to occur before the 750 completions from non- or part-time users, they will no longer provide links to the informed consent to qualified full-time users.)

Frequency: This study is a one-time information collection, and there will be no recurrence.

Estimated Total Annual Burden Hours: 1,057.

The total estimated burden associated with this collection is 1,057 hours. The sample of potential participants will receive an email invitation from Schlesinger Group, a marketing research firm that specializes in providing sampling pools of panelists, with screening questions to determine eligibility. The 20,850 potential participants are expected to spend 1 minute each in reading the invitation email for an estimated 348 hours. Those who are interested (estimated to be 20%, or 4,170 individuals) are expected to spend 1 minute each in completing the screener form for an estimated 70 hours. Schlesinger will provide electronic links to the consent form to the first 834 full-time seat belt users and to the first 834 part-time/non-users who qualify based on the screening questions. The 1,668 eligible participants are expected to spend 5 minutes each reading and completing the consent form for an estimated 139 hours. The estimated 1,500 consenting participants will each spend 20 minutes completing the experiment for an estimated 500 hours. The total burden is the sum of the burden across the invitation/screening, consenting, and completing the experiment for a total estimate of 1,057 hours. The details are presented in Table 1 below.

TABLE 1—ESTIMATED BURDEN HOURS BY FORM

Form	Description	Participants	Estimated minutes per participant	Total estimated burden hours per form
Form 1599	Invitation Email	20,850	1	348
Form 1604	Screener Form	4,170	1	70
Form 1600	Informed Consent Form	1,668	5	139
Form 1601	Experiment Form	1,500	20	500
Total				1,057

Estimated Total Annual Burden Cost: NHTSA estimates that there are no costs to respondents beyond the time spent participating in the study.

Public Comments Invited: You are asked to comment on any aspects of this information collection, including (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; 49 CFR 1.49; and DOT Order 1351.29.

Issued in Washington, DC.

Nanda Narayanan Srinivasan,

Associate Administrator, Research and Program Development.

[FR Doc. 2022–06260 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2019–0105]

Denial of Motor Vehicle Defect Petition, DP18–002

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted on August 7, 2018, by Mr. Gary Weinreich (the petitioner) to NHTSA's Office of Defects Investigation (ODI). The petition requests that the Agency investigate alleged ''premature and excessive frame corrosion'' in model year (MY) 2002 through 2006 Toyota 4Runner vehicles. The petitioner bases his request upon his own experience with a MY 2005 Toyota 4Runner, a class action lawsuit settlement involving other Toyota products, and other complaints of underbody corrosion in Toyota 4Runner vehicles that he found in NHTSA's online complaint database. After reviewing the information provided by the petitioner regarding his vehicle, facts related to the class action lawsuit cited by the petitioner, and field data regarding underbody corrosion in

[3] National Highway Traffic Safety Administration. (2019, December). *The 2016 motor vehicle occupant safety survey: Seat belt report* (Report No. DOT HS 812 798). Author. *https://rosap.ntl.bts.gov/view/dot/43608.*

Toyota 4Runner vehicles, NHTSA has concluded that there is insufficient evidence to pursue further action. Accordingly, the Agency has denied the petition.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Magno, Vehicle Defects Division—D, Office of Defects Investigation, NHTSA, 1200 New Jersey Ave. SE, Washington, DC 20590 (telephone 202–366–5226).

SUPPLEMENTARY INFORMATION: By letter dated August 7, 2018, Mr. Gary Weinreich (the petitioner) submitted a petition requesting that the Agency ''perform a high-priority investigation'' of ''premature and excessive frame corrosion'' in model year (MY) 2002 through 2006 Toyota 4Runner vehicles. The petitioner bases his request upon a corrosion-related front suspension failure he experienced in his MY 2005 Toyota 4Runner, a class action lawsuit settlement involving other Toyota products, and other complaints of underbody corrosion in Toyota 4Runner vehicles that he found in NHTSA's online complaint database.

On August 17, 2018, the Office of Defects Investigation (ODI) opened Defect Petition DP18–002 to evaluate the petitioner's request for an investigation. ODI has reviewed the following information as part of its evaluation: (1) Information provided by the petitioner regarding his vehicle; (2) facts related to the class action lawsuit cited by the petitioner; (3) consumer complaint data regarding underbody corrosion in third- and fourth-generation Toyota 4Runner vehicles.

Scope: The petitioner's request for an investigation of premature frame corrosion in MY 2002 through 2006 Toyota 4Runner vehicles includes both third- and fourth-generation 4Runner vehicles that ranged from 12 to 17 years in age when the petition was filed. Toyota sold approximately 745,000 third-generation (MY 1996 through 2002), and approximately 603,000 fourth-generation (MY 2003 through 2009) 4Runner vehicles in the United States.[1]

Petitioner's vehicle: On May 24, 2018, the petitioner experienced a front suspension failure while driving on the highway in a 2005 Toyota 4Runner vehicle that was nearing 13 years of service.[2] He reported the incident to NHTSA in a Vehicle Owner Questionnaire (VOQ) submitted on May 26, 2018 (NHTSA ID 11098055):

> Yesterday, my wife and I and two friends riding with us narrowly escaped a fatal accident when the front suspension separated from the frame due to the corrosion problem. At highway speed, the vehicle began shaking violently and the steering was unable to properly control the vehicle. The vehicle went off the road after coming close to hitting an oncoming vehicle.

The petitioner alleged that this failure resulted from premature and excessive frame corrosion and provided service history information and photographs as supporting evidence.[3] ODI reviewed the information provided by the petitioner, as well as additional details contained in a lawsuit he filed against Toyota in December 2018.[4]

ODI found that the petitioner's vehicle had a history of general corrosion concerns throughout the undercarriage that were not isolated to the frame. The photographs showed that the vehicle undercarriage was seriously corroded at the time the incident occurred. The information indicates severe general corrosion of the vehicle undercarriage consistent with many years of severe use and exposure, but ODI has not found evidence showing a design or manufacturing defect in the vehicle.

The vehicle service history information that the petitioner provided supports these observations. Concerns with underbody corrosion on his vehicle were first noted by a Toyota dealer in a multi-point vehicle inspection performed on April 28, 2011. The invoice for that inspection noted ''severe and excessive amount of rust on the undercarriage and on the drive shaft transmission.'' Two years later, on October 21, 2013, another multi-point inspection by a Toyota dealer observed further progression of underbody corrosion damage, noting: ''rust on shocks/struts and other components,'' ''rust on exhaust system,'' ''both splash shields severely rusted,'' and ''undercarriage very rusty.''[5] On July 17, 2017, approximately 10 months prior to experiencing the suspension failure incident, an independent repair facility performing a routine oil change and brake maintenance informed the petitioner of a concern with ''excessive frame corrosion'' on his vehicle.

The service history further indicates that corrosion concerns in the petitioner's vehicle were first observed in other underbody components (*e.g.,* drive shaft transmission, exhaust, splash shields) and grew progressively worse over several years before the observation of ''excessive frame corrosion'' and subsequent suspension link failure. Photographs provided by the petitioner show that the vehicle's underbody was in poor condition when the failure occurred, with heavy corrosion throughout the vehicle underbody and multiple visible perforations in frame structural members.

The petitioner lives less than a mile from the ocean, where exposure to marine salts may lead to increased vehicle corrosion rates if vehicles are not regularly cleaned. While no information was provided regarding the use, care, and maintenance of the petitioner's vehicle, ODI has not received evidence that the vehicle received any repairs to address the noted corrosion concerns prior to the May 2018 front suspension failure.

Class action lawsuit: The petitioner cites a class action lawsuit settled by Toyota in 2017[6] as evidence of the defect in his vehicle and states that 4Runner vehicles ''were not included in the class-action lawsuit simply because there were insufficient complaints known to the counsel representing the class at the time it was formed.'' ODI has reviewed the referenced lawsuit and does not agree with the petitioner's claims. The vehicles covered by the class action were equipped with frames manufactured by a specific supplier alleged to be using a defective electrocoating process over a certain manufacturing period. The subject 4Runner vehicles were not equipped with frames manufactured by that supplier.

Starting in 2008, Toyota conducted multiple service campaigns and warranty extension programs to address concerns with premature frame corrosion in certain vehicles equipped with frames supplied by Dana Holding Company (Dana).[7] The combined field actions covered MY 1995 through 2010 Toyota Tacoma, MY 2000 through 2008 Tundra, and MY 2001 through 2007 Sequoia vehicles (''Dana frame

[1] The analysis here will focus on the fourth-generation vehicles, which includes the Petitioner's vehicle, except where otherwise indicated.

[2] The front attachment bracket for the left lower control arm detached from the frame.

[3] Gary Weinreich letter to Stephen Ridella, Ph.D., Director, Office of Defects Investigation, August 28, 2018.

[4] *Gary Weinreich* v. *Toyota Motor Sales USA Inc., et al.,* Case No. 2:18–cv–03294–RMG, in the U.S. District Court for the District of South Carolina, Charleston Division.

[5] Records provided by petitioner indicate that Toyota did not service the vehicle after October 2013.

[6] *www.toyotaframesettlement.com.*

[7] In December 2009, Dana announced its agreement to sell its Structural Products Business to Metalsa, S.A. de C.V, *http://dana.mediaroom.com/index.php?s=26450&item=69875.*

vehicles'').[8] Toyota took these actions after identifying quality concerns with the electrocoating processes in certain frames supplied by Dana that could lead to premature corrosion failures. In 2011, Dana settled a lawsuit with Toyota for warranty claim costs related to premature frame corrosion.[9]

These issues were presented in other litigation as well. A class-action lawsuit filed in Arkansas on October 3, 2014, alleged that MY 2005 through 2009 Toyota Tacoma vehicles lacked adequate rust protection on the vehicles' frames, leading to premature corrosion failures.[10] A separate class-action lawsuit filed in California on March 24, 2015, made similar claims.[11] The lawsuits were consolidated in a second amended complaint filed on November 8, 2016. The consolidated complaint covered MY 2005 through 2010 Toyota Tacoma, MY 2007 through 2008 Toyota Tundra, and MY 2005 through 2008 Toyota Sequoia vehicles. The second amended complaint stated that the vehicles that were the subject of the lawsuit were all equipped with frames manufactured by Dana using ''the same defective process.'' The complaint alleged that, ''The frames on the Toyota Vehicles are materially the same for purposes of this lawsuit and suffer from the same defect. All of the frames were manufactured by the same corporation (Dana Holding Corporation) pursuant to the same defective process.''

The class action was settled in May 2017. The terms of the settlement included extending warranty coverage to 12 years from first use for a Frame Inspection and Replacement Program. The settlement was widely reported by news media.[12]

Both third and fourth-generation 4Runner vehicles were built in Japan and are not equipped with frames manufactured by Dana. Although private litigation can be a relevant source of information to consider in the course of examining a potential vehicle defect in many cases, the petitioner has not demonstrated that the litigation he cites here supports the grant of his petition.

Complaint analysis: The petitioner alleged that his analysis of NHTSA's complaint database revealed evidence supporting his claim of premature and excessive frame corrosion in MY 2002 through 2006 Toyota 4Runner vehicles, and that differences in field experience between third- and fourth-generation 4Runner vehicles provide further evidence suggesting a design or manufacturing defect in the fourth-generation products. The petitioner claims that third-generation Toyota 4Runners ''do not appear to experience the premature and excessive frame corrosion.''[13] The petitioner stated their belief that ''Any frame specification changes between generations may help identify the root cause(s) of the problem.''[14]

ODI's analysis of consumer complaint data related to frame corrosion in fourth-generation Toyota 4Runner vehicles has not found evidence of a failure trend indicating a potential design or manufacturing defect leading to premature failures. Rather, the data tends to show complaint trends occurring late in vehicle life in high corrosion regions. Relatively few complaints involved suspension detachments, and those that did were spread among multiple suspension links, each occurring in older vehicles operated in high corrosion regions. Finally, ODI finds no meaningful difference between frame corrosion complaint trends and related suspension detachment allegations in third- and fourth-generation 4Runner vehicles.

4Runner complaint trends lag trends for the Dana frame vehicles by several years. Through the end of 2008, the year of Toyota's first field action for Dana frame vehicles, NHTSA had received 150 complaints for Dana frame vehicles and just 3 for 4Runner vehicles (none involving the subject fourth-generation 4Runner vehicles). By the end of 2010, NHTSA had received 716 complaints for the Dana frame vehicles and just 36 for 4Runner vehicles (only 5 involving the subject fourth-generation vehicles).

Figure 1 shows the vehicle age distributions of frame corrosion complaints to NHTSA for Toyota 4Runner vehicles, Toyota Dana frame vehicles, and peer body-on-frame vehicles. The chart on the left shows the distributions for MY 1996 through 2002 vehicles (*i.e.,* third-generation 4Runner compared with peers) and the chart on the right shows the distributions for MY 2003 through 2009 vehicles (*i.e.,* fourth-generation 4Runner compared with peers).

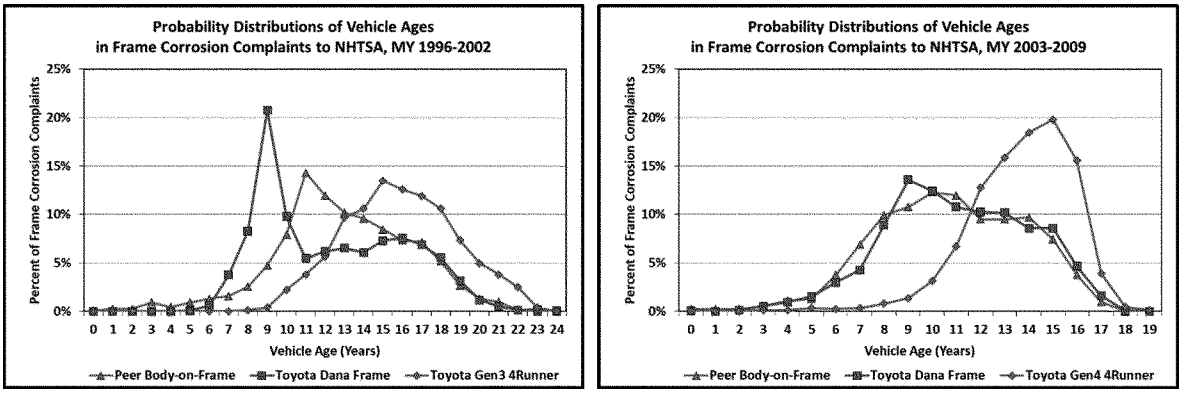

Figure 1. Probability distributions of vehicle ages in frame corrosion complaints to NHTSA for MY 1996-2002 vehicles (left) and MY 2003-2009 vehicles (right).

[8] The subject Tacoma, Tundra, and Sequoia vehicles were all manufactured at assembly plants located in the United States. Dana did not supply frames for any products manufactured in Japan.

[9] Dana Holding Corporation Reaches Settlement with Toyota on Warranty Claims Related to Divested Structural Products Business, January 12, 2011, *http://dana.mediaroom.com/index.php?s=26450&item=69927.*

[10] *Burns* v. *Toyota Motor Sales USA Inc.,* Case No. CV 14–2208 (W.D. Ark.), *http://www.toyotaframesettlement.com/.*

[11] *Brian Warner et al* v. *Toyota Motor Sales USA Inc., et al.,* Case No. 2:18–cv–02171–FMO–FFM, in the U.S. District Court for the Central District of California, *http://www.toyotaframesettlement.com/.*

[12] Reuters, *Toyota to settle U.S. truck rust lawsuit for up to $3.4 billion,* November 12, 2016, *https://www.reuters.com/article/us-toyota-settlement-idUSKBN1370PE.*

[13] Gary Weinreich letter to Stephen Ridella, Ph.D., Director, Office of Defects Investigation, August 28, 2018.

[14] *Ibid.*

In both age groups, the complaint age distributions for the Toyota 4Runner vehicles lag the distributions of the Toyota Dana frame and peer body-on-frame vehicles by several years. The complaints peak at 15 years-in-service for the third-generation Toyota 4Runner vehicles, 6 years after the peak for the Dana frame vehicles and 4 years after the peak for the peer body-on-frame vehicles. The complaints also peak at 15 years-in-service for the fourth-generation Toyota 4Runner vehicles, 6 years after the peak for the Toyota Dana frame vehicles and 5 years after the peak for the peer body-on-frame vehicles.

Figure 2 shows the cumulative age distributions of frame corrosion complaints to NHTSA for the same vehicle sets. The 4Runner complaints occur later in the vehicle age than the Toyota Dana frame and peer body-on-frame complaints. Only about 3 percent of the complaints for the third-generation 4Runner vehicles occurred within 10 years-in-service, compared with 43 percent of the Toyota Dana frame vehicle complaints and 21 percent of the peer body-on-frame vehicle complaints for the same model year range. For the MY 2003 through 2009 vehicles, approximately 6 percent of complaints for the Toyota 4Runners occurred within 10 years, compared with 45 percent for the Toyota Dana frame vehicles and 47 percent for the peer body-on-frame vehicles.

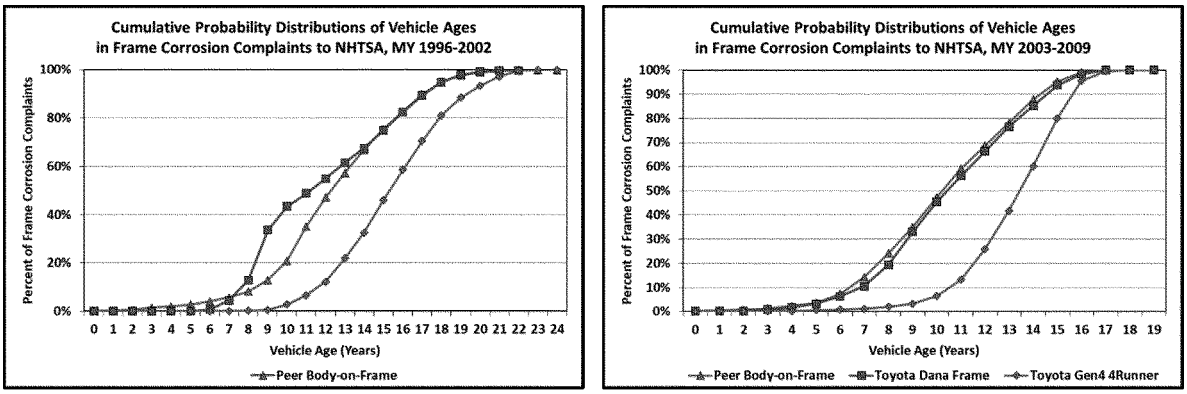

Figure 2. Cumulative probability distributions of vehicle ages in frame corrosion complaints to NHTSA for MY 1996-2002 vehicles (left) and MY 2003-2009 vehicles (right).

ODI's analysis of consumer complaints received by NHTSA through March 7, 2022, identified a total of 1,024 records that appear to be related to frame corrosion in fourth-generation Toyota 4Runner vehicles, including 70 involving alleged detachments of front or rear suspension links. Both the overall complaints and those reporting suspension link detachments primarily involve older vehicles in high-corrosion states. No patterns or trends were identified for any specific suspension link. The radiator support bracket was the most common location for frame perforation damage in reports that included sufficient information to assess damage location. This part can be serviced separately and does not present any crash avoidance or crashworthiness safety concerns. The complaints describe general underbody corrosion damage indicative of normal, end-of-life wear-out failures from long duration exposures to severe, corrosive environments.

Table 1 provides a breakdown of the complaints reporting suspension detachments by the suspension component. The detachment failures include two minor crashes and no verified injury allegations.

TABLE 1—DETACHMENTS WHILE DRIVING BY SUSPENSION LINK

	Count	Average age (yrs)	Alleged crashes	Alleged injuries
Lower Control Arm, Front	15	13.1	2	0
Lower Control Arm, Rear	38	14.1	0	0
Upper Control Arm, Rear	6	13.3	0	0
Lateral Control Rod, Rear	2	10.5	0	0
Sway Bar, Rear	2	13.5	0	0
Unknown	7	16.3	0	0
Total	70	14.1	2	0

ODI's analysis of NHTSA complaint data finds similar age-adjusted trends in the field experience of the third and fourth-generation 4Runner vehicles. The third-generation 4Runner vehicles have more than double the allegations of suspension link detachments than the fourth-generation 4Runners. The difference appears to be attributable to the greater exposure time of the third-generation vehicles. Analysis of suspension link failures by vehicle age showed similar rates for the third- and fourth-generation products through 15 years of service. In both generations, the failures are concentrated in states with the greatest use of deicing salts to treat road surfaces in winter months. 96 percent of the failures involved vehicles owned or previously registered in states with the greatest use of deicing salts to treat road surfaces in winter months (''Salt states'').

Complaints for both generations of 4Runners appear to have been influenced by news about Toyota's field actions for the Sequoia, Tacoma and

Tundra vehicles equipped with frames supplied by Dana. Toyota's field actions were referenced in 203 of the fourth-generation 4Runner complaints. Furthermore, 699 or two thirds (68 percent) of the fourth-generation 4Runner complaints were received after news of NHTSA opening this defect petition evaluation on August 7, 2018.

Conclusion: After reviewing the available data, ODI has not identified evidence of a defect trend for premature corrosion-related failure of frame structural components in the vehicles that the petitioner has identified. Contrary to the petitioner's primary allegation, the vehicles are not equipped with frames manufactured by the same supplier as Toyota products that have been included in previous field actions by the company addressing frame corrosion concerns. The frames in those vehicles exhibited failure trends before reaching 10 years in service, several years prior to the current trends evident in the subject 4Runner vehicles.

Analysis of the age distributions of corrosion-related suspension link failures in the subject 4Runner vehicles shows late-life patterns after well over 10 years of exposure to severe corrosion environments. Incidents of corrosion damage that have resulted in failure of underbody components while driving appear to have developed progressively over many years with ample opportunity for detection and repair. This appears to be indicative of normal wear and tear failures, and we have not found evidence of a defect related to premature or excessive corrosion failures.

ODI has not identified any serious crashes or injuries associated with corrosion-related failure of frame structural components while driving in a population of vehicles that currently ranges from 15 to 19 years old. Accordingly, the Agency is denying the petition.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Anne L. Collins,

Associate Administrator for Enforcement.

[FR Doc. 2022–06217 Filed 3–23–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Community Volunteer Income Tax Assistance (VITA) Matching Grant Program—Availability of Application for Federal Financial Assistance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of the application package for the 2023 Community Volunteer Income Tax Assistance (VITA) Matching Grant Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2022, by visiting: *IRS.gov* (key word search—''VITA Grant''). Application packages are available on May 1, 2022, by visiting *Grants.gov* and searching with the Catalog of Federal Domestic Assistance (CFDA) number 21.009. The deadline for applying to the IRS through *Grants.gov* for the Community VITA Matching Grant Program is May 31, 2022. All applications must be submitted through *Grants.gov*.

ADDRESSES: Internal Revenue Service, Grant Program Office, 401 West Peachtree St. NW, Stop 420–D, Atlanta, GA 30308.

FOR FURTHER INFORMATION CONTACT: Sharon Alley, at 470–639–2933, or at the Grant Program Office via their email address at *Grant.Program.Office@irs.gov*.

SUPPLEMENTARY INFORMATION: Authority for the Community Volunteer Income Tax Assistance (VITA) Matching Grant Program is contained in the Taxpayer First Act 2019, Public Law 116–25.

Carol M Quiller,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2022–05721 Filed 3–23–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax Counseling for the Elderly (TCE) Program Availability of Application Packages

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This document provides notice of the availability of application packages for the 2023 Tax Counseling for the Elderly (TCE) Program.

DATES: Application instructions are available electronically from the IRS on May 1, 2022, by visiting: *IRS.gov* (key word search—''TCE'') or through *Grants.gov* by searching the Catalog of Federal Domestic Assistance (CFDA) Number 21.006. The deadline for applying to the IRS for the Tax Counseling for the Elderly (TCE) Program is May 31, 2022. All applications must be submitted through *Grants.gov*.

ADDRESSES: Internal Revenue Service, Grant Program Office, 5000 Ellin Road, NCFB C4–110, SE:W:CAR:SPEC:FO:GPO, Lanham, Maryland 20706.

FOR FURTHER INFORMATION CONTACT: Lorraine Thompson, at (240)613–6085, or at the Grant Program Office via their email address at *tce.grant.office@irs.gov.*

SUPPLEMENTARY INFORMATION: Authority for the Tax Counseling for the Elderly (TCE) Program is contained in Section 163 of the Revenue Act of 1978, Public Law 95–600, (92 Stat.12810), November 6, 1978. Regulations were published in the **Federal Register** at 44 FR 72113 on December 13, 1979. Section 163 gives the IRS authority to enter into cooperative agreements with private or public non-profit agencies or organizations to establish a network of trained volunteers to provide free tax information and return preparation assistance to elderly individuals. Elderly individuals are defined as individuals aged 60 and over at the close of their taxable year. Because applications are being solicited before the fiscal year budget has been approved, cooperative agreements will be entered into subject to the appropriation of funds.

Carol M Quiller,

Chief, Grant Program Office, IRS, Stakeholder Partnerships, Education & Communication.

[FR Doc. 2022–05720 Filed 3–23–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0016]

Agency Information Collection Activity: Claim for Disability Insurance Benefits, Government Life Insurance

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans

Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 23, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov* Please refer to ''OMB Control No. 2900–0016'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0016'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Claim for Disability Insurance Benefits—VA Form 29–357.

OMB Control Number: 2900–0016.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used by the policyholder to claim disability insurance benefits on S–DVI, NSLI and USGLI policies. The information requested is authorized by law, 38 U.S.C. 1912, 1915, 1922, 1942 and 1948.

Affected Public: Individuals and households.

Estimated Annual Burden: 14,175 hours.

Estimated Average Burden per Respondent: 1 Hour and 45 minutes.

Frequency of Response: Once.

Estimated Number of Respondents: 8,100.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–06224 Filed 3–23–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0128]

Agency Information Collection Activity: Notice of Lapse, Notice of Past Due Payment

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 23, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0128'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0128'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Notice of Lapse, Notice of Past Due Payment—VA Form 29–389 and 29–389–1.

OMB Control Number: 2900–0128.

Type of Review: Extension of a currently approved collection.

Abstract: These forms are used by the policyholder to reinstate a lapsed life insurance policy. The information requested is authorized by law, 38 CFR 8.11.

Affected Public: Individuals and households.

Estimated Annual Burden: 4,459 hours.

Estimated Average Burden per Respondent: 11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 23,352.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–06204 Filed 3–23–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Test Procedures for Central Air Conditioners and Heat Pumps; Proposed Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2021–BT–TP–0030]

RIN 1904–AF29

Energy Conservation Program: Test Procedure for Test Procedures for Central Air Conditioners and Heat Pumps

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

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The U.S. Department of Energy (''DOE'') proposes to amend the test procedures for central air conditioners and heat pumps that will be required for certification of compliance with applicable energy conservation standards starting January 1, 2023 to address a limited number of specific issues. DOE is seeking comment from interested parties on the proposal.

DATES: DOE will accept comments, data, and information regarding this proposal no later than May 23, 2022. See section V, ''Public Participation,'' for details. DOE will hold a webinar on Monday, April 18, 2022, from 1 p.m. to 4 p.m. *See* section V, ''Public Participation,'' for webinar registration information, participant instructions, and information about the capabilities available to webinar participants.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at *www.regulations.gov.* Follow the instructions for submitting comments. Alternatively, interested persons may submit comments, identified by docket number EERE–2021–BT–TP–0030 by any of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.

2. *Email:* to *CentralACHeatPumps2021TP0030@ee.doe.gov.* Include docket number EERE–2021–BT–TP–0030 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted. For detailed instructions on submitting comments and additional information on this process, see section V of this document.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing COVID–19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses an undue hardship, please contact Appliance Standards Program staff at (202) 586–1445 to discuss the need for alternative arrangements. Once the COVID–19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

Docket: The docket, which includes **Federal Register** notices, public meeting attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *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.

The docket web page can be found at *www.regulations.gov/docket/EERE-2021-BT-TP-0030.* The docket web page contains instructions on how to access all documents, including public comments, in the docket. See section V for information on how to submit comments through *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT:

Ms. Catherine Rivest, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–2J, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–7335. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Pete Cochran, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9496. Email: *peter.cochran@hq.doe.gov.*

For further information on how to submit a comment, review other public comments and the docket, or participate in a public meeting, contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE proposes to maintain the following previously approved incorporations by references in 10 CFR part 430:

ANSI/AHRI 210/240–2008 with Addenda 1 and 2, 2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment, ANSI approved October 27, 2011;

ANSI/AHRI 1230–2010 with Addendum 2, 2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment, ANSI approved August 2, 2010.

Copies of AHRI 210/240–2008 and AHRI 1230–2010 can be obtained from the Air-Conditioning, Heating, and Refrigeration Institute, 2111 Wilson Boulevard, Suite 500, Arlington, VA 22201, (703) 524–8800, or by going to *www.ahrinet.org.*

ANSI/ASHRAE 23.1–2010, Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant, ANSI approved January 28, 2010;

ANSI/ASHRAE Standard 37–2009, Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009;

ANSI/ASHRAE 41.1–2013, Standard Method for Temperature Measurement, ANSI approved January 30, 2013;

ANSI/ASHRAE 41.2–1987 (Reaffirmed 1992), ''Standard Methods for Laboratory Airflow Measurement,'' ANSI approved April 20, 1992;

ANSI/ASHRAE 41.6–2014, Standard Method for Humidity Measurement, ANSI approved July 3, 2014;

ANSI/ASHRAE 41.9–2011, Standard Methods for Volatile-Refrigerant Mass Flow Measurements Using Calorimeters, ANSI approved February 3, 2011;

ANSI/ASHRAE 116–2010, Methods of Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps, ANSI approved February 24, 2010.

Copies of ASHRAE 23.1–2010, ANSI/ASHRAE 37–2009, ANSI/ASHRAE 41.1–2013, ASHRAE 41.2–1987 (RA 1992), ASHRAE 41.6–2014, ASHRAE 41.9–2011, and ASHRAE 116–2010 can be purchased from *www.ashrae.org/resources--publications.*

ANSI/AMCA 210–2007, ANSI/ASHRAE 51–2007, Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, Figure 2A and Figure 12, ANSI approved August 17, 2007.

Copies of AMCA 210–2007 can be purchased from *www.amca.org/store/index.php.*

For a further discussion of these standards, see section IV.M of this document.

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I. Authority and Background

Central air conditioners (''CACs'') and central air conditioning heat pumps (''HPs'') (collectively, ''CAC/HPs'') are included in the list of ''covered products'' for which DOE is authorized to establish and amend energy conservation standards and test procedures (42 U.S.C. 6292(a)(3)). DOE's energy conservation standards and test procedures for CAC/HPs are currently prescribed at title 10 of the Code of Federal Regulations (''CFR''), part 430 section 32(c), and 10 CFR part 430 subpart B appendices M (''Appendix M'') and M1 (''Appendix M1''). The following sections discuss DOE's authority to establish test procedures for CAC/HPs and relevant background information regarding DOE's consideration of test procedures for this product.

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. These products include CAC/HPs,[3] the subject of this document. (42 U.S.C. 6292(a)(3))

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 (42 U.S.C. 6295), and the authority to require information and reports from manufacturers (42 U.S.C. 6296).

The Federal 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 pursuant to EPCA (42 U.S.C. 6295(s)), and (2) making representations about the efficiency of those consumer products (42 U.S.C. 6293(c)). Similarly, DOE must use these test procedures to determine whether the products comply with 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 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 test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

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. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. *Id.* 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 use or energy efficiency of the type (or class) of covered products involved. (*Id.*)

DOE's regulations at 10 CFR 430.27 provide that any interested person may seek a waiver from the test procedure requirements if certain conditions are met. A waiver allows manufacturers to use an alternate test procedure in situations in which the DOE test procedure cannot be used to test the product or equipment, or use of the DOE test procedure would generate unrepresentative results. 10 CFR 430.27(a)(1). DOE's regulations at 10 CFR 430.27(l) require that as soon as practicable after the granting of any waiver, DOE will publish in the **Federal Register** a NOPR to amend its

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Public Law 116–260 (Dec. 27, 2020).

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

[3] This rulemaking uses the term ''CAC/HP'' to refer specifically to central air conditioners (which include heat pumps) as defined by EPCA. (42 U.S.C. 6291(21))

regulations so as to eliminate any need for the continuation of such waiver. As soon thereafter as practicable, DOE will publish in the **Federal Register** a final rule. 10 CFR 430.27(l). DOE is publishing this NOPR for the limited purpose of addressing its obligations under the waiver process regulations at 10 CFR 430.27.

B. Background

As discussed, DOE's existing test procedures for CAC/HPs appear at appendix M and appendix M1 (both titled ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps'').

On January 5, 2017, DOE published a final rule regarding the Federal test procedure for CAC/HPs. 82 FR 1426 (''January 2017 Final Rule''). The January 2017 Final Rule amended appendix M and established appendix M1, use of which is required beginning January 1, 2023 for any representations, including compliance certifications, made with respect to the energy use or efficiency of CAC/HPs. appendix M provides for the measurement of the cooling and heating performance of CAC/HPs using the seasonal energy efficiency ratio (''SEER'') metric and heating seasonal performance factor (''HSPF'') metric, respectively. appendix M1 specifies a revised SEER metric (*i.e.,* SEER2) and a revised HSPF metric (''HSPF2'').

Since the publication of the January 2017 Final Rule, DOE has granted various petitions for waiver and interim waiver from certain provisions of appendix M and/or M1.[4] Additionally, DOE has become aware of certain provisions in appendix M1 for which additional detail and direction may be needed to avoid potential confusion and reduce test burden. Therefore, DOE is proposing changes to improve the functionality of appendix M1 to address these issues.

In addition, on May 8, 2019, AHRI submitted a comment responding to the notice of proposal to revise and adopt procedures, interpretations, and policies for consideration of new or revised energy conservation standards (2020 Process Rule NOPR, 84 FR 3910, Feb. 13, 2019). The comment included as Exhibit 2 a ''List of Errors Found in both appendix M and appendix M1'' (''AHRI Exhibit 2'', EERE–2017–BT–STD–0062–0117 at pp. 23–24). Many of the errors pointed out by AHRI regard typographical errors in appendix M and appendix M1. DOE is addressing these issues in this rulemaking.

C. Deviation From Appendix A

In accordance with section 3(a) of 10 CFR part 430, subpart C, appendix A (''Appendix A''), DOE notes that it is deviating from the provision in appendix A regarding the early assessment process prior to the NOPR stage to notify stakeholders that DOE is considering a rulemaking to amend a test procedure and solicit comment on whether an amended test procedure would more accurately measure energy efficiency, energy use, water use (as specified in EPCA), or estimated annual operating cost of a covered product during a representative average use cycle or period of use without being unduly burdensome to conduct or reduce testing burden. DOE is opting to deviate from this provision by proposing changes to the test procedure in this proposed rule without first having gone through the early assessment process because DOE has already been made aware by stakeholders that the test procedure for CACs/HPs could be enhanced to improve repeatability, representativeness, and accuracy, and reduce testing burden, and the proposals in this document are aimed at addressing those issues. Additionally, resolution of these issues has some urgency because the test procedure the proposals address is required to be used for testing starting on January 1, 2023. Hence, because DOE is aware that the test procedure could be improved to be more repeatable and representative, and less burdensome, a general early assessment process of request of comments, data, and information prior to the NOPR stage is not considered necessary.

II. Synopsis of the Notice of Proposed Rulemaking

In this notice of proposed rulemaking (''NOPR''), DOE proposes to update appendix M1 to subpart B of part 430, ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps.'' DOE has identified certain provisions of appendix M1 that may benefit from additional detail and/or instruction. The proposed updates are as follows:

(1) Adjusting the default fan power for two-stage coil-only systems when testing at low stage with reduced air volume rate to be more representative of fan input power trends as air volume rate reduces;

(2) Defining ''Variable-speed Communicating Coil-only Central Air Conditioner or Heat Pump'' and ''Variable-speed Non-communicating Coil-only Central Air Conditioner or Heat Pump'' and establishing procedures specific for testing such systems;

(3) Allowing the adjustment of the air volume rate as a function of outdoor air temperature during testing for blower coil systems with either multiple-speed or variable-speed indoor fans and with a control system capable of adjusting air volume rate as function of outdoor air temperature;

(4) Adjusting the maximum wet bulb temperature from 3 °F to 4 °F for the H4 test condition;

(5) Specifying in section 2(B) of appendix M1, that the instructions presented in the labels attached to the unit take precedence over the installation manuals printed and shipped with a product;

(6) Specifying in sections 3.1.4.1.1, 3.1.4.1.2, and 3.1.4.4.3 of appendix M1 that the airflow measurement apparatus fan must be adjusted if necessary to maintain the same air volume rate for different test conditions for systems not including multiple-speed or variable-speed indoor fans with control system capability to adjust air volume rate as function of operating conditions such as outdoor air temperature; and

(7) Revising the equations representing full-capacity operation of variable-speed heat pumps at and above 45 °F ambient temperature to be consistent with the intent for nominal capacity operation.

Additionally, in this notice of proposed rulemaking (''NOPR''), DOE proposes to update 10 CFR part 429, ''Certification, Compliance, and Enforcement for Consumer Products and Commercial and Industrial Equipment''. DOE has identified certain provisions of part 429 that may benefit from additional detail and/or instruction. The proposed updates are as follows:

(1) Clarifying the language for required represented values for single-stage and two-stage coil-only CACs; and

(2) Providing additional direction regarding the regional standard requirements in part 429.

DOE's proposed substantive actions are summarized in Table II.1 compared to the current test procedure as well as the reason for the proposed change (''attribution''). Additional proposed

[4] Waivers granted to GD Midea Heating and Ventilating Equipment Co., Ltd. (83 FR 56065), Johnson Controls, Inc. (83 FR 12735 and 84 FR 52489), and TCL Air Conditioner (Zhongshan) Co., Ltd. (84 FR 11941);, interim waivers granted to National Comfort Products, Inc. (83 FR 24754), Aerosys Inc. (83 FR 24762), LG Electronics U.S.A., Inc. (85 FR 40272), and Goodman Manufacturing Company, L.P. (86 FR 40534).

incidental changes are summarized in Tables III–2 and III–3 in section III.C.10 of this document.

TABLE II–1—SUMMARY OF CHANGES IN PROPOSED TEST PROCEDURE RELATIVE TO CURRENT TEST PROCEDURE

Current DOE test procedure	Proposed test procedure	Attribution
Calculate indoor fan power of two-stage coil-only CACs and HPs using constant default fan power values that do not vary with air volume rate (441W/1000 scfm for most two-stage coil-only CACs and HPs and 406 W/1000 scfm for mobile-home and space-constrained CACs and HPs).	Calculate indoor fan power of two-stage coil-only CACs and HPs for reduced air volume rate tests using new default fan power values air volume rate (360 W/1000 scfm for most two-stage coil-only CACs and HPs and 331 W/1000 scfm for mobile-home and space-constrained CACs and HPs).	Improve representativeness.
No test procedure provisions for variable-speed, coil-only CACs and HPs.	Test procedures and requirements established for variable-speed coil-only systems, include new definitions for "Variable-speed Communicating Coil-only Central Air Conditioner or Heat Pump" and "Variable-speed Non-communicating Coil-only Central Air Conditioner or Heat Pump", for which the newly established test procedures have more flexibility.	Incorporate test procedures contained in test procedure waivers.
Appendix M1 currently does not explicitly allow for variation of air volume rate as outdoor temperature changes when testing blower coil systems.	For blower coil systems with multiple-speed or variable-speed indoor fans and the control system capability to adjust air volume rate as a function of outdoor air temperature, allow such air volume rate variation during testing.	Improve representativeness for certain models.
Appendix M1 contains provisions for conducting an optional H4 heating test at a 5 °F outdoor ambient dry-bulb temperature and, at a maximum, a 3 °F outdoor wet-bulb temperature.	Amend the wet bulb test condition for the H4 test to be 4 °F maximum instead of the current condition of 3 °F maximum.	Reduce test burden by reducing the time needed to remove sufficient moisture to achieve the wet bulb requirement.
Clarification regarding which form of installation instructions to use, if multiple forms are provided, only for VRF multisplit systems.	Add direction to prioritize the instructions presented in the label attached to the unit over the installation instructions shipped with the unit for all CAC/HP products.	Improve representativeness and repeatability.
Appendix M1 currently is not clear about how to achieve the same air volume rate for different test conditions.	Add specific instruction to adjust the airflow measurement apparatus fan but not the fan of the unit under test to achieve the same air volume rate for different tests.	Improve representativeness and repeatability.
The equations for full-capacity operation for variable-speed heat pumps at and above 45 °F ambient temperature are based on operating in this range with a compressor speed the same as its operation in 17 °F ambient temperature.	Revise the equations for full-capacity operation at and above 45 °F to be more consistent with compressor speed used in normal operation for this temperature range, represented by the nominal heating test condition, $H1_N$.	Improve representativeness.
10 CFR part 429 provides requirements regarding regional CAC/HP efficiency standards.	Reinforce the language explaining regional requirements.	Improve clarity.
10 CFR 429.16(a)(1) provides requirements for represented values of single-stage and two-stage coil-only CACs that can lead to different interpretation.	Modify the instructions in that section to improve clarity without changing meaning.	Improve repeatability.
10 CFR 430.2 defines central air conditioner, excluding two commercial package air-conditioning and heating categories—packaged terminal air conditioners and packaged terminal heat pumps.	Add exclusions for additional commercial package air-conditioning and heating categories that justifiably are not central air conditioners.	Improved representativeness.

As mentioned previously, DOE is also fixing typographical errors in appendix M and appendix M1 that were commented upon by AHRI. DOE is addressing these issues in this rulemaking.

Under 42 U.S.C. 6293(e)(1), DOE is required to determine whether an amended test procedure will alter the measured energy use of any covered product. If an amended test procedure does alter measured energy use, DOE is required to make a corresponding adjustment to the applicable energy conservation standard to ensure that minimally compliant covered products remain compliant. (42 U.S.C. 6293(e)(2)) DOE has tentatively determined that the proposed amendments described in section III of this NOPR would not alter the measured efficiency of CAC/HPs that are rated using the test procedure that is currently required for testing, *i.e.,* appendix M. The proposals applicable for appendix M are simply fixing errors within the current test procedure. With respect to appendix M1, many of the proposals clarify test procedures rather than making changes that would affect the measurements. Variable-speed coil-only systems are not addressed currently in appendix M, so this proposal is establishing a method of test for those products. For two-stage coil-only systems, DOE is proposing to adjust the fan power to be more representative as further described in section X, which DOE believes will slightly improve the measured efficient of these combinations as compared to their current representative values. Given that two-sage combinations are not representative of minimally compliant combinations, DOE has tentatively determined that this proposal would not require an adjustment to the energy conservation standard for central air conditioners and heat pumps to ensure that minimally compliant central air conditioners and heat pumps would remain compliant. Additionally, DOE has tentatively determined that the proposed amendments, if made final, would not increase the cost of testing. Discussion of DOE's proposed actions are addressed in detail in section III of this NOPR.

III. Discussion

A. Scope of Applicability

DOE is proposing to amend the test procedures at appendix M1 for CAC/HP and to implement a few minor clerical revisions to the test procedures at appendix M. A *Central air conditioner or central air conditioner heat pump* is defined as a product, other than a packaged terminal air conditioner or packaged terminal heat pump, which is powered by single phase electric current, air cooled, rated below 65,000 British thermal units per hour (''Btu/h''), not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu/h, and is a heat pump or a cooling unit only. A central air conditioner or central air conditioning heat pump may consist of: A single-package unit; an outdoor unit and one or more indoor units; an indoor unit only; or an outdoor unit with no match. In the case of an indoor unit only or an outdoor unit with no match, the unit *must* be tested and rated as a system (combination of both an indoor and an outdoor unit). 10 CFR 430.2.

Appendix M1 applies to the following CACs/HPs:

(a) Split-system air conditioners, including single-split, multi-head mini-split, multi-split (including VRF), and multi-circuit systems;

(b) Split-system heat pumps, including single-split, multi-head mini-split, multi-split (including VRF), and multi-circuit systems;

(c) Single-package air conditioners;

(d) Single-package heat pumps;

(e) Small-duct, high-velocity systems (including VRF);

(f) Space-constrained products—air conditioners; and

(g) Space-constrained products—heat pumps.

See Section 1.1 of appendix M1.

DOE is not proposing to change the scope of CACs/HPs covered by appendix M1.

B. Topics Arising From Test Procedure Waivers

1. Fan Power at Reduced Airflows for Coil-Only Systems

Coil-only systems are indoor units that are distributed in commerce without an indoor blower or separate designated air mover. Such systems installed in the field rely on a separately installed furnace or a modular blower for indoor air movement. Because coil-only CAC/HPs do not include their own indoor fan to circulate air, the DOE test procedures prescribe equations that are used to calculate the assumed (*i.e.,* ''default'') power input and heat output of an average furnace fan with which the test procedure assumes the indoor coil is pared in a field installation. The resulting fan power input value is added to the electrical power consumption measured during testing. The resulting fan heat output value is subtracted from the measured cooling capacity of the CAC/HP for cooling mode tests and added to the measured heating capacity for heating mode tests. In appendix M1, separate fan power and fan heat equations are provided for different types of coil-only systems (*i.e.,* the equations for mobile home or space-constrained are different than for ''conventional'' non-mobile home and non-space-constrained). In each equation, the measured airflow rate (in cubic feet per minute of standard air (''scfm'')) is multiplied by a defined coefficient (expressed in Watts (''W'') per 1,000 scfm (''W/1000 scfm'') for fan power, and British Thermal Units (''Btu'') per hour (''Btu/h'') per 1,000 scfm (''Btu/h/1000 scfm'') for fan heat), hereafter referred to as the ''default fan power coefficient'' and ''default fan heat coefficient.''

In appendix M, the default fan power coefficient is defined as 365 W/1000 scfm, and the default fan heat coefficient is defined as 1,250 Btu/h/1000 scfm.[5] (appendix M, section 3.3.d). For testing of two-stage coil-only systems, appendix M requires testing at two load conditions: (1) Full-load, operating at full compressor stage, and (2) low-load (also referred to as part-load), operating at the lower compressor stage. The test procedure defines the relative air volume rates to use for each test; in general, the part-load test has a lower air volume rate than the full-load test.[6] For both the default fan power coefficient and default fan heat coefficient, the same coefficient is used for both the full-load and part-load tests.[7]

The January 2017 Final Rule adopted certain values in appendix M1 to be more representative of field conditions, as compared to appendix M (*i.e.,* consistent with indoor fan power consumption at the increased minimum required external static pressures defined in appendix M1). 82 FR 1426, 1451–1453. Specifically, appendix M1 defines separate default fan power coefficients and default fan heat coefficients for coil-only systems intended for installation in mobile-home applications and for space-constrained systems, as opposed to those intended for all other ''conventional'' applications. *Id.* Specifically, for coil-only units installed in mobile-home and space-constrained systems, appendix M1 defines a default fan power coefficient of 406 W/1000 scfm and a default fan heat coefficient of 1,385 Btu/h/1000 scfm. For coil-only units installed in conventional (*i.e.,* non-mobile-home and non-space-constrained) systems, appendix M1 defines a default fan power coefficient of 441 W/1000 scfm and a default fan heat coefficient of 1,505 Btu/h/1000 scfm. (10 CFR part 430, subpart B, appendix M1, section 3.3.d). As with appendix M, in appendix M1, for both the default fan power coefficient and default fan heat coefficient, the same coefficient is used for both the full-load and part-load tests.

In updating the default fan power coefficients and default fan heat coefficients for coil-only systems in appendix M1, DOE relied on indoor fan electrical power consumption data collected from product literature, testing, and exchanges with manufacturers during a previous furnace fan rulemaking (see 79 FR 500, 506; Jan. 3, 2014) to determine appropriate values for these coefficients for coil-only products. 80 FR 69277, 69318.

By letter dated September 7, 2021, Nortek filed a petition for waiver and interim waiver from the test procedure for CAC/HPs set forth in appendix M1.[8] Specifically, Nortek requested waivers for basic models of ducted, coil-only, two-stage CAC/HPs. Nortek asserted that appendix M1 contains errors in the calculations for capacity adjustment and power consumption for the indoor fan at part-load conditions resulting from a faulty assumption of default fan wattage at reduced airflows. (Nortek, EERE–2021–BT–WAV–0025, No. 1 at p. 1) Nortek asserted that by applying the same default fan power coefficient and default fan heat coefficient to both the full-load and part-load tests, appendix M1 incorrectly establishes a linear

[5] For example, for a CAC/HP test conducted at an airflow rate of 1640 scfm, the default fan power would be calculated as (365 W/1000 scfm × 1,640 scfm = 599 W); and the default fan heat would be calculated as (1,250 Btu/1000 scfmh × 1,640 scfm = 2,050 Btu/h).

[6] Specifically, the indoor air volume rate to be used for testing at part-load (*i.e.,* the ''cooling minimum air volume rate'') is the higher of (1) the rate specified by the installation instructions included with the unit by the manufacturer, or (2) 75 percent of the cooling full-load air volume rate (see section 3.1.4.2.c of appendix M).

[7] For example, for a two-stage coil-only system that has a cooling full-load air volume rate of 1,640 scfm and a cooling minimum (*i.e.,* part-load) air volume rate of 1,230, the default fan power at full load would be calculated as (365 W/1000 scfm × 1,640 scfm = 599 W); and default fan power at part-load would be calculated as (365 W/1000 scfm × 1,230 scfm = 449 W).

[8] As noted, appendix M1 is the test procedure applicable to CAC/HPs beginning January 1, 2023.

relationship between indoor airflow and fan power (and fan heat); whereas, according to Nortek, a cubic relationship should be applied instead, citing the theoretical fan affinity laws that describe the relationship between fan power and airflow. (Nortek, EERE–2021–BT–WAV–0025, No. 1 at p. 2) Nortek recommended an alternate test procedure that would define lower default fan power coefficients and default fan heat coefficients for the part-load tests, instead of applying the same coefficients to both the full-load and part-load tests, as is done in appendix M1. (Nortek, EERE–2021–BT–WAV–0025, No. 1 at pp. 4–9)

On November 16, 2021, DOE published a notification that announced its receipt of the petition for waiver and denial of Nortek's petition for an interim waiver. 86 FR 63357 (''Notification of Petition for Waiver''). In the Notification of Petition for Waiver, DOE noted that applying the modified default fan power coefficients and default fan heat coefficients in appendix M1 to products such as those that are the subject of Nortek's petition was determined to be representative of the systems' performance and reflected the adoption of the recommendations of a working group formed to negotiate a notice of proposed rulemaking for energy conservation standards for CAC/HPs; and that the modified coefficients were subject to public comment during the 2016 test procedure rulemaking for CAC/HPs. 82 FR 1426, 1452 (January 5, 2017). DOE also noted that Nortek commented in support of the modified coefficients during the 2016 rulemaking. *Id.*

In response to the issue raised by Nortek, DOE re-examined the furnace fan electrical power consumption data collected for the furnace fans rulemaking (see 79 FR 506, Jan. 3, 2014) that was used to develop the default fan power coefficients and default fan heat coefficients for coil-only products in appendix M1. In establishing the current coefficients, for each furnace fan in DOE's furnace fan dataset, DOE developed correlations of airflow and power consumption as functions of external static pressure (''ESP''), and then applied those correlations to a reference ductwork system curve to predict the actual operating airflow and power consumption at each fan speed setting for the furnace fan.

DOE has extended the prior analysis to examine both full-load and part-load air volume rates.[9] DOE correlated the predicted power consumption with the predicted air volume rate for each furnace fan to determine adjusted values of the default fan power coefficients that may result in a more representative estimate of fan power and fan heat at reduced airflow conditions, compared to the coefficients currently defined in appendix M1. DOE's analysis indicates that at a reduced air volume rate of 75 percent, the average indoor fan power coefficient would be 360 W/1000 scfm for coil-only CAC/HPs in a conventional (*i.e.,* non-mobile-home and non-space-constrained) installation. For mobile-home and space-constrained systems, to the average indoor fan power coefficient would be 331 W/1000 scfm. DOE also calculated the associated fan heat coefficients associated with these power input levels. The average indoor fan heat coefficients would be 1,228 Btu/hr/1000 scfm and 1,130 Btu/h/1000 scfm for conventional (*i.e.,* non-mobile-home and non-space-constrained) and mobile-home/space-constrained installations, respectively.

The analysis conducted by DOE resulted in higher default fan power coefficients and default fan heat coefficients at the reduced 75 percent air volume rate than the values presented in the Nortek waiver petition. DOE tentatively concludes that its analysis is a more appropriate representation of average furnace fan power consumption than the results presented by Nortek for the following reasons: (1) DOE's analysis relied on test and specification data from a collection of actual furnaces operating at reduced air volume rates, whereas the Nortek analysis derived default fan power values using a theoretical relationship between full-load and part-load conditions; (2) DOE's analysis applied the same weighting factors that were used to develop the full-load default values during the 2016 CAC TP Rulemaking, whereas Nortek's analysis introduced new weighting factors and motor efficiency data without indicating the source of the data; and (3) DOE's analysis considered performance data from an additional type of fan motor not considered by Nortek (specifically, constant-torque brushless-permanent-magnet ''X13'' motors). Therefore, in this NOPR DOE proposes to amend the default fan power coefficients and default fan heat coefficients for coil-only fan power when operating at reduced air volume rates to reflect the results of its analysis. Specifically, when operating at 75 percent air volume rate (or higher manufacturer-specified air volume rate that is between the 75 percent air volume rate and the full-load air volume rate as described in appendix M1, section 3.1.4.2.c), DOE proposes to specify for ducted two-capacity coil-only systems a default fan power coefficient of 360 W/1000 scfm and a default fan heat coefficient of 1,228 Btu/h/1000 scfm for units installed in conventional systems; and a default fan power coefficient of 331 W/1000 scfm and a default fan heat coefficient of 1,130 Btu/h/1000 scfm for mobile home and space-constrained systems.[10]

The reduced air volume rate used for low-stage operation of two-stage coil-only systems may be higher than 75 percent of the full-load air volume rate, if the manufacturer's instructions specify a higher part-load air volume rate. DOE is proposing that in such cases, the default fan power values associated with full-load air volume rate be used. However, the appropriate default fan power coefficient and default fan heat coefficient may be values between the reduced values discussed above and the values used for full-load air volume rate. For such cases, DOE could consider alternative options, other than requiring use of the full-load air volume default fan power and fan heat coefficients. Two alternative options include (1) allowing the reduced value up to a threshold value, *e.g.,* 80 percent of full-load air volume rate, above which the full-load value would be required, and (2) requiring a linear interpolation of the default fan power coefficient between the reduced value at 75 percent of full-load air volume rate to the full-load value at 100 percent.[11] DOE seeks comment on whether one these alternate approaches should be adopted instead of the proposed use of the single reduced coefficients for the category discussed previously.

DOE requests comment on its proposal to specify a reduced default fan power coefficient and default fan heat coefficient at part-load airflows in the calculations of SEER2 and HSPF2

[9] To ensure consistency across analyses, DOE aggregated the data by applying market weightings to each type and brand of furnace model, using the same market shares that were used in the previous analysis for the 2016 CAC TP Rulemaking.

[10] For example, under DOE's proposed changes to Appendix M1, for a two-stage coil-only system in a conventional application that has a cooling full-load air volume rate of 1,640 scfm and a cooling minimum (*i.e.,* part-load) air volume rate of 1,230, the default fan power at full load would be calculated as (441 W/1000 scfm × 1,640 scfm = 723 W); and default fan power at part-load would be calculated as (371 W/1000 scfm × 1,230 scfm = 456 W).

[11] For example, for non-mobile-home and non-space-constrained systems, if a linear interpolation of the default fan power coefficient is required, it would be equal to 371 + (441 − 371)*(%FLAVR − 75%)/(100% − 75%), where %FLAVR is the reduced air volume rate used for the test expressed as a percentage of the full load air volume rate.

for ducted two-stage coil-only systems. DOE requests comment on the specific default fan power coefficients and default fan heat coefficients proposed. If the proposed values are not appropriate, DOE seeks data to support selection of alternative values. Additionally, DOE requests comment on whether a single default fan power coefficient (and default fan heat coefficient) should be used for each product class group regardless of the actual air volume rate used for low-stage tests, or whether one of the alternative approaches discussed in the NOPR should be considered, or any other alternative. DOE also requests comment on whether any two-stage systems use a part-load air volume rate higher than 75 percent of the full-load air volume rate, and if so, whether the ratio is a value less than 100 percent.

2. Variable-Speed Coil-Only Test Procedure

As discussed, appendix M1 contains provisions for testing split-system CAC/HPs equipped with ''coil only'' indoor units that, in a field installation, are paired with an existing furnace or other air handler in order to circulate conditioned air through ductwork. These provisions apply to single-stage and two-stage systems.[12] appendix M1 does not include provisions for testing variable-speed systems equipped with coil-only indoor units.

Since the publication of the January 2017 Final Rule, DOE has granted test procedure waivers to GD Midea Heating & Ventilating Equipment Co., Ltd. (''GD Midea'') (83 FR 56065 (Nov. 9, 2018)) and TCL air conditioner (zhongshan) Co. Ltd. (''TCL AC'') (84 FR 11941 (Mar. 29, 2019)), and an interim waiver for LG Electronics U.S.A., Inc. (''LGE'') (85 FR 40272 (July 6, 2020)), for specified basic models of variable-speed, coil-only CAC/HPs. In each of these cases, the petitioners identified their variable-speed coil only systems as ''non-communicative'' systems for which compressor speed varies based only on controls located on the outdoor unit, and for which the indoor unit maintains a constant indoor blower fan speed (see, *e.g.,* 83 FR 24767, 24769 (May 30, 2018)). As required under the specified alternate test procedures, the subject systems must be tested according to the appendix M provisions applicable to variable-speed systems (*e.g.,* three different compressor speeds in the cooling mode), except that the subject systems must be tested using the full-load cooling air volume rate at all test conditions, commensurate with the constant indoor blower fan speed that these units would experience (GD Midea, EERE–2017–BT–WAV–0060, No. 1, pp. 1–3; TCL, EERE–2018–BT–WAV–0013, No. 1, pp. 2–4; LG, EERE–2019–BT–WAV–0023, No. 1, pp 3–4). DOE notes that the waivers for these models were granted for appendix M only and will expire on Jan 1, 2023—the date when use of appendix M1 becomes required for any representations, including compliance certifications, made with respect to the energy use, power, or efficiency of CAC/HPs.

DOE notes also that the waivers for ''non-communicative'' variable-speed coil-only systems did not address comprehensively how the outdoor units are controlled to turn on or off in cooling mode or in heating mode, nor how the compressor speeds are set to match the internal building load. Regarding the latter, the waivers indicated only that ''compressor speed varies based only on controls located on the outdoor unit'' (GD Midea, EERE–2017–BT–WAV–0060, No. 1, p. 6; TCL, EERE–2018–BT–WAV–0013, No. 1, p. 4; LG, EERE–2019–BT–WAV–0023, No. 1, pp 2). DOE did not receive information in the waiver petitions regarding, nor has it evaluated, the compressor speed selections used for different test conditions specified in appendix M or appendix M1. Further, DOE has not compared these speed selections with those used by blower-coil variable speed systems for the same test conditions. Based on the information received and evaluated, DOE has yet to receive sufficient evidence that can be relied on to conclude that the alternate test procedures specified in the waivers are representative of average use cycles of CAC/HPs other than those subject to the granted waivers, as required by EPCA for DOE test procedures.

DOE has also granted an interim test procedure waiver to Goodman Manufacturing Company, L.P. (''Goodman'') (86 FR 40534 (July 28, 2021)) for their basic models of variable-speed, coil-only CAC/HPs. Unlike the aforementioned test procedure waivers, Goodman represented, and supported in their petition, that their systems have communicative controls, where both the outdoor unit and indoor coil communicate with each other to control both the variable-speed compressor and multi-speed indoor fan. 86 FR 40534, 40539. As a result, the alternate test procedure prescribed under the interim waiver requires use of two different indoor air volume rates during testing to simulate the impacts of communicative control that would be realized in a typical field installation. 86 FR 40534, 40538. Specifically, the Goodman waiver requires use of the cooling full-load air volume rate for the full-load cooling and full-load heating tests; and the cooling minimum air volume rate for the cooling minimum, heating minimum, cooling intermediate, and heating intermediate tests. *Id.*

In response to the notice of petition for waiver, Rheem questioned the approach of the alternate test procedure in specifying two different indoor air volume rates during testing of these basic models. (Rheem, EERE–2021–BT–WAV–0001, No. 7 at p. 1). Rheem expressed concern that the alternate test procedure would allow Goodman an unfair competitive advantage, (*i.e.,* by allowing reduced airflow rates at low-load test conditions while other variable-speed coil-only products would be required to test at full-load cooling air volume rate for all test conditions), that it would be unlikely that installers would correctly install the communicative products to enable the indoor fan control requested in Goodman's proposed alternate test procedure, and that most furnace fans currently installed are not capable of adding controls to set multiple airflow rates. In response to the Rheem comment, Goodman stated that almost all two-stage coil-only ratings today utilize a lower indoor air volume rate for low-stage compressor operation, and highlighted training procedures and other best-practices put in place to ensure proper installation of communicating systems. (Goodman, EERE–2021–BT–WAV–0001, No. 8 at pp. 1–4)

As stated in a final rule published in 2005, use of a lower air volume rate for low-stage operation is based on the assumption that the two-capacity coil-only unit would most often be used with an existing multi-tap furnace blower (*i.e.,* a furnace fan capable of multiple speeds). 70 FR 59122, 59128 (October 11, 2005). The two-stage coil-only test provisions in the DOE test procedure are premised on the installation location having two-stage thermostat wiring (Final Rule Technical Supporting Document, EERE–2014–BT–STD–0048, No. 98, p. 8–25). DOE similarly assumes the presence of the necessary wiring for the installation of variable-speed systems.

As mentioned in the notification of the interim waiver issued in response to the Goodman petition, DOE reviewed numerous materials relevant to the control of the Goodman variable-speed coil-only system, including additional materials Goodman provided in support of the petition. 86 FR 40534, 40537 (July

[12] Section 3.1.4.2 (cooling minimum air volume rate), section 3.1.4.3 (cooling intermediate air volume rate), and section 3.1.4.6 (heating intermediate air volume rate) of appendix M1.

28, 2021). These materials included installation manuals and other information that confirmed similarities between the system's control and the control of more conventional variable-speed blower-coil systems (including the use of communicating controls), providing justification for claims that the alternate test procedure specified in the waiver would be representative of average use.

DOE notes that Goodman's interim waiver was granted for both appendix M and appendix M1. The waiver for appendix M will expire on the date representations are required to be based on testing according to appendix M1 (Jan 1, 2023), and the waiver for appendix M1 will expire on the date on which use of an amended test procedure that addresses the issues presented in the Goodman waiver is required to demonstrate compliance. 10 CFR 430.27(h)(3).

In this NOPR, DOE proposes to add testing provisions addressing variable-speed coil-only systems in appendix M1. DOE also proposes to define ''communicating control'' in the context of variable-speed, coil-only CAC/HPs in order to differentiate between the test procedure provisions that would be applicable to communicating systems from those applicable to non-communicating systems.

DOE is proposing provisions as generally prescribed in the relevant waivers, except that DOE is proposing to require that all variable-speed coil-only systems, regardless of communicative capability, would be tested using the cooling minimum air volume rate for the cooling minimum, heating minimum, cooling intermediate, and heating intermediate tests. This proposal is consistent with the conditions specified in the interim waiver granted to Goodman. DOE further proposes to require that non-communicative variable-speed coil-only systems be tested using the newly proposed provisions for variable-speed compressor with non-communicating coil-only systems (*i.e.,* eliminating the E_V test for cooling and $H2_V$ for heating as well as including $H2_2$, $H2_1$ and $H3_1$ for heating), whereas systems that meet the newly proposed criteria for ''communicating'' control would follow the existing variable-speed test procedure.

Regarding indoor air volume rate, the proposed test procedure would utilize the same procedure as for ducted two-capacity coil-only units. As discussed previously, the two-stage coil-only test procedure is premised on the capability of controlling an existing multi-tap furnace fan at two air volume rates for cooling operation. DOE is not proposing to amend this approach. DOE is proposing to apply a similar approach to the testing of variable-speed coil-only systems. As such, DOE proposes to align the requirements for minimum air volume rate between two-capacity and variable-speed coil-only indoor units, regardless of communicating capabilities. This includes adopting the reduced default fan power and default fan heat coefficients at reduced air volume rates discussed in section I.B.1. However, if the system does not include the capability to control an existing furnace fan at two air volume rates, the manufacturer has the option of specifying minimum/intermediate air volume rates equal to the full-load air volume rate. Regarding compressor speed, the proposed test procedure would limit use of the variable-speed testing provisions to those systems meeting the newly proposed criteria for communicating control.

As previously stated, the test procedure for two-stage coil-only systems is premised on the system using a two-stage thermostat and associated wiring that responds to indoor temperature measurements and sends voltage signals that enable two-stage control of both the compressor speed and the indoor fan speed. A more sophisticated control approach is required to enable a variable speed system to modulate compressor speed control (*e.g.,* proprietary thermostat, serial communication wiring, and/or electronic sensors at the indoor coil). DOE proposes to define ''Communicating Variable-speed Coil-only Central Air Conditioner or Heat Pump'' in section 1.2 of appendix M1 to distinguish variable-speed coil-only systems with such control as the following:

Variable-Speed Communicating Coil-Only Central Air Conditioner or Heat Pump means a variable-speed compressor system having a coil-only indoor unit that is installed with a control system that (a) communicates the difference in space temperature and space setpoint temperature (not a setpoint value inferred from on/off thermostat signals) to the control that sets compressor speed; (b) provides a signal to the indoor fan to set fan speed appropriate for compressor staging and air volume rate; and (c) has installation instructions indicating that the required control system meeting both (a) and (b) must be installed.

DOE also proposes to define variable-speed systems that do not have this communicating feature as the following:

Variable-Speed Non-communicating Coil-Only Central Air Conditioner or Heat Pump means a variable-speed compressor system having a coil-only indoor unit that does not meet the definition of variable-speed communicating coil-only central air conditioner or heat pump.

Variable-speed coil-only systems that meet the ''communicating'' definition would be tested like any other variable-speed system, except that the heating full-load air volume rate would be equal to the cooling full-load air volume rate, and the intermediate and minimum cooling and heating air volume rates would all be the higher of (1) the rate specified by the installation instructions included with the unit by the manufacturer, and (2) 75 percent of the full-load cooling air volume rate.

DOE proposes that those variable-speed coil-only systems that are not ''communicating'' as defined above would be tested with additional limitations as if they have some variable-speed system characteristics and some two-stage coil-only system characteristics. Specifically, (a) the outdoor unit and/or the indoor unit would be provided with a control signal indicating operation at high or low stage, rather than testing with compressor speed fixed at specified speeds, and (b) air volume rates would be determined consistent with the requirement for two-stage coil-only systems. A key implication of (a) is that there would be no intermediate compressor speed operation. Many of the requirements associated with variable-speed operation would, however, be retained. For example, such systems would be allowed to have ''minimum speed-limiting'' control for heat pump mode (see the alternative calculations representing minimum-speed operation in appendix M1, section 4.2.4.b). The test method for non-communicating variable-speed coil-only systems would include requiring tests for minimum-speed operation for both the 35 °F and 17 °F heating test conditions so that the HSPF2 calculations utilize test results for appropriate compressor speeds. Also, the full compressor speed during heating mode operation would be allowed to vary with outdoor temperature, there would be an $H1_N$ test to represent the nominal capacity, and the same provisions for calculation of full-speed capacity and power applied to conventional variable-speed systems would be used (see, *e.g.,* the calculations in appendix M1, sections 3.6.4, 4.2.4.c, and 4.2.4.d). If a manufacturer chooses to run the optional $H1_2$ test (*i.e.* if compressor speed for the $H1_N$ test is different than compressor speed for the $H3_2$ test, and

the manufacturer chooses to run the $H1_2$ test rather than use the standardized slope factors described in appendix M1 section 3.6.4.b), then the test would be run with over-ride of compressor speed using the same speed as used for the $H3_2$ test—this is the only test for which such over-ride would be allowed.

To ensure consistency of testing, it may be necessary for manufacturers to certify whether a variable-speed coil-only rating is based on non-communicating or communicating control. However, this change is not being proposed in this NOPR and may be considered in a separate rulemaking.

DOE requests comment on its proposals related to test procedures for variable-speed coil-only CAC/HPs and on its proposed definitions for variable-speed communicating and non-communicating coil-only CAC/HPs.

DOE recognizes that there may be variable-speed control technology that cannot be tested according to the proposed test approach described previously for non-communicating variable-speed coil-only systems. Specifically, the test approach may not result in tests that meet the stability requirements for testing (*i.e.,* the measurements might not meet the tolerance requirements in Table 2 of ANSI/ASHRAE 37–2009, ''Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment,'' (''ASHRAE 37–2009''), which is incorporated by reference by the DOE test procedure). Or the proposed test procedure might evaluate such a basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. In this case, the manufacturer may petition DOE for a waiver and include a suggested alternate test procedure. See 10 CFR 430.27. As part of its review of such a waiver and alternate test procedure, DOE would consider the correlation between results of a suggested alternate test procedure and results of testing when using the two-stage two-wire controls expected to be available in a general coil-only system installation, recognizing that the latter testing may involve dynamics that exceed the measurement tolerances discussed above. DOE would also consider the control hardware involved in achieving appropriate control for indoor and outdoor conditions and some understanding of how the control works.

DOE is aware that installations using non-communicating controls may not be limited only to variable-speed coil-only systems, but could also occur with variable-speed blower-coil systems. DOE's proposal makes a distinction between the testing approach used for coil-only configurations and the testing approach used for blower-coil configurations. As coil-only installations are much more likely than blower-coil installations to involve use of both the existing furnace fan and existing controls, the test procedure should be reflective of coil-only installations because they are more representative than blower coil installations.

DOE has considered whether the current test procedures for variable-speed systems generally give manufacturers too much flexibility in specifying fixed settings of the compressor and indoor fan for testing without requiring the selected settings to be demonstrated using native control testing. DOE is well aware that there is ongoing work addressing questions about whether the current DOE test procedure for variable-speed systems is fully representative of native control operation. However, DOE has initiated this rulemaking not as a comprehensive revision that will satisfy the 7-year lookback requirements (see 42 U.S.C. 6293(b)(1)(A)), but instead as an action that will address a focused group of known issues, including those that have been raised through the test procedure waiver process. Thus, DOE is limiting its proposals addressing potential concerns about variable-speed systems to coil-only systems, for which there are clear differences in system controls architecture, particularly when using non-communicating controls, which impact the performance of these systems in the field. However, DOE may more comprehensively address these issues for all variable-speed systems in a future rulemaking.

Coil-Only Variable-Speed System Representations and Testing

Coil-only testing approaches for variable-speed systems address the installation of variable-speed technology in which the newly-installed system uses existing components, for example an existing furnace fan. For single-capacity and two-capacity air-conditioners, certification requirements anticipate this potential gap by requiring that such models include performance representations with a coil-only combination representative of the least-efficient combination in which the outdoor unit is sold (see 10 CFR 429.16(a)(1)). DOE considered whether such a requirement may be appropriate for variable-speed systems.

A review of manufacturing materials, such as product datasheets and installation instructions, indicates that there is a wide range of instruction provided regarding the need to pair a variable-speed outdoor unit with specific models of indoor units and/or air movers (*e.g.,* furnaces) whose controls can be coordinated with those of the outdoor unit to optimize performance. Some literature is very clear that achieving the rated performance requires installation with specific models of mating components with variable-speed indoor fans and communicating controls. However, other models have literature that does not mention the need for such pairing of components. The latter group is not limited to brands that have received test procedure waivers or interim waivers for variable-speed coil-only systems. Thus, it is possible that variable-speed systems are being installed in coil-only applications for which the system representations may not be representative of actual performance because the representations are blower-coil based. Realizing this possibility, DOE considered the approaches that could be applied to address this issue.

Currently, every single-split system AC with other than single-stage and two-stage compressors must represent every individual combination distributed in commerce, including all coil-only and blower coil combinations. 10 CFR 429.16(a)(1). These regulations, when combined with the test procedure proposals in this NOPR, would require manufacturers to represent variable-speed ACs based on how they distribute them in commerce, which includes whether they are coil-only communicating, coil-only noncommunicating, or blower coil, as applicable to a given model of outdoor unit. DOE would evaluate how manufacturers distribute models of outdoor units based on review of product datasheets, installation and operation manuals, product marketing, relevant databases (including the AHRI database), manufacturer websites, and other related materials that help inform the consumer how the outdoor unit should be installed.

As noted previously, representations of efficiency for single-split air conditioners with a single-stage or two-stage compressor must include at least one coil-only combination representative of the least-efficient combination distributed in commerce with that outdoor unit. 10 CFR 429.16(a)(1). As part of this rulemaking, DOE considered adopting such an approach for all single-split outdoor units, including variable speed models, to ensure that representations include all installations that may occur in the field. However, based on the

information DOE has from the previous energy conservation standards rulemaking pertaining to central air conditioners and heat pumps, less than 5 percent of variable-speed system installations are coil-only installations. 82 FR 1786. Further, the number of certified combinations of variable-speed coil-only systems is a small percentage of all of the variable-speed system certifications.[13] Based on this information, DOE concludes that installations of variable-speed systems in coil-only applications are not likely to be representative of variable-speed system operation as a whole. For this reason, DOE is not proposing a blanket coil-only representation requirement for variable-speed systems. However, DOE may revisit this possibility if it determines that there is significant distribution in commerce of coil-only variable-speed systems using outdoor units that do not include a coil-only representation.

In order improve representativeness of the representations of variable-speed systems used in coil-only combinations, DOE proposes to require a coil-only tested combination for any variable-speed outdoor unit distributed in commerce in a coil-only combination. In addition, DOE proposes to require that, if a manufacturer distributes in commerce an outdoor unit basic model with other than a single-stage or two-stage compressor in non-communicating coil-only combinations, the combination selected for testing be a non-communicating coil-only combination. If a manufacturer distributes in commerce an outdoor unit basic model with other than a single-stage or two-stage compressor only in communicating coil-only combinations, then the combination selected for testing that outdoor model would be a communicating coil-only combination. Finally, if the manufacturer does not distribute in commerce any coil-only combinations, then the individual combination selected for testing for split-system AC and HP with other than a single-stage or two-stage compressor would be a blower-coil combination.

DOE notes that the variable-speed coil-only waiver petitions addressed both air-conditioners and heat pumps. Thus, DOE's considered whether the coil-only tested combination requirement should apply to variable speed heat pumps and/or to single-stage and/or two-stage heat pumps. DOE notes that coil-only heat pumps allow the heating system to provide heat either using the furnace or the heat pump. There has been greater interest in such systems in recent years, since they provide heating with a furnace in extreme cold conditions for which a heat pump may have limited capacity and/or reduced efficiency.[14] DOE is proposing in this NOPR to require coil-only tested combinations for variable-speed heat pumps, but not for single- and two-stage heat pumps, because DOE expects that the representativeness of blower-coil tests would deviate more from coil-only tests for variable-speed systems, due to the use of a variable-speed indoor fan and use of an intermediate air volume rate used for intermediate-speed testing for variable-speed systems. The test procedures for single-stage and two-stage heat pumps are more restrictive with regard to allowed air volume rates and thus performance differences between blower-coil and coil-only operation would be less.

Regarding variable-speed coil-only systems using indoor units manufactured by independent coil manufacturers (''ICMs''), the regulations require certification of the performance of any variable-speed coil-only combinations distribution in commerce, and whether any given combination is coil-only (see 10 CFR 429.16(a)(1)). However, DOE notes that a tested combination for an ICM indoor unit must include the least-efficient outdoor unit with which the indoor unit is distributed in commerce (see 10 CFR 429.6(b)(2)(i)). DOE does not believe any changes are needed to this proposal with respect to ICM certifications as the current regulations already encompass representing all combinations distributed in commerce, including noncommunicating and communicating variable-speed coil only systems.

DOE requests comment on its approach for variable speed coil-only systems. More specifically, DOE seeks comment on its proposal to require coil-only tested combinations for variable-speed systems, both air-conditioners and heat pumps, that are distributed in commerce with coil-only combinations. DOE also requests comment on the proposal to require that the tested combination be a non-communicating coil-only combination, if the outdoor unit is distributed in commerce in a non-communicating coil-only combination.

3. Space-Constrained Coil-Only CAC Ratings

DOE's regulations at 10 CFR 429.16 prescribe certification requirements for CAC/HPs. Paragraph (a)(1) of that section includes a table specifying the required represented values for each ''tested combination'' of CAC/HPs. Table III–1 is an excerpt from the table in 10 CFR 429.16(a)(1) showing represented value requirements for different varieties of split-system CAC/HPs.

TABLE III–1—REQUIRED REPRESENTED VALUES FOR SPLIT-SYSTEM CAC/HPS

[Excerpted from 429.16(a)(1)]

Category	Equipment subcategory	Required represented values
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	Every individual combination distributed in commerce must be rated as a coil-only combination. For each model of outdoor unit, this must include at least one coil-only value that is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. Additional blower-coil representations are allowed for any applicable individual combinations, if distributed in commerce.
	Single-Split-System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	Every individual combination distributed in commerce, including all coil-only and blower coil combinations.

[13] For example, there are roughly 27,000 combinations listed in the AHRI Database for which a non-zero intermediate indoor air volume rate is listed, indicating that the combination is a variable-speed model. DOE reviewed the current certifications in the certification compliance management system and found that there are approximately 400 variable-speed coil-only combinations, representing roughly 1.5 percent of the total variable speed combinations certified to the Department.

[14] *https://www.trane.com/residential/en/resources/glossary/dual-fuel-heat-pump/*(last accessed 2/4/2022).

TABLE III–1—REQUIRED REPRESENTED VALUES FOR SPLIT-SYSTEM CAC/HPS—Continued

[Excerpted from 429.16(a)(1)]

Category	Equipment subcategory	Required represented values
	Single-Split-System HP (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	For each model of outdoor unit, at a minimum, a non-ducted ''tested combination.'' For any model of outdoor unit also sold with models of ducted indoor units, a ducted ''tested combination.'' When determining represented values on or after January 1, 2023, the ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (*i.e.,* conventional, mid-static, or low-static). Additional representations are allowed, as described in paragraph (c)(3)(i) of this section.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For each model of outdoor unit, an SDHV ''tested combination.'' Additional representations are allowed, as described in paragraph (c)(3)(ii) of this section.

As presented in Table III–1, single-split CACs with single-stage or two-stage compressors are required to provide represented values for every individual combination distributed in commerce, each rated as a coil-only combination. For each model of outdoor unit, this must include at least one coil-only value that is representative of the least efficient combination distributed in commerce with that model of outdoor unit. Additional blower-coil ratings are allowed (*i.e.,* optional) for any applicable individual combinations, if distributed in commerce. DOE has become aware that these provisions may contain ambiguity over the precise rating requirements for single-split CACs. For example, if the least efficient combination distributed in commerce for a given basic model includes a blower-coil indoor unit (as opposed to the assumption that a coil-only combination would be least efficient), the existing provisions are unclear on which combination would be used to rate the basic model. Accordingly, DOE is proposing to amend the language in the table found in 10 CFR 429.16(a)(1) to clarify the rating requirements pertaining to single-split CACs with single-stage or two-stage compressors.[15]

DOE requests comment on its proposal to clarify the language for required represented values of coil-only CACs found in the table at 10 CFR 429.16(a)(1)

The requirement to provide coil-only ratings for each basic model also applies to single split CACs designed for space-constrained applications (''SC–CAC''). DOE has received three petitions for test procedure waivers related to the represented value requirements for SC–CACs. The first was a petition from National Comfort Products, Inc. (''NCP'') dated March 20, 2017 (Docket No. EERE–2017–BT–WAV–0030–0001); the second was a petition from AeroSys, Inc. (''AeroSys'') dated May 29, 2017 (Docket No. EERE–2017–BT–WAV–0042–0001); and the third was a petition from First Company (''First Co.'') dated May 25, 2018 (Docket No. EERE–2018–BT–WAV–0012–0002). Each petitioner claimed that specified basic models of SC–CAC outdoor units listed in their respective petitions are designed and intended to be sold only with proprietary blower-coil indoor units equipped with high-efficiency electronically commutated (''ECM'') fan motors, and not as a coil-only combination (NCP, EERE–2017–BT–WAV–0030, No. 1 at p. 1; AeroSys, EERE–2017–BT–WAV–0042; No. 1 at p. 1, First Co., EERE–2018–BT–WAV–0012, No. 2 at p. 1) Each petitioner also claimed that the identified blower-coil indoor units operate at a much lower wattage than the default fan power required by appendix M for coil-only combinations and asserted that appendix M would not result in a representative rating for the specified basic models (NCP, *Id.* at p. 2; AeroSys, *Id.* at p. 1, First Co., *Id.* at pp. 2–3) Each petitioner requested waivers requiring that the specified basic models be tested according to appendix M and that representations be determined by pairing models only with blower-coil indoor units (*i.e.,* requesting exemption from the requirement in 10 CFR 429.16(a)(1) to provide represented values based on a coil-only combination). (NCP, *Id.* at p. 3; AeroSys, *Id.* at p. 6, First Co., *Id.* at p. 6) These waiver requests were predicated on the premise that the basic models of outdoor units identified by NCP, AeroSys, and First Co. are not intended to be sold with a coil-only indoor unit pairing and are designed to be sold with only the specified blower-coil indoor units containing high-efficiency ECM fans.

In a notice published May 30, 2021, DOE granted AeroSys's petition for interim waiver. Since that time, AeroSys filed for bankruptcy and thus DOE stopped further evaluation of the AeroSys test procedure waiver request.

With respect to First Co.'s petition, DOE has concluded that statements provided in product specification sheets and installation instructions for the subject basic models appear inconsistent with First Co.'s assertion that the subject basic models are distributed in commerce exclusively for use with blower-coil indoor units. For example, installation instructions for affected models include language describing these units as replacements for R–22 systems, and the existing indoor units are unlikely to have the high-efficiency motors used in the described blower-coil indoor units. Additionally, some spec sheets include additional language indicating that installation is intended with existing indoor units that are unlikely to have high efficiency motors.

As NCP's waiver petition and the prescribed alternate test procedure are specific to appendix M, the interim waiver will terminate on the date on which testing is required under appendix M1 (*i.e.,* January 1, 2023); there is no need for continuation of the waiver once testing is required under appendix M1. Moreover, as discussed in the following paragraphs, DOE has tentatively determined that it would be inappropriate to amend appendix M1 to provide for the testing of split-system

[15] DOE's proposed clarifications would require every single-stage and two-stage outdoor unit of single-split CAC to have a compliant rating with a coil-only combination that is distributed in commerce and representative of the least efficient combination distributed in commerce for that particular model of outdoor unit

CACs as requested in the waiver petitions.

DOE is required per EPCA to prescribe test procedures that are reasonably designed to produce test results which measure energy efficiency during a representative average use cycle or period of use, as determined by the Secretary. (42 U.S.C. 6293(b)(3)) For split-system central air conditioner and heat pump outdoor units, determination of what constitutes a representative average use cycle or period of use must include consideration of combinations in which a unit is paired in field installations. DOE published an energy conservation standard final rule to set new standards for central air conditioners and heat pumps on January 6, 2017. 82 FR 1786. In the rulemaking that culminated in this final rule, DOE examined the typical installations for split-system CACs and HPs as part of its assessment of life-cycle costs. DOE determined that 39 percent of split-system CAC installations in 2021 [16] would be full-system replacements including a blower-coil indoor unit. Of the 61 percent remaining CAC installations, DOE's determined that 75 percent of these would require replacement of the entire system (*i.e.,* both outdoor unit and coil-only indoor unit) and 25 percent would involve solely replacement of the outdoor unit (*i.e.,* leaving the existing coil-only indoor unit and refrigerant line-sets intact). (Docket No. EERE–2014–BT–STD–0048–0098, p. 8–8).

DOE's analysis indicates that installations involving blower-coil indoor units are in the minority for split-system CACs. While DOE does not have data showing the installation breakdown specifically for space-constrained systems, DOE assumes in the absence of such data that the general installation trends would apply to equally to space-constrained systems. Additionally, DOE has observed instances for which outdoor units designed for space-constrained applications are being distributed in commerce without a corresponding blower-coil indoor unit,[17] indicating the potential for pairing a replacement outdoor unit with an existing indoor unit using a legacy fan that would not likely be comparable to the ECM fan of the blower-coil indoor unit on which the system rating is based. DOE notes that the cited example is for sale of an NCP outdoor unit, which indicates that it is impossible to ensure that installations are of systems with blower-coil indoor units, as suggested by NCP's waiver petition.

Consequently, DOE tentatively concludes that measuring the performance of space-constrained systems exclusively with high-efficiency blower-coil combinations, as requested in the NCP, AeroSys, and First Co. waiver petitions, is not generally representative of field operation. Based on this tentative conclusion, amendment to the existing requirements for represented values in 10 CFR 429.16 to allow manufacturers to avoid the coil-only test requirement for single-speed and two-stage space-constrained CACs would provide test results that are not representative of an average use cycle or period of use. DOE is not proposing amendments to appendix M1 regarding the test procedure waiver granted to NCP.

DOE requests comment on its planned approach not to propose waiving the coil-only rating requirement for space-constrained air conditioners and heat pumps. To support any comments suggesting that DOE reverse this decision, DOE requests shipment and/or installation data for space-constrained systems to clarify the characteristics of representative installations.

C. Other Test Procedure Revisions

1. Air Volume Rate Changing With Outdoor Conditions

When testing CAC/HP systems under appendix M1, section 3.1.4 requires determining airflow setting(s) before testing begins; unless otherwise specified, no changes are to be made to the airflow setting(s) after initiation of testing. The subsections of section 3.1.4 provide instructions for establishing air volume rates for the following test conditions: Cooling full-load (section 3.1.4.1), cooling minimum (section 3.1.4.2), cooling intermediate (section 3.1.4.3), heating full-load (section 3.1.4.4), heating minimum (section 3.1.4.5), heating intermediate (section 3.1.4.6), and heating nominal (section 3.1.4.7).

For example, section 3.1.4.1.1.a of appendix M1 provides instructions for determining the cooling full-load air volume rate for ducted blower coil systems other than those having a constant-air-volume-rate indoor blower. Within that section, a seven-step process is followed to determine the final fan speed or control settings to be used for testing. Step (7) of the process specifies using the measured air volume rate as the cooling full-load air volume rate, and to use the final fan speed or control settings for all tests that use the cooling full-load air volume rate. Sections 3.1.4.2.a and 3.1.4.4.3.a specify a similar process for determining cooling minimum air volume rate and heating full-load air volume rate, respectively. These sections similarly specify using use the measured air volume rate and final fan speed or control settings for all tests that use the cooling minimum air volume rate or heating full-load air volume rate, respectively.

As noted, sections 3.1.4.1.1.a, 3.1.4.2.a, and 3.1.4.3.a of appendix M1 specify using the air volume rates determined in those respective sections for all tests. By contrast, sections 3.2.2.2, 3.2.3.b, and 3.2.4.b specify using air volume rates that represent a ''normal installation'' when testing units having a single-speed compressor where the indoor section uses a single variable-speed variable-air-volume rate indoor blower or multiple indoor blowers (3.2.2.2), when testing units having a two-capacity compressor (3.2.3.b), and when testing units having a variable-speed compressor (3.2.4.b). In some cases, reference to ''air volume rates that represent a normal installation'' could conflict with the air volume rates determined in sections 3.1.4.1.1.a, 3.1.4.2.a, and 3.1.4.3.a.

For example, many modern blower-coil systems have multiple-speed or variable-speed indoor fans and control systems (*i.e.* the type of units covered under section 3.2.2.2) that may have the capability to vary fan speed in response to operating conditions in order to optimize performance. Under ''normal installation'' for such units, air volume rate changes in response to operating conditions such as outdoor air temperature. For these types of systems, the instructions in sections 3.1.4.1.1.a, 3.1.4.2.a, and 3.1.4.3.a to use a fixed (constant) air volume rate for all tests conflict with the instructions in sections 3.2.2.2, 3.2.3.b, and 3.2.4.b to use air volume rates that represent a normal installation.

For units with multiple-speed or variable-speed indoor fans and control systems that have the capability to vary fan speed in response to operating conditions, requiring air volume rate to remain constant as outdoor air temperature changes during testing may not provide test results that are representative of field operation.

To address this issue, DOE proposes to explicitly state in Step 7 of sections 3.1.4.1.1.a, 3.1.4.2.a, and 3.1.4.3.a that,

[16] DOE based its life-cycle analysis on the assumption that the year of product purchase date would be 2021, which at the time was the assumed effective date of energy conservation standards for CACs and HPs. Accordingly, all installation figures were forecast through the year 2021.

[17] *www.ferguson.com/product/national-comfort-products-3000-series-25-tons-12-seer-r-410a-27200-btuh-room-air-conditioner-nncpe4303010/_/R-4397660.*

for blower coil systems in which the indoor blower capacity modulation correlates with outdoor dry bulb temperature or sensible to total cooling capacity ratio, use an air volume rate that represents a normal operation. To ensure consistency of testing, it may be necessary for manufacturers to certify whether the system varies blower speeds with outdoor air conditions. However, this change is not being proposed in this notice and may be addressed in a separate rulemaking.

DOE requests comments on its proposal to add language clarifying how to implement variation of blower speed for different ambient temperature test conditions.

2. Wet Bulb Temperature for H4 5 °F Heating Tests

Appendix M1 specifies required and optional heating mode test conditions for heat pumps, designated as ''H'' conditions. See Tables 11 through 15 of appendix M1. appendix M1 provides for conducting optional ''H4'' heating tests at a 5 °F outdoor ambient dry-bulb temperature and, at a maximum, a 3 °F outdoor wet-bulb temperature.[18] DOE initially proposed a target wet-bulb temperature for the H4 test of 3.5 °F in an SNOPR published in August 2016 (''August 2016 SNOPR''). 81 FR 58164, 58193. ACEEE, NRDC, and ASAP agreed with DOE's proposal of a target wet bulb temperature of 3.5 °F for the optional 5 °F test. (ACEEE, NRDC, and ASAP, EERE–2016–BT–TP–0029, No. 33 at p. 8) Carrier/UTC, Lennox, JCI, Ingersoll Rand, Goodman, Nortek, NEEA, Rheem, the CA IOUs, AHRI, and Mitsubishi all recommended that the target wet bulb temperature for the 5 °F test should be 3 °F or less, rather than the proposed 3.5 °F target. The commenters indicated that holding tight tolerances on the wet bulb temperature at such low temperatures is very challenging, but the frost loading for this temperature is so low that the variation in the wet bulb temperature level would not affect the test significantly. Unico made a similar recommendation but suggested a maximum of 4 °F wet bulb temperature. (Carrier/UTC, No. 36 at p. 12; Lennox, EERE–2016–BT–TP–0029, No. 25 at p. 15; JCI, EERE–2016–BT–TP–0029, No. 24 at p. 17; Ingersoll Rand, EERE–2016–BT–TP–0029, No. 38 at p. 7, Goodman No. 39 at p. 11; Nortek, EERE–2016–BT–TP–0029, No. 22 at p. 16; Unico, EERE–2016–BT–TP–0029, No. 30 at p. 7; NEEA, EERE–2016–BT–TP–0029, No. 35 at p. 3; Rheem, EERE–2016–BT–TP–0029, No. 37 at p. 6; CA IOU, EERE–2016–BT–TP–0029, No.32 at p.4; AHRI, EERE–2016–BT–TP–0029, No. 27 at p.19; Mitsubishi, No. 29 at p.4).

In the January 2017 TP Final Rule, DOE agreed that the amount of moisture in 5 °F air would be sufficiently low that imposing a maximum wet bulb temperature of 3 °F would be adequate to ensure test repeatability; hence DOE adopted the suggestion to require a 3 °F maximum wet bulb temperature in the January 2017 TP Final Rule (82 FR 1426). Since the publication of the 2017 Final Rule, DOE and other stakeholders have gained additional experience testing to the new appendix M1, including testing at the 5 °F H4 heating condition. DOE has received informal comments and has independently observed that holding the wet-bulb tolerance of maximum 3 °F is difficult for some test labs, especially for extended periods of time, and that even if this low humidity level can be attained, the additional 0.5 to 1.0 °F wet bulb reduction adds significant time to testing (as compared to maximum wet bulb requirements of 3.5 °F and 4 °F, respectively).

The 3 °F wet bulb condition represents an extremely dry air condition, which is difficult to attain and maintain due to issues with infiltration and ground moisture passing through the floor in some laboratory setups. Accordingly, DOE is proposing to amend the wet bulb test condition for all H4 tests to be 4 °F maximum instead of the current condition of 3 °F maximum. Because, as previously identified in comments, there is very little moisture content in the air at 5 °F dry-bulb temperature, DOE does not expect that the change in wet bulb temperature condition will have a significant impact on test results.

DOE seeks comment on its proposal to amend the wet bulb temperature condition for the H4 heating tests from the existing 3 °F maximum temperature to a maximum temperature of 4 °F.

3. Hierarchy of Manufacturer Installation Instructions

Instructions for installation of CAC/HP products can take multiple forms, including documents shipped with the product, labels affixed to the outdoor unit and/or indoor unit, and online documents.

Section 2(A) of appendix M1 provides requirements regarding the installation instructions to be used and their order of precedence (*i.e.,* installation instruction hierarchy) for variable refrigerant flow (''VRF'') multi-split systems. Section 2(A) specifies that installation instructions that appear in the labels applied to the unit take precedence over installation instructions that are shipped with the unit. Further, Section 2(A) specifies that the term ''manufacturer's installation instructions'' does not include online manuals. Appendix M1 does not specify installation instruction hierarchy for any other types of CAC/HP products.

Throughout appendix M1, references to manufacturer's installation instructions are made regarding refrigerant charging requirements (section 2.2.5), installation of an air supply plenum adapter accessory for testing small-duct, high-velocity systems (section 2.4.1.c), and control circuit connections between the furnace and the outdoor unit for coil-only systems (section 3.13.1.a).

DOE notes that it initially proposed in a supplemental NOPR published November 9, 2015 (''November 2015 SNOPR'') that the hierarchy of installation instructions be located in proposed section 2.2.5.1 of appendix M1, which pertains to refrigerant charging requirements. See 80 FR 69278, 69350.[19] However, as finalized in the June 2016 Final Rule, the installation instruction hierarchy provision was located within section 2(A) of appendix M1, and therefore applies only to testing of VRF multi-split systems. 81 FR 36992, 37060. The June 2016 Final Rule did not provide a discussion of this change.

The requirements regarding installation instruction would be equally applicable to classes of CAC/HP other than VRF multi-split systems. As noted, manufacturer's installation instructions are referenced in a number of provisions in appendix M1. Therefore, DOE is proposing to add in section 2(B) of appendix M1, ''Testing Overview and Conditions for Systems Other than VRF,'' the same requirements associated with installation instructions that are in section 2(A), *i.e.* what instructions can be used and what instructions take precedence. This proposal would align the approach for all classes of CAC/HP with the current approach for VRF CAC.

DOE requests comment on the proposed alignment of the VRF and non-VRF test procedures when it comes to instruction precedence.

[18] The tests at this condition are optional for heat pumps, except for Triple-Capacity Northern heat pumps.

[19] DOE also notes that as initially proposed, installation instructions that are shipped with the unit were to take precedence over installation instructions that appear in the labels applied to the unit, but this hierarchy was reversed in the final rule. 81 FR 36992, 37060.

4. Adjusting Airflow Measurement Apparatus To Achieve Desired SCFM at Part-Load Conditions

DOE is aware that the specifications for cooling full-load air volume rates for both ducted and non-ducted units may require additional detail to provide improved repeatability. Sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3 of appendix M1 each specify seven steps for achieving the correct air volume rate to be used for testing (cooling full-load air volume rate, cooling minimum air volume rate, and heating full-load air volume rate, respectively). In each section, Step 7 mentions ''fan speed'' and ''control settings'' without indicating whether they are the speed and settings of the unit under test, of the airflow measurement apparatus, or both. DOE notes that cooling full-load air volume rate, cooling minimum air volume rate, and heating full-load air volume rate may each be used for multiple test conditions. However, when using this same air-volume rate at different test conditions, it may be necessary to adjust one of the fans to achieve the same air-volume rate, due to differences in air density and/or loading of condensate on the indoor coil.[20] In sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3 of appendix M1, Step 7 identifies the air volume rate (cooling full-load, cooling minimum, and heating full-load, respectively) to be used for all test conditions that use the same air volume rate, but it does not indicate what adjustments are allowed or required to obtain it.

These sections may be misinterpreted to indicate that both the fan speed of the unit under test and the airflow measurement apparatus fan speed should not be adjusted during testing. As previously described, if both the test unit fan speed and the measurement apparatus fan speed are fixed, differences in air density and/or loading of condensate could cause differences in measured air volume rate at different test conditions, with no recourse for correction. This interpretation could then cause tests to be conducted at different air volume rates across test conditions, whereas the test procedure at sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3 of appendix M1 requires the tests to be conducted at the same air volume rate across different conditions. To minimize the potential for misinterpretation, DOE is proposing to explicitly require that the airflow measurement apparatus fan be adjusted if needed to maintain constant air volume rate for all tests using the same air volume rate. Similarly, the section would explicitly state that the speed and settings of the fan of the unit under test are not to be adjusted.

DOE requests comment on its proposal to add more specific direction to step 7 of sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3.

5. Revision of Equations Representing Full-Speed Variable-Speed Heat Pump Operation at and Above 45 °F Ambient Temperature

A compressor's speed at full speed may change as the outdoor temperature changes. While the compressor speed at full speed may differ at different outdoor temperatures, accuracy of predictions using the test results from two temperature conditions to calculate the performance for a third temperature condition is maximized when the same compressor speed is used for the tests at the two different ambient temperature conditions (see, *e.g.,* 81 FR 58164, 58178 (August 24, 2016)).

For calculation of full-compressor performance in the temperature ranges less than 17 °F and greater than or equal to 45 °F, the test procedure determines performance based on the $H3_2$ and $H1_2$ tests, which are conducted at 17 °F and 47 °F, respectively (see appendix M1, sections 4.2.4.c, which refers to equations 4.2.2–3 and 4.2.2–4 in Section 4.2.2). As indicated in appendix M1 in the Table 14 footnotes, the $H1_2$ test is run with the compressor speed that represents normal operation at 17 °F conditions. However, for many variable-speed heat pumps, this is a higher compressor speed than would be normal for operation at 47 °F conditions.

The $H1_N$ test represents normal 47 °F operation, as indicated in the Table 14 footnotes. For heat pumps with different normal speeds for 17 °F and 47 °F conditions, the full-compressor performance equation is not appropriately representative for temperatures greater than or equal to 45 °F. For example, at 47 °F, the equation would indicate that the capacity is equal to the $H1_2$ capacity, even though the $H1_N$ test is specifically intended to represent capacity at 47 °F. To rectify this issue, DOE proposes to amend the portion of the equations representing performance in conditions warmer than 45 °F. Specifically, the capacity equation for this temperature range would be multiplied by the ratio of the capacities of the $H1_N$ and $H1_2$ tests. Similarly, the power input equation for this range would be multiplied by the ratio of the power inputs measured in the $H1_N$ and $H1_2$ tests. This would change the calculated capacity and power input for the range of temperature above 45 °F to be consistent with the compressor speed of the $H1_N$ test (which is intended to represent performance in this range), rather than with the compressor speed of the $H3_2$ test, which is conducted in a 17 °F ambient temperature.

While DOE believes that the proposed amendments would provide more representative results, DOE does not expect that such changes would significantly affect heat pump HSPF2 measurements. This is because the full-capacity performance would affect HSPF2 only when the calculated building load exceeds the calculated intermediate capacity of a variable-speed heat pump, which DOE believes to be a rare occurrence in the ambient temperature range above 45 °F. In the cases that would affect HSPF2, the change would increase the measured efficiency, since $H1_N$ COP is expected to be higher than $H1_2$ COP due to its lower compressor speed.

DOE requests comment on the proposed change to the full-capacity performance equations for variable-speed heat pumps in the ambient temperature range above 45 °F, adjusting the equations for capacity and power by the ratio of capacity and power, respectively, associated with $H1_N$ and $H1_2$ operation.

6. Calculations for Triple-Capacity Northern Heat Pumps

Section 4.2.6 of appendix M1 includes additional steps for calculating HSPF2 of a heat pump having a triple-capacity compressor. Heat pumps with triple-capacity compressors respond to building heating load by operating at low (k=1), high (k=2), or booster (k=3) capacity or by cycling on and off at one or more of those stages. Section 4.2.6.5 covers the scenario where the heat pump alternates between high (k=2) and booster (k=3) compressor capacity to satisfy the building load. In this scenario, the total electrical power consumption is determined by calculating the fraction of time the system spends operating in the high and booster stage, respectively, and then weighting the steady-state power consumption at each operating state accordingly. Section 4.2.6.5 gives equations for calculating the fraction of load addressed by the high compressor stage, denoted as ''$X^{k=2}(T_j)$'', as well as the fraction of load addressed by the booster compressor stage ''$X^{k=3}(T_j)$''. These proportions should, by definition, be complementary because the system is

[20] When operating in cooling mode, water vapor in the return air may condense and collect and flow down the coil into the indoor unit's drain pan. This removal of water vapor is called dehumidification—it occurs only in cooling mode and its magnitude depends on the test conditions.

either operating in high compressor stage or boost compressor stage. However, the equation for the booster capacity load factor ''$X^{k=3}(T_j)$'' is erroneously set equal to the high-capacity load factor ''$X^{k=2}(T_j)$'' as opposed to the complementary value ''1 $X^{k=2}(T_j)$.'' Therefore, DOE is proposing to correct the booster capacity load factor equation to be defined as $X^{k=3}(T_j) = 1 - X^{k=2}(T_j)$.

DOE seeks comment on its proposal to revise the calculation for booster capacity load factor equation for triple-capacity northern heat pumps.

7. Heating Nominal Air Volume Rate for Variable-Speed Heat Pumps

Appendix M1 includes procedures for calculating the heating capacity and power input for variable-speed heat pumps at various test conditions. The $H1_N$ test is used to calculate the nominal heating capacity of the system at 47 °F ambient temperature, whereas the $H1_2$ test is used to calculate maximum heating capacity at 47 °F and the $H1_1$ test is used to calculate minimum heating capacity at 47 °F. Section 3.1.4.7 of appendix M1 requires that manufacturers must specify a heating nominal air volume rate for each variable-speed heat pump system and must provide instructions for setting the fan speed or controls. The heating full-load air volume rate is defined in section 3.1.4.4 of appendix M1, which ties the heating full-load air volume rate to the cooling full-load air volume rate and denotes static pressure requirements. However, in Table 14 to appendix M1 (which specifies heating mode test conditions for units having a variable-speed compressor), the $H1_N$ test (used for calculating nominal heating capacity at 47 °F) is erroneously specified as using the ''Heating Full-load'' air volume rate instead of the heating nominal air volume rate. Because the $H1_N$ test is intended to represent nominal heating capacity, DOE is proposing to amend Table 14 to specify the ''heating nominal air volume rate'' as defined in section 3.1.4.7 of appendix M1 as opposed to the ''heating full-load air volume rate''. As discussed in section I.B.2 of this NOPR, DOE is also proposing to amend the test provisions for variable-speed compressor systems with coil-only indoor units. The proposal mentioned in this section would only apply to variable-speed systems equipped with blower-coil indoor units, while variable-speed coil-only systems would be required to test using the heating full-load air volume rate at the $H1_N$ test condition.

DOE requests comment on its proposal to specify heating nominal air volume rate as the air volume rate to be used for the $H1_N$ heating test for variable-speed heat pumps.

8. Clarifications for HSPF2 Calculation

Section 4.2 of appendix M1 contains methodologies for calculating HSPF2 for all heat pumps. DOE has identified an instance where additional instruction may be warranted to make clear the calculation procedure across different types of heat pump systems. DOE proposes to clarify the appropriate slope adjustment factor to be used in the calculation for building heating load (Equation 4.2–2).

As written, Equation 4.2–2 refers to the heating load line slope adjustment factor ''C'', which varies by climate region according to Table 20. However, Table 20 includes both the ''C'' factor as well as a factor denoted ''C_{VS}''—the variable-speed slope factor, which includes different coefficients that impact calculation of HSPF2. C_{VS} is not explicitly referenced in the definitions surrounding Equation 4.2–2, therefor DOE is proposing to amend the language of that paragraph to indicate that the slope adjustment factor ''C'' should be used when calculating building heating load except for variable-speed compressor systems, where the variable-speed slope adjustment factor ''C_{VS}'' should be used instead.

DOE seeks comment on its proposal to clarify the calculation process for heating load line slope factor as it pertains to variable-speed heat pumps.

9. Distinguishing Central Air Conditioners and Heat Pumps From Commercial Equipment

EPCA defines ''industrial equipment'' as equipment of a type which, among other requirements, is not a covered product under section 6291(a)(2), *i.e.,* not a covered consumer product. (42 U.S.C.6311(2)(A)) Small, large, and very large commercial package air conditioning and heating equipment are included as types of covered industrial equipment. (42 U.S.C.6311(1)(B,C,D))

EPCA defines ''central air conditioner'' as a product, other than a packaged terminal air conditioner, which is powered by single phase electric current, is air-cooled, is rated below 65,000 Btu per hour, is not contained within the same cabinet as a furnace the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling only unit. DOE understands that there are basic models that exists on the market that meet the central air conditioner definition but are exclusively distributed in commerce for commercial and industrial applications. In DOE's view, there are certain types of equipment that meet the definition of CAC but that EPCA was not intended to regulate as consumer products. To clarify that any such model is not a central air conditioner, DOE proposes to revise the central air conditioner definition so that it explicitly excludes these equipment categories, similar to the way the definition excludes packaged terminal air conditioners and packaged terminal heat pumps. The exclusion for single-package vertical air-conditioners and heat pumps would refer specifically to those models that could be confused with central air conditioners, *i.e.,* those that are single-phase with capacity less than 65,000 Btu/h, for which the test procedure notice of proposed rulemaking for single-package vertical air conditioners and heat pumps has proposed new definitions. 87 FR 2490, 2518 (January 14, 2022).

DOE emphasizes that the exclusion from the central air conditioner definition for a given model depends on whether it meets the definition for one of the excluded categories. For example, a model must meet the packaged terminal air conditioner definition to be considered to be a packaged terminal air conditioner. Suppose a model meets the characteristics listed in the central air conditioner definition, but otherwise has similarities to packaged terminal air conditioners. If such a model is not ''intended for mounting through the wall,'' it would be missing a key characteristic of the packaged terminal air conditioner definition (see 10 CFR 431.92), and, unless it met the definition for one of the other categories proposed to be excluded, it is considered a central air conditioner irrespective of whether it gets installed in a consumer or commercial building.

10. Additional Test Procedure Revisions

On May 8, 2019, AHRI submitted a comment responding to the notice of proposal to revise and adopt procedures, interpretations, and policies for consideration of new or revised energy conservation standards (2020 Process Rule NOPR, 84 FR 3910, Feb. 13, 2019). The comment included as Exhibit 2 a ''List of Errors Found in appendix M and appendix M1'' (''AHRI Exhibit 2'', EERE–2017–BT–STD–0062–0117 at pp. 23–24). Many of the errors pointed out by AHRI regard typographical errors in appendix M and appendix M1. DOE published a notice of corrections to appendices M and M1 on December 2, 2021 (''December 2021 Corrections Notice''). 86 FR 68389. The December 2021 Corrections Notice

addressed some of the ''Errors'' identified in AHRI Exhibit 2, but not all of them. DOE is proposing to address additional ''Errors'' identified in AHRI Exhibit 2 in this NOPR to improve accuracy and representativeness of the test procedures.

a. Revisions Specific to Appendix M

AHRI's comment identified three areas of appendix M where they requested changes. These are detailed in Table III–2. Additionally, DOE has identified one transcription error in the December 2021 Corrections Notice related to changes made in section 3.6.4 of appendix M. DOE is making corresponding revisions in this NOPR to correct that transcription error.

TABLE III–2—AHRI-IDENTIFIED ERRORS TO APPENDIX M

Section	Original appendix M language	AHRI comment summary	Proposed change
1.2	''Nominal cooling capacity is approximate to the air conditioner cooling capacity tested at A or A_2 condition. Nominal heating capacity is approximate to the heat pump heating capacity tested in H12 test (or the optional H1N test)''.	The $H1_N$ test is required in section 3.6.4, and section 3.6.4 designates the $H1_N$ test—not the $H1_2$ test.	Remove the ''Optional $H1_N$ test'' and replace the ''$H1_2$'' with ''$H1_N$''.
4.1.4.2		The $EER^{k=1}(T_j)$ should be $EER^{k=2}(T_j)$ because the coefficient ''A'' only utilizes the maximum speed temperature, T_2.	Revise the formula to implement this change to $EER^{k=2}(T_j)$.
4.2.c	''For a variable-speed heat pump, $Q_h^k(47) = Q_h^{k=N}(47)$, the space heating capacity determined from the $H1_N$ test''.	2017 and later versions of appendix M use $H^{k=2}_{calc}$ for all conditions, as explained in 3.6.4. This should not be an exception for the rest of the calculations.	Accurately implement the change intended by the December 2021 Corrections Notice.

The following sections discuss proposed changes to the language of appendix M that DOE believes will improve clarity regarding how tests and calculations are to be conducted to determine capacity levels and efficiency metrics.

i. Definition of Nominal Cooling Capacity

AHRI commented that the definition of Nominal Cooling Capacity in Section 1.2 of appendix M incorrectly references the $H1_N$ test as ''optional.'' AHRI claimed that, on the contrary, the $H1_N$ test is required for heat pumps. DOE agrees with the AHRI comment, since Section 3.6.4, ''Tests for a Heat Pump Having a Variable-Speed Compressor,'' requires the $H1_N$ test. Therefore, DOE is proposing to revise the definition of ''Nominal Capacity'' to remove the references to the $H1_2$ test in its entirety. Referring to the $H1_N$ test will avoid confusion.

ii. Revising Energy Efficiency Ratio Equation at Intermediate Compressor Speed

In section 4.1.4.2 of appendix M, there are a series of equations used to calculate $EER^{k=i}(T_j)$, the steady-state energy efficiency ratio of the test unit when operating at an intermediate compressor speed (k=i) for outdoor temperature T_j. This value is calculated using a quadratic equation: $EER^{k=i}(T_j) = A + B*T_j + C*T_j^2$. These coefficients (A, B and C) are calculated by their own respective formulae.

AHRI commented that the formula for the ''A'' coefficient has an error. Specifically, $EER^{k=1}(T_2)$ in the equation should be $EER^{k=2}(T_2)$ because the coefficient ''A'' only utilizes maximum-speed temperature T_2. As described further in this section, DOE is proposing to revise this calculation such that it uses the intended ''k=2''. The use of ''k=2'' is supported both by its appearance in ASHRAE 116–2010, ''Methods for Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps'' (see page 25) and also in the DOE test procedure final rule that first established test methods for variable-speed systems. 49 FR 8304, 8316 (March 14, 1987).

iii. Clarification of Compressor Speed Limits in Heating Tests for Heat Pumps Having a Variable-Speed Compressor

In the December 2021 Corrections Notice, DOE discussed corrections to the compressor speed limitations for the $H1_N$ heating mode test for both appendix M and appendix M1. 86 FR 68389, 68390. However, when setting out the correcting language in the amendatory instruction for appendix M, the instructions erroneously directed to revise the fifth sentence of paragraph a to section 3.6.4, when the instructions were intended to revise the seventh sentence of the same paragraph. As currently printed, the text in paragraph a of section 3.6.4 to appendix M includes two sentences starting with ''for a cooling/heating heat pump . . .'' that give conflicting instructions. Accordingly, DOE is proposing to revise this paragraph to reflect the intent of the December 2021 Corrections Notice and, by extension, the January 2017 Final Rule.

b. Revisions Specific to Appendix M1

AHRI's comment identified one area of appendix M1 where they requested changes. This requested change is detailed in Table III–2.

TABLE III–3—AHRI-IDENTIFIED ERRORS TO APPENDIX M1

Section	Original appendix M1 language	AHRI comment summary	Proposed change
4.2	Q_h(47 °F): the heating capacity at 47 °F determined from the H2 $H1_2$ or $H1_N$ test, Btu/h..	For variable speed heat pumps, the language should be clarified to $H^{k=2}{}_{calc.}$.	Revise the language to be clearer about what capacity to use for different types of heating-only heat pumps.

The following sections discuss proposed changes to the language of appendix M1 that DOE believes will improve clarity regarding how tests and calculations are to be conducted to determine capacity levels and efficiency metrics.

i. Detailed Descriptions of Capacity for Different Subcategories

AHRI commented that in Section 4.2 of appendix M1, which describes the calculation for HSPF2 for different subcategories of heat pumps, there is a lack of clarity in the term for heating capacity measured at 47 °F, ''Q_h(47 °F),'' in Equation 2–2, the building load, ''BL(T_j),'' equation. Currently, the description of Q_h(47 °F) says that it is ''determined from the H, $H1_2$ or $H1_N$ test.'' Additionally, the first ''H'' is missing an additional character to specify the appropriate test point. DOE agrees with AHRI's assessment of this description, and DOE is proposing to revise this description to include specific instructions for which test point is appropriate for different heat pump subcategories. DOE is proposing to specify that the H1 test is for a heat pump with a single-speed compressor, the $H1_2$ test is for a heat pump with a two-speed compressor, and the $H1_N$ test is for a heat pump with a variable-speed compressor.

However, AHRI commented regarding a ''$H^{k=2}{}_{calc}$'' term. DOE notes that this term does not exist in this section of appendix M1. While DOE is revising this section to add clarity in light of AHRI's general comment, DOE will not be proposing to make the exact edit AHRI proposes.

c. Revisions to Both Appendix M and Appendix M1

AHRI's comment claimed that there are two sections in both appendix M and appendix M1 that contain similar errors. These errors are detailed below in Table III–4.

Table III-4: AHRI-Identified Errors in Both Appendix M and Appendix M1

Section	Original Appendix M and Appendix M1 Language	AHRI Comment Summary	Proposed Change
4.2.3.3	$PLF_j = 1 - C_D{}^{h(k=2)} * [1 - X^{k=1}(T_j)$	The trailing square bracket "]" is missing and "$X^{k=1}(T_j)$" should be "$X^{k=2}(T_j)$"	Add the square bracket and revise the equation in appendix M.[1]
4.2.3.4	$\frac{RH(T_j)}{N} = (BL(T_j) * \frac{[Q_h^{k=2}(T_j) * \delta'(T_j)]}{3.413\frac{Btu}{Wh}} * \frac{n_j}{N}$	The multiplication operator between BL(T_j) and the square bracket should be subtraction	Revise the equation to have the subtraction

[1]The equation is correct in section 4.2.3.3 of appendix M1.

The following sections discuss proposed changes to the language of both appendix M and appendix M1 that DOE believes will improve clarity regarding how tests and calculations are to be conducted to determine capacity levels and efficiency metrics.

i. Revising Part Load Factor Equation for Heat Pumps in Section 4.2.3.3

AHRI's comment claims that the part load factor (PLF) equation in section 4.2.3.3 of both appendix M and appendix M1 contain two errors. The first error is that the equation is missing a closing square bracket, and the second is that the heating mode low-capacity load factor, ''$X^{k=1}(T_j)$,'' is incorrectly referenced instead of the high-capacity load factor, ''$X^{k=2}(T_j)$.'' DOE notes that this equation is actually correct in appendix M1. The high-capacity load factor is appropriate in this equation because section 4.2.3.3 applies to heat pumps that only operate at high (k=2) compressor capacity. Therefore, the high-capacity load factor should be used in this case for the part load factor. DOE is proposing to revise this formula in appendix M to include the closing square bracket and to use the high-capacity load factor.

ii. Revising the Ratio of Electrical Energy Used for Resistive Space Heating Equation in Section 4.2.3.4

AHRI has identified an error in the equation for electrical energy consumed by the heat pump for electric resistance auxiliary heating for bin temperature, T_j divided by the total number of hours in the heating season, ''RH(T_j)/N,'' used in section 4.2.3.4 of both appendix M and appendix M1. AHRI indicated that the equation used in section 4.2.3.4

includes a multiplication operator where it should have subtraction. The subtraction operator is consistent with all other instances of $RH(T_j)/N$ in both appendix M and appendix M1. DOE agrees that the equation for $RH(T_j)/N$ in section 4.2.3.4 of both appendix M and appendix M1 is incorrect, and therefore DOE is proposing to revise this equation to include the subtraction operator rather than a multiplication operator.

DOE requests comments on the proposals to implement the correcting revisions described in this section.

D. Other Representation Proposed Revisions

Manufacturers, including importers, must use product-specific certification templates to certify compliance to DOE. For CAC/HPs, the certification template reflects the general certification requirements specified at 10 CFR 429.12 and the product-specific requirements specified at 10 CFR 429.16. As discussed in the previous paragraphs, DOE is not making any proposals related to certification requirements in this rulemaking and any such changes may be addressed in a future rulemaking.

1. Required Represented Values for Models Certified Compliant With Regional Standards

DOE's standards for CAC at 10 CFR 430.32(c) include both amended national standards with which compliance is required for models manufactured on or after January 1, 2023, and amended regional standards with which compliance is required for units installed on or after January 1, 2023. See 10 CFR 430.32(c)(5)–(6). In addition, as discussed in section III.B.3, DOE's regulations at 10 CFR 429.16 describe certification requirements for central air conditioners and central air conditioning heat pumps, and paragraph (a)(1) of this section requires single-split CACs with single-stage or two-stage compressors, at a minimum, to rate each outdoor model as part of a coil-only combination representative of the least efficient combination distributed in commerce with that particular outdoor unit.

On December 16, 2021, DOE issued final guidance regarding whether a model of outdoor unit for a single-split-system AC with single-stage or two-stage compressor whose coil-only rating under M1 does not meet regional standards, but where certain blower-coil combinations that include the outdoor model do meet regional standards, can be installed in the SE or SW region. DOE's guidance states that ''In order to be installed in the SE or SW region, the outdoor unit must have at least one coil-only combination that is compliant with the regional standard applicable at the time of installation.''

As background, DOE notes that it finalized provisions related to this issue in a June 2016 Test Procedure Final Rule (81 FR 36992, June 8, 2016) with minor revisions in a January 2017 Test Procedure Final Rule (82 FR 1426, January 5, 2017); a July 2016 Enforcement Final Rule (81 FR 45387, July 14, 2016); and a January 2017 Energy Conservation Standards Direct Final Rule (82 FR 1786, January 6, 2017). These provisions were based on consensus recommendations by two ASRAC Working Groups—a Regional Standards Enforcement Working Group (''Enforcement WG'') that concluded on October 24, 2014 (See final report: Docket No. EERE–2011–BT–CE–0077, No. 70), and a Central Air Conditioner and Heat Pump Energy Conservation Standards Working Group (''ECS WG'') that concluded on January 19, 2016 (See term sheet: Docket No. EERE–2014–BT–STD–0048, No. 76).

The July 2016 Enforcement Final Rule adopted several provisions of relevance here, with a focus on enforcement of the existing energy conservation standards:

- 10 CFR 429.102(c)(4) contains provisions regarding what a ''product installed in violation'' includes, specifying, among other things: ''(i) A complete central air conditioning system that is not certified as a complete system that meets the applicable standard. Combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided the combination meets the currently applicable standard. . . . [and] (iii) An outdoor unit that is part of a certified combination rated less than the standard applicable in the region in which it is installed.'' 81 FR 45387, 45393–45394.
- 10 CFR 429.158(a) specifies that if DOE determines a model of outdoor unit fails to meet the applicable regional standard(s) when tested in a combination certified by the same manufacturer, then the outdoor unit basic model will be deemed noncompliant with the regional standard(s). 81 FR 45387, 45397.
- 10 CFR 430.32(c)(3)–(4) provides that any outdoor unit model that has a certified combination with a rating below 14 SEER cannot be installed in either the southern or southwest region. 81 FR 45387, 45391.

The June 2016 TP Final Rule adopted several certification provisions of relevance here, with a focus on the amended energy conservation standards recommended by the ECS WG. In particular, the June 2016 TP Final Rule noted that the ECS WG recommended energy conservation standards for central air conditioners based on coil-only ratings. 81 FR 36992, 37002. (June 8, 2016). The recommended standard levels for split system air conditioners may very well have been higher if they had been based on blower-coil ratings. For example, the recommended standard levels for split system heat pumps, which are based on blower-coil ratings, are approximately one point higher than those for split system air conditioners.

In addition, the ECS WG recommended that DOE implement the requirement that every single-split air conditioner combination distributed in commerce must be rated, and that every single-stage and two-stage condensing (outdoor) unit distributed in commerce (other than a condensing unit for a 1-to-1 mini split) must have at least 1 coil-only rating that is representative of the least efficient coil distributed in commerce with a particular condensing unit. Every condensing unit distributed in commerce must have at least 1 tested combination, and for single-stage and two-stage condensing units (other than condensing units for a 1-to-1 mini split) this must be a coil-only combination. (Docket No. EERE–2014–BT–STD–0048, No. 76, Recommendation #7) In the June 2016 Final Rule, DOE adopted these recommendations along with regional limitations for represented values of individual combinations:

- 10 CFR 429.16(a)(1) contains provisions for required represented values, stating that for single-split system AC with single-stage or two-stage compressor, every individual combination distributed in commerce must be rated as a coil-only combination. For each model of outdoor unit, this must include at least one coil-only value that is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. Additional blower-coil representations are allowed for any applicable individual combinations, if distributed in commerce. 81 FR 36992, 37002.
- 10 CFR 429.16(b)(2)(i) specifies that for each basic model of single-split system AC with single-stage or two-stage compressor, the model of outdoor unit must be tested with a model of coil-only indoor unit. 81 FR 36992, 37002.
- 10 CFR 429.16(a)(4)(i) [as modified in the January 2017 TP Final Rule] states that a basic model may only be certified as compliant with a regional standard if all individual combinations within that basic model meet the

regional standard for which it is certified, and that a model of outdoor unit that is certified below a regional standard can only be rated and certified as compliant with a regional standard if the model of outdoor unit has a unique model number and has been certified as a different basic model for distribution in each region. 81 FR 36992, 37012 [as 10 CFR 429.16(a)(3)(i)]; 82 FR 1426.

DOE notes that the July 2016 Enforcement Final Rule stated that the adopted provisions in 10 CFR 430.32(c)(3)–(4) were meant to be complementary to the regional limitations adopted in the June 2016 TP Final Rule at 10 CFR 429.16(a)(3)(i) [now 10 CFR 429.16(a)(4)(i)]. 81 FR 45387, 45391. In the January 2017 CAC DFR, DOE adopted additional language in 10 CFR 430.32 relevant to the amended standards:

- 10 CFR 430.32(c)(6)(ii) provides that any outdoor unit model that has a certified combination with a rating below the applicable standard level(s) for a region cannot be installed in that region. The least-efficient combination of each basic model must comply with this standard. 82 FR 1786, 1857.

Finally, DOE notes that the general enforcement provisions in Subpart C to part 429 also apply to CAC standards (both national and regional), including:

- 10 CFR 429.102(a)(1), specifying that the failure of a manufacturer to properly certify covered products in accordance with 10 CFR 429.12 and 429.14 through 429.62 is a prohibited act subject to enforcement action.

Taken together, the regional standards, certification, and enforcement provisions require that, in order to comply with a regional standard, the least efficient combination of each basic model must comply. 10 CFR 430.32(c)(6)(ii). Further, each basic model of single-split system AC with single-stage or two-stage compressor must include a represented value for a coil-only combination representative of the least efficient combination distributed in commerce with the model of outdoor unit, and each model of outdoor unit must be tested with a model of coil-only indoor unit. (10 CFR 429.16(a)(1) and 429.16(b)(2)(i)). While manufacturers can create a regional-specific basic model under 10 CFR 429.16(a)(4)(i), such a basic model must still be certified properly according to the other provisions in that section. As such, in order to comply with a regional standard, a regional-specific basic model of single-split system AC with single-stage or two-stage compressor must include at least one coil-only combination that complies with the regional standard. Failure to certify a regional-specific basic model according to the provisions in 10 CFR 429.16(a)(1) and 429.16(b)(2)(i) is a prohibited act under 10 CFR 429.102(a)(1).

Similarly, while 10 CFR 429.102(c)(4)(i) states that combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided the combination meets the currently applicable standard. The provision at 10 CFR 429.102(c)(4)(i) was designed to allow sell-through of inventory that manufacturers had discontinued for reasons other than non-compliance with a regional standard. 81 FR 45387, 45393. It was not intended, nor in the light of all other provisions can it be read, as allowing installation of models of outdoor unit that do not comply with the applicable regional standard at the time of installation (*i.e.,* have no combinations of coil-only units that comply with the amended regional standards, which, as stated previously, were developed based on coil-only ratings).

Based on this background, the CAC regional guidance states in part:

In general, a basic model may be certified as compliant with a regional standard (and, as of January 1, 2023, meets the applicable amended regional standard) only if all individual combinations within that basic model meet the regional standard for which it is certified. All individual model combinations within a basic model must include, for single-split-system AC with single-stage or two-stage compressor (including space-constrained and SDHV systems), a coil-only combination representative of the least-efficient combination in which the specific outdoor unit is distributed in commerce. *See* 10 CFR 429.16(a)(1); 429.16(a)(4)(i); 430.32(c)(6).

A manufacturer may sell an outdoor unit of identical design in the SE and SW regions, if the manufacturer separates the basic model (*i.e.* outdoor unit model) into different basic models with unique model numbers for distribution in each region, provided that the basic models for the SE and SW regions: (1) Do not include any individual combinations that are not compliant with the regional standard applicable at the time of installation; and (2) include at least one coil-only combination that is representative of the least-efficient combination in which the specific outdoor unit is distributed in commerce. *Id.*

DOE notes that the install-through provisions in 10 CFR 429.102(c)(4)(i) allows existing stock of discontinued basic model combinations to be installed in the SE or SW regions as long as they were previously validly certified as compliant to the regional standards applicable at the time of installation. DOE further notes that the term ''previously validly certified'' means that all combinations within the basic model must show compliance with the regional standard applicable at the time of installation, including, for single-split-system AC with single-stage or two-stage compressor (including space-constrained and SDHV systems), a coil-only combination representative of the least-efficient combination in which the specific outdoor unit is distributed in commerce, in order for the install-through provisions to apply.

DOE proposes to add additional direction to the regulatory text in 10 CFR 429.16(a)(1) and (a)(4)(i), 10 CFR 429.102(c)(4)(i) and (iii), and 10 CFR 430.32(c)(6)(ii) to more explicitly cross-reference the existing regulatory text to clarify the interplay of the existing requirements and reinforce the guidance.

In addition, DOE notes that the table in 10 CFR 429.16(a)(1) states that the required coil-only value must be ''representative of the least efficient combination *distributed in commerce with that particular model of outdoor unit*'' (emphasis added). Sections 429.140 through 429.158 provide enforcement procedures specific to regional standards, 10 CFR 429.142 includes records retention of information regarding sales of outdoor units, indoor units, and single-package units, and 10 CFR 429.144 specifies requirements for records requests. When determining if a model of indoor unit is distributed in commerce with a particular model of outdoor unit, DOE may review catalogs, product literature, installation instructions, and advertisements, and may also request sales records.

Finally, 10 CFR 429.158 discusses products determined noncompliant with regional standards. Paragraphs (a) and (b) cross-reference 10 CFR 429.102(c), stating that the certifying manufacturer is liable for distribution of noncompliant units in commerce. DOE notes that 10 CFR 429.102(c) refers to distributors, contractors, and dealers, while 10 CFR 429.102(a)(10) states that it is prohibited ''for any manufacturer or private labeler to knowingly sell a product to a distributor, contractor, or dealer with knowledge that the entity routinely violates any regional standard applicable to the product.'' Therefore, DOE proposes that 10 CFR 429.158(a)–(b) cross-reference 10 CFR 429.102(a)(10) rather than 10 CFR 429.102(c).

DOE requests comment on its proposals to the regulatory text in 10 CFR part 429, and in particular, whether they clarify the requirements and align with DOE's issued guidance or whether additional clarification is needed.

E. Test Procedure Costs and Impact

As discussed, DOE's existing test procedures for CAC/HPs appear at appendix M and appendix M1 (both titled ''Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps''). In this NOPR, DOE proposes to amend the existing test procedure for CACs and HPs to provide additional detail and instruction to ensure the representativeness of the test procedure and to reduce potential burden. As discussed, DOE is proposing limited amendments to appendix M1, which is the required test procedure beginning January 1, 2023.

DOE has tentatively determined that the proposed amendments in this NOPR would improve the representativeness, accuracy, and reproducibility of the test results, and they would not be unduly burdensome for manufacturers to conduct or result in increased testing cost as compared to the current test procedure.

The proposed amendment to the wet bulb temperature maximum for the 5 °F ambient temperature condition, discussed in section III.C.2, would amend the condition from 3 °F to 4 °F. This change is proposed based, in part, on feedback from manufacturers that the proposed change to 4 °F would be easier to achieve than 3 °F. As such, DOE does not anticipate that this provision would increase the burden of conducting testing under appendix M1.

With regards to the additional test procedure proposals introduced in sections III.B and III.C of this NOPR, DOE does not believe that these will cause manufacturers to incur any additional test procedure costs. The proposals to (a) define revised fan wattages for low-stage testing of two-stage coil-only units, and (b) revise the equations for full-capacity operation of variable-speed heat pumps at and above 45 °F affect calculations rather than testing. The proposals for variable-speed coil-only air conditioners and heat pumps provide instructions for testing such models that are currently the subject of test procedure waivers. The proposals to (a) revise text regarding variation of fan speed with ambient temperature, (b) explicitly indicate that the airflow measurement apparatus fan should be adjusted to maintain constant airflow for certain models, and (c) clarify that the instructions on a label affixed to the unit take precedence over the instructions shipped with the unit provide additional instruction to improve consistency of testing but would not increase either the number of tests or the duration of tests. Finally, the proposed changes in 10 CFR part 429 neither modify the test procedure nor increase the number of units that would be required to be tested. Thus, DOE does not anticipate these additional procedures would cause any increased test procedure costs.

F. Compliance Date and Waivers

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6293(c)(2))

If DOE were to publish an amended test procedure 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.*)

Upon the compliance date of test procedure provisions of an amended test procedure, should DOE issue a such an amendment, any waivers that had been previously issued and are in effect that pertain to issues addressed by such provisions are terminated. 10 CFR 430.27(h)(3). Recipients of any such waivers would be required to test the products subject to the waiver according to the amended test procedure as of the compliance date of the amended test procedure. The amendments proposed in this document pertain to issues addressed by waivers granted to GD Midea Heating and Ventilating Equipment Co., (83 FR 56065, Case No. 2017–013), and TCL AC (84 FR 11941, Case No. 2018–009); and interim waivers granted to Aerosys (83 FR 24762, Case No. 2017–008), LG Electronics (85 FR 40272, Case No. 2019–008), and Goodman (86 FR 40534, Case No. 2021–001). To the extent such waivers and interim waivers permit the petitioner to test according to an alternate test procedure to appendix M, such waivers and interim waivers will terminate on the date testing is required according to appendix M1 (*i.e.,* January 1, 2023), independent of this rulemaking. To the extent that such waivers and interim waivers permit the petitioner to test according to an alternate test procedure to appendix M1 at such time as testing is required according to appendix M1, such waivers and interim waivers would terminate on January 1, 2023, if the amendments in this NOPR are adopted as proposed.

DOE notes that the waiver issued to Johnson Controls (83 FR 12735, Case No. CAC–051; 84 FR 52489, Case No. CAC–050) and interim waiver granted to National Comfort Products (83 FR 24754, Case No. 2017–008) will terminate on January 1, 2023, the date beginning which testing according to appendix M1 is required, independent of this NOPR.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Order 12866

The Office of Management and Budget (''OMB'') has determined that 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 an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed 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.*

DOE reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. DOE certifies that the proposed rule, if adopted, would not have significant economic impact on a substantial number of small entities.

The factual basis of this certification is set forth in the following paragraphs.

Under 42 U.S.C. 6293, the statute sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered products. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use and not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

DOE is proposing a limited number of amendments to the test procedure for central air conditioners and heat pumps (''CAC/HPs'') to address specific issues that have been raised in test procedure waivers regarding appendix M1 to subpart B of 10 CFR part 430.

In this NOPR, DOE proposes the following updates to the test procedure for CACs/HPs:

1. Update default fan power for coil-only CACs and HPs that can utilize different fan speeds and the 75% intermediate airflow.
2. Define ''Communicating Variable-speed Coil-only Central Air Conditioner or Heat Pump'' and prescribing an appropriate test procedure.
3. Add the control system capability to adjust air volume rate as a function of outdoor air temperature for blower coil systems with multiple-speed or variable-speed indoor fans.
4. Amend the wet bulb test condition for the 5 °F dry, outdoor ambient test to have a 4 °F maximum.
5. Add direction to prioritize the instructions presented in the label attached to the unit over the instructions included in the installation instructions shipped with the unit.
6. Add specific instruction to adjust the exhaust fan speed to achieve a constant cooling full-load air volume rate through the airflow measurement apparatus.
7. Revise the equations representing full-capacity performance of variable-speed heat pumps for the temperature range above 45 °F to be more consistent with field operation.
8. Providing additional direction regarding the regional standard requirements in 10 CFR part 429.

For manufacturers of CACs/HPs, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. See 13 CFR part 121. The equipment covered by this rule is classified under North American Industry Classification System (''NAICS'') code 333415,[21] ''Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing.'' In 13 CFR 121.201, the SBA sets a threshold of 1,250 employees or fewer for an entity to be considered as a small business for this category. DOE identified manufacturers using DOE's Compliance Certification Database (''CCD''),[22] the AHRI database,[23] the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS''),[24] the ENERGY STAR Product Finder database,[25] and the prior CAC/HP rulemakings. DOE used the publicly available information and subscription-based market research tools (*e.g.,* reports from Dun & Bradstreet[26]) to identify 33 original equipment manufacturers (''OEMs'') of the covered equipment. Of the 33 OEMs, DOE identified eight domestic manufacturers of CACs/HPs that meet the SBA definition of a ''small business.''

This NOPR proposes amendments to the test procedure for CAC/HP for which compliance is not required until January 1, 2023. As discussed in more detail in section III.E of this document, DOE has initially determined that the proposed amendments to the test procedure would not require retesting or re-rating, with the potential exception of variable-speed coil-only units. While DOE believes the variable-speed coil-only units will be isolated to a very small fraction of models distributed in commerce (*i.e.,* less than 1 percent based on manufacturer representations in DOE's current Compliance Management Database), a manufacturer will have need to ensure their representations are made in accordance with these amendments if finalized. DOE notes that none of the variable-speed coil-only basic models certified currently with DOE are manufactured by small manufacturers. Additionally, the test procedure amendments would not result in any change in burden associated the DOE test procedure for CACs/HP. Therefore, DOE initially concludes that the test procedure amendments proposed in this NOPR would not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of an IRFA is not warranted. DOE will transmit the 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). DOE welcomes comment on the Regulatory Flexibility certification conclusion.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of CAC/HP 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 CACs/HPs. (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 NOPR, DOE proposes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for CAC/HP. DOE has determined that this proposed rule falls into a class of actions that are categorically excluded from review under the National

[21] The size standards are listed by NAICS code and industry description and are available at: *www.sba.gov/document/support—table-size-standards* (Last accessed on October 1, 2021).

[22] DOE's Compliance Certification Database is available at: *www.regulations.doe.gov/ccms* (last accessed October 11, 2021).

[23] The AHRI Database is available at: *www.ahridirectory.org/* (last accessed October 1, 2021).

[24] California Energy Commission's MAEDbS is available at *cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx* (last accessed October 1, 2021).

[25] The ENERGY STAR Product Finder database is available at *energystar.gov/productfinder/* (last accessed September 22, 2021).

[26] *app.dnbhoovers.com.*

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 (Aug. 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 has examined this proposed rule and has determined that it 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. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this proposed 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 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, the proposed 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 proposed regulatory action likely to result 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 proposed 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 proposed rule would 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 proposed regulation would 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 *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%.pdf.* DOE has reviewed this proposed 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 proposed 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 proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

The proposed regulatory action to amend the test procedure for measuring the energy efficiency of CAC/HPs 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 proposed modifications to the test procedure for CACs/HPs would maintain the incorporation of testing methods contained in certain sections of the following commercial standards: ANSI/AHRI 210/240–2008 with Addenda 1 and 2, (''AHRI 210/240–2008''): 2008 Standard for Performance Rating of Unitary Air-Conditioning & Air-Source Heat Pump Equipment, ANSI approved October 27, 2011; ANSI/AHRI 1230–2010 with Addendum 2, (''AHRI 1230–2010''): 2010 Standard for Performance Rating of Variable Refrigerant Flow (VRF) Multi-Split Air-Conditioning and Heat Pump Equipment, ANSI approved August 2, 2010; ANSI/ASHRAE 23.1–2010, (''ASHRAE 23.1–2010''): Methods of Testing for Rating the Performance of Positive Displacement Refrigerant Compressors and Condensing Units that Operate at Subcritical Temperatures of the Refrigerant, ANSI approved January 28, 2010; ANSI/ASHRAE Standard 37–2009, (''ANSI/ASHRAE 37–2009''), Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009; ANSI/ASHRAE 41.1–2013, (''ANSI/ASHRAE 41.1–2013''): Standard Method for Temperature Measurement, ANSI approved January 30, 2013; ANSI/ASHRAE 41.6–2014, (''ASHRAE 41.6–2014''): Standard Method for Humidity Measurement, ANSI approved July 3, 2014; ANSI/ASHRAE 41.9–2011, (''ASHRAE 41.9–2011''): Standard Methods for Volatile-Refrigerant Mass Flow Measurements Using Calorimeters, ANSI approved February 3, 2011; ANSI/ASHRAE 116–2010, (''ASHRAE 116–2010''): Methods of Testing for Rating Seasonal Efficiency of Unitary Air Conditioners and Heat Pumps, ANSI approved February 24, 2010; ANSI/ASHRAE 41.2–1987 (Reaffirmed 1992), (''ASHRAE 41.2–1987 (RA 1992)''): ''Standard Methods for Laboratory Airflow Measurement'', ANSI approved April 20, 1992; and ANSI/AMCA 210–2007, ANSI/ASHRAE 51–2007, (''AMCA 210–2007'') Laboratory Methods of Testing Fans for Certified Aerodynamic Performance Rating, ANSI approved August 17, 2007.

DOE has evaluated these standards and is unable to conclude whether they fully comply 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 will consult with both the Attorney General and the Chairman of the FTC concerning the impact of these test procedures on competition, prior to prescribing a final rule.

M. Description of Materials Incorporated by Reference

The following standard was previously approved for incorporation by reference in appendix M1 where it appears and no change is proposed:

ANSI/ASHRAE Standard 37–2009, Methods of Testing for Rating Electrically Driven Unitary Air-Conditioning and Heat Pump Equipment, ANSI approved June 25, 2009;

V. Public Participation

A. Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule no later than the date provided in the **DATES** section at the beginning of this proposed rule.[27] Interested parties may submit comments using any of the methods described in the **ADDRESSES** section at the beginning of this document.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE Building Technologies staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade

[27] DOE has historically provided a 75-day comment period for test procedure NOPRs pursuant to the North American Free Trade Agreement, U.S.-Canada-Mexico (''NAFTA''), Dec. 17, 1992, 32 I.L.M. 289 (1993); the North American Free Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 2057 (1993) (codified as amended at 10 U.S.C.A. 2576) (1993) (''NAFTA Implementation Act''); and Executive Order 12889, ''Implementation of the North American Free Trade Agreement,'' 58 FR 69681 (Dec. 30, 1993). However, on July 1, 2020, the Agreement between the United States of America, the United Mexican States, and the United Canadian States (''USMCA''), Nov. 30, 2018, 134 Stat. 11 (*i.e.,* the successor to NAFTA), went into effect, and Congress's action in replacing NAFTA through the USMCA Implementation Act, 19 U.S.C. 4501 *et seq.* (2020), implies the repeal of E.O. 12889 and its 75-day comment period requirement for technical regulations. Thus, the controlling laws are EPCA and the USMCA Implementation Act. Consistent with EPCA's public comment period requirements for consumer products, the USMCA only requires a minimum comment period of 60 days. Consequently, DOE now provides a 60-day public comment period for test procedure NOPRs.

secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (''CBI'')). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email. Comments and documents submitted via email also will be posted to *www.regulations.gov.* If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information on a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments.

Include contact information each time you submit comments, data, documents, and other information to DOE. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, written in English and free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: One copy of the document marked confidential including all the information believed to be confidential, and one copy of the document marked non-confidential with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

B. Issues on Which DOE Seeks Comment

Although DOE welcomes comments on any aspect of this proposal, DOE is particularly interested in receiving comments and views of interested parties concerning the following issues:

(1) DOE requests comment on its proposal to specify a reduced default fan power coefficient and default fan heat coefficient at part-load airflows in the calculations of SEER2 and HSPF2 for ducted two-stage coil-only systems. DOE requests comment on the specific default fan power coefficients and default fan heat coefficients proposed. If the proposed values are not appropriate, DOE seeks data to support selection of alternative values. Additionally, DOE requests comment on whether a single default fan power coefficient (and default fan heat coefficient) should be used for each product class group regardless of the actual air volume rate used for low-stage tests, or whether one of the alternative approaches discussed in the NOPR should be considered, or any other alternative. If an alternative approach should be used, DOE requests details indicating how such an alternative should be implemented, and justification for its use rather than the proposed approach. See section III.B.1.

(2) DOE requests comment on its proposals related to test procedures for variable-speed coil-only CAC/HPs and on its proposed definitions for variable-speed communicating and non-communicating coil-only CAC/HPs. See section III.B.2.

(3) DOE requests comment on its proposal to clarify the language for required represented values of coil-only CACs found in the table at 10 CFR 429.16(a)(1). See section III.B.3.

(4) DOE requests comment on its planned approach to require the coil-only rating requirement for space-constrained air conditioners and heat pumps. DOE requests shipment and/or installation data for space-constrained systems to clarify the characteristics of representative installations. See section III.B.3.

(5) DOE requests comments on its proposal to add language clarifying how to implement variation of blower speed for different ambient temperature test conditions. See section III.C.1.

(6) DOE seeks comment on its proposal to amend the wet bulb temperature condition for the H4 heating tests from the existing 3 °F maximum temperature to a maximum temperature of 4 °F. See section III.C.2.

(7) DOE requests comment on the proposed alignment of the VRF and non-VRF test procedures when it comes to instruction precedence. See section III.C.3.

(8) DOE requests comment on its proposal to add more specific direction to step 7 of sections 3.1.4.1.1, 3.1.4.2, and 3.1.4.4.3. See section III.C.4.

(9) DOE requests comment on the proposed change to the full-capacity performance equations for variable-speed heat pumps in the ambient temperature range above 45 °F, adjusting the equations for capacity and power by the ratio of capacity and power, respectively, associated with H1N and H12 operation. See section III.C.5.

(10) DOE requests comment on its proposals to the regulatory text in 10 CFR part 429. See section III.D.1.

C. Participation in the Webinar

The time and date of the webinar are listed in the **DATES** section at the beginning of this document. If no participants register for the webinar, it will be cancelled.

Webinar registration information, participant instructions, and information about the capabilities available to webinar participants will be published on DOE's website: *https://www1.eere.energy.gov/buildings/appliance_standards/standards.aspx?productid=48&action=viewlive.* Participants are responsible for ensuring their systems are compatible with the webinar software. Procedure for Submitting Prepared General Statements for Distribution. Any person who has an interest in the topics addressed in this notice, or who is representative of a group or class of persons that has an interest in these issues, may request an opportunity to make an oral presentation at the webinar. Such persons may submit to *ApplianceStandardsQuestions@ee.doe.gov.* Persons who wish to speak should include with their request a computer file in WordPerfect, Microsoft Word, PDF, or text (ASCII) file format that briefly describes the nature of their interest in this rulemaking and the

topics they wish to discuss. Such persons should also provide a daytime telephone number where they can be reached.

Persons requesting to speak should briefly describe the nature of their interest in this rulemaking and provide a telephone number for contact. DOE requests persons selected to make an oral presentation to submit an advance copy of their statements at least two weeks before the webinar. At its discretion, DOE may permit persons who cannot supply an advance copy of their statement to participate, if those persons have made advance alternative arrangements with the Building Technologies Office. As necessary, requests to give an oral presentation should ask for such alternative arrangements.

D. Conduct of the Webinar

DOE will designate a DOE official to preside at the webinar/public meeting and may also use a professional facilitator to aid discussion. The meeting will not be a judicial or evidentiary-type public hearing, but DOE will conduct it in accordance with section 336 of EPCA (42 U.S.C. 6306). A court reporter will be present to record the proceedings and prepare a transcript. DOE reserves the right to schedule the order of presentations and to establish the procedures governing the conduct of the webinar/public meeting. There shall not be discussion of proprietary information, costs or prices, market share, or other commercial matters regulated by U.S. anti-trust laws. After the webinar/public meeting and until the end of the comment period, interested parties may submit further comments on the proceedings and any aspect of the rulemaking.

The webinar/public meeting will be conducted in an informal, conference style. DOE will present a summary of the proposals, allow time for prepared general statements by participants, and encourage all interested parties to share their views on issues affecting this rulemaking. Each participant will be allowed to make a general statement (within time limits determined by DOE), before the discussion of specific topics. DOE will permit, as time permits, other participants to comment briefly on any general statements.

At the end of all prepared statements on a topic, DOE will permit participants to clarify their statements briefly. Participants should be prepared to answer questions by DOE and by other participants concerning these issues. DOE representatives may also ask questions of participants concerning other matters relevant to this rulemaking. The official conducting the webinar/public meeting will accept additional comments or questions from those attending, as time permits. The presiding official will announce any further procedural rules or modification of the above procedures that may be needed for the proper conduct of the webinar/public meeting.

A transcript of the webinar/public meeting will be included in the docket, which can be viewed as described in the Docket section at the beginning of this document. In addition, any person may buy a copy of the transcript from the transcribing reporter.

VI. Approval of the Office of the Secretary

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

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

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 February 22, 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 February 24, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE is proposing to amend parts 429 and 430 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.16 is amended by:
■ a. Revising the table 1 to paragraph (a)(1);
■ b. Revising paragraph (a)(4)(i); and
■ c. Revising the table in paragraph (b)(2)(i).

The revisions read as follows:

§ 429.16 Central air conditioners and central air conditioning heat pumps.

(a) * * *
(1) * * *

TABLE 1 TO PARAGRAPH (a)(1)

Category	Equipment subcategory	Required represented values
Single-Package Unit	Single-Package AC (including space-constrained). Single-Package HP (including space-constrained).	Every individual model distributed in commerce.

TABLE 1 TO PARAGRAPH (a)(1)—Continued

Category	Equipment subcategory	Required represented values
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small-Duct, High Velocity Systems (SDHV)).	Every individual combination distributed in commerce. Each model of outdoor unit must include a represented value for at least one coil-only individual combination that is distributed in commerce and which is representative of the least efficient combination distributed in commerce with that particular model of outdoor unit. For that particular model of outdoor unit, additional represented values for coil-only and blower-coil individual combinations are allowed, if distributed in commerce.
	Single-Split System AC with Other Than Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	Every individual combination distributed in commerce, including all coil-only and blower-coil combinations.
	Single-Split-System HP (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	For each model of outdoor unit, at a minimum, a non-ducted ''tested combination.'' For any model of outdoor unit also sold with models of ducted indoor units, a ducted ''tested combination.'' When determining represented values on or after January 1, 2023, the ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (i.e., conventional, mid-static, or low-static). Additional representations are allowed, as described in paragraphs (c)(3)(i) and (c)(3)(ii) of this section, respectively.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For each model of outdoor unit, an SDHV ''tested combination.'' Additional representations are allowed, as described in paragraph (c)(3)(iii) of this section.
Indoor Unit Only Distributed in Commerce by ICM.	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	Every individual combination distributed in commerce.
	Single-Split-System Heat Pump (including Space-Constrained and SDHV).	
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	For a model of indoor unit within each basic model, an SDHV ''tested combination.'' Additional representations are allowed, as described in section (c)(3)(iii) of this section.
Outdoor Unit with no Match		Every model of outdoor unit distributed in commerce (tested with a model of coil-only indoor unit as specified in paragraph (b)(2)(i) of this section).

* * * * *

(4) * * *

(i) *Regional.* A basic model (model of outdoor unit) may only be certified as compliant with a regional standard if all individual combinations within that basic model meet the regional standard for which it is certified, including the coil-only combination as specified in paragraph (a)(1) of this section, as applicable. A model of outdoor unit that is certified below a regional standard can only be rated and certified as compliant with a regional standard if the model of outdoor unit has a unique model number and has been certified as a different basic model for distribution in each region, where the basic model(s) certified as compliant with a regional standard meet the requirements of the first sentence. An ICM cannot certify an individual combination with a rating that is compliant with a regional standard if the individual combination includes a model of outdoor unit that the OUM has certified with a rating that is not compliant with a regional standard. Conversely, an ICM cannot certify an individual combination with a rating that is not compliant with a regional standard if the individual combination includes a model of outdoor unit that an OUM has certified with a rating that is compliant with a regional standard.

* * * * *

(b) * * *

(2) * * *

(i) * * *

TABLE 2 TO PARAGRAPH (B)(2)(I)

Category	Equipment subcategory	Must test:	With:
Single-Package Unit	Single-Package AC (including Space-Constrained).	The individual model with the lowest SEER (when testing in accordance with appendix M to subpart B of part 430) or SEER2 (when testing in accordance with appendix M1 to subpart B of part 430).	N/A.
	Single-Package HP (including Space-Constrained).		

TABLE 2 TO PARAGRAPH (B)(2)(I)—Continued

Category	Equipment subcategory	Must test:	With:
Outdoor Unit and Indoor Unit (Distributed in Commerce by OUM).	Single-Split-System AC with Single-Stage or Two-Stage Compressor (including Space-Constrained and Small- Duct, High Velocity Systems (SDHV)).	The model of outdoor unit	A model of coil-only indoor unit.
	Single-Split-System HP with Single-Stage or Two-Stage Compressor (including Space-Constrained and SDHV).	The model of outdoor unit	A model of indoor unit.
	Single-Split System AC or HP with Other Than Single-Stage or Two-Stage Compressor having a coil-only individual combination (including Space-Constrained and SDHV).	The model of outdoor unit	A model of coil-only indoor unit. If the outdoor unit is distributed in commerce in a non-communicating variable-speed coil-only combination, the tested combination must be non-communicating.
	Single-Split System AC or HP with Other Than Single-Stage or Two-Stage Compressor without a coil-only individual combination (including Space-Constrained and SDHV).	The model of outdoor unit	A model of indoor unit.
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—non-SDHV (including Space-Constrained).	The model of outdoor unit	At a minimum, a ''tested combination'' composed entirely of non-ducted indoor units. For any models of outdoor units also sold with models of ducted indoor units, test a second ''tested combination'' composed entirely of ducted indoor units (in addition to the non-ducted combination). If testing under appendix M1 to subpart B of part 430, the ducted ''tested combination'' must comprise the highest static variety of ducted indoor unit distributed in commerce (i.e., conventional, mid-static, or low-static).
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	The model of outdoor unit	A ''tested combination'' composed entirely of SDHV indoor units.
Indoor Unit Only (Distributed in Commerce by ICM).	Single-Split-System Air Conditioner (including Space-Constrained and SDHV).	A model of indoor unit	The least efficient model of outdoor unit with which it will be paired where the least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER combination (when testing under appendix M to subpart B of part 430) or SEER2 combination (when testing under appendix M1 to subpart B of part 430) as certified by the OUM. If there are multiple models of outdoor unit with the same lowest SEER (when testing under appendix M to subpart B of part 430) or SEER2 (when testing under appendix M1 to subpart B of part 430) represented value, the ICM may select one for testing purposes.
	Single-Split-System Heat Pump (including Space-Constrained and SDHV).	Nothing, as long as an equivalent air conditioner basic model has been tested. If an equivalent air conditioner basic model has not been tested, must test a model of indoor unit.	

TABLE 2 TO PARAGRAPH (B)(2)(I)—Continued

Category	Equipment subcategory	Must test:	With:
	Multi-Split, Multi-Circuit, or Multi-Head Mini-Split Split System—SDHV.	A model of indoor unit	A ''tested combination'' composed entirely of SDHV indoor units, where the outdoor unit is the least efficient model of outdoor unit with which the SDHV indoor unit will be paired. The least efficient model of outdoor unit is the model of outdoor unit in the lowest SEER combination (when testing under appendix M to subpart B of part 430) or SEER2 combination (when testing under appendix M1 to subpart B of part 430) as certified by the OUM. If there are multiple models of outdoor unit with the same lowest SEER represented value (when testing under appendix M to subpart B of part 430) or SEER2 represented value (when testing under appendix M1 to subpart B of part 430), the ICM may select one for testing purposes.
Outdoor Unit with No Match		The model of outdoor unit	A model of coil-only indoor unit meeting the requirements of section 2.2e of appendix M or M1 to subpart B of part 430.

■ 3. Section 429.102 is amended by revising paragraphs (c)(4)(i) and (iii) to read as follows:

§ 429.102 Prohibited acts subjecting persons to enforcement action.

* * * * *

(c) * * *

(4) * * *

(i) A complete central air conditioning system that is not certified as a complete system that meets the applicable standard. Combinations that were previously validly certified may be installed after the manufacturer has discontinued the combination, provided all combinations within the basic model, including for single-split-system AC with single-stage or two-stage compressor at least one coil-only combination as specified in paragraph (a)(1) of this section, comply with the regional standard applicable at the time of installation.

* * * * *

(iii) An outdoor unit that is part of a certified combination rated less than the standard applicable in the region in which it is installed or, where applicable, an outdoor unit with no certified coil-only combination as specified in paragraph (a)(1) of this section that meets the standard applicable in the region in which it is installed.

§ 429.158 [Amended]

■ 4. Section 429.158 is amended by removing ''§ 429.102(c)'' in paragraphs (a) and (b) and adding in its place ''§ 429.102(b)(10)''.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 6. Section 430.2 is amended by revising the definition for ''Central air conditioner or central air conditioning heat pump'' to read as follows:

§ 430. 2 Definitions.

* * * * *

Central air conditioner or central air conditioning heat pump means a product, other than a packaged terminal air conditioner, packaged terminal heat pump, single-phase single-package vertical air conditioner with cooling capacity less than 65,000 Btu/h, single-phase single-package vertical heat pump with cooling capacity less than 65,000 Btu/h, computer room air conditioner, or unitary dedicated outdoor air system as these equipment categories are defined at 10 CFR 431.92, which is powered by single phase electric current, air cooled, rated below 65,000 Btu per hour, not contained within the same cabinet as a furnace, the rated capacity of which is above 225,000 Btu per hour, and is a heat pump or a cooling unit only. A central air conditioner or central air conditioning heat pump may consist of: A single-package unit; an outdoor unit and one or more indoor units; an indoor unit only; or an outdoor unit with no match. In the case of an indoor unit only or an outdoor unit with no match, the unit must be tested and rated as a system (combination of both an indoor and an outdoor unit). For all central air conditioner and central air conditioning heat pump-related definitions, see appendix M or M1 of subpart B of this part.

* * * * *

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

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

* * * * *

(c) * * *

(6) * * *

(ii) Any model of outdoor unit that has a certified combination with a rating below the applicable standard level(s) for a region cannot be installed in that region. The least-efficient combination of each basic model, which for single-split-system AC with single-stage or

two-stage compressor (including Space-Constrained and Small-Duct High Velocity Systems (SDHV)) must be a coil-only combination, must comply with the applicable standard. See 10 CFR 429.16(a)(1) and (a)(4)(i) of this chapter.

* * * * *

■ 8. Appendix M to subpart B of part 430 is amended by:

■ a. Revising the definition of ''Nominal Capacity'' in section 1.2;

■ b. Revising paragraph a of section 3.6.4;

■ c. Revising section 4.1.4.2;

■ d. Revising the introductory text to section 4.2.3;

■ e. Revising the equation following the word ''Where:'' in section 4.2.3.3; and

■ f. Revising section 4.2.3.4.

The revisions read as follows:

Appendix M to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

* * * * *

1. * * *

1.2 * * *

Nominal Cooling Capacity is approximate to the air conditioner cooling capacity tested at A or A_2 condition. Nominal heating capacity is approximate to the heat pump heating capacity tested in H1N test.

* * * * *

3. * * *

3.6.4 * * *

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_N$ and $H1_1$), one frost accumulation test ($H2_V$), and one low temperature test ($H3_2$). Conducting one or both of the following tests is optional: An additional high temperature test ($H1_2$) and an additional frost accumulation test ($H2_2$). If desired, conduct the optional maximum temperature cyclic ($H0C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. If this optional test is conducted but yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for the eight tests are specified in Table 14. The compressor shall operate at the same heating full speed, measured by RPM or power input frequency (Hz), for the $H1_2$, $H2_2$ and $H3_2$ tests. For a cooling/heating heat pump, the compressor shall operate for the $H1_N$ test at a speed, measured by RPM or power input frequency (Hz), no lower than the speed used in the A_2 test if the tested $H1_N$ heating capacity is less than the tested A_2 cooling capacity. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H1C_1$, and $H1_1$ tests. Determine the heating intermediate compressor speed cited in Table 14 using the heating mode full and minimum compressors speeds and:

$$Heating\ intermediate\ speed = Heating\ minimum\ speed + \frac{Heating\ full\ speed - Heating\ minimum\ speed}{3}$$

Where a tolerance on speed of plus 5 percent or the next higher inverter frequency step from the calculated value is allowed.

* * * * *

4. * * *

4.1.4.2 Unit Operates at an Intermediate Compressor Speed (k=i) In Order To Match the Building Cooling Load at Temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) * \frac{n_j}{N}$$

where:

$\dot{Q}_c^{k=i}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in matching the building load at temperature T_j, Btu/h.

The matching occurs with the unit operating at compressor speed k=i.

$\dot{E}_c^{k=i}(T_j) = \frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)}$, the electrical power input required by the test unit when operating at a compressor speed of k=i and temperature T_j, W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of k=i and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 19. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using,

$$EER^{k=i}(T_j) = A + B * T_j + C * T_j^2.$$

For each unit, determine the coefficients A, B, and C by conducting the following calculations once:

$$A = EER^{k=2}(T_2) - (B * T_2) - (C * T_2^2)$$

$$B = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - D * [EER^{k=1}(T_1) - EER^{k=v}(T_v)]}{T_1 - T_2 - D * (T_1 - T_v)}$$

$$C = \frac{EER^{k=1}(T_1) - EER^{k=2}(T_2) - B * (T_1 - T_2)}{T_1^2 - T_2^2}$$

$$D = \frac{T_2^2 - T_1^2}{T_v^2 - T_1^2}$$

where:

T_1 = the outdoor temperature at which the unit, when operating at minimum compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=1}(T_1) = BL(T_1)$), °F. Determine T_1 by equating Equations 4.1.3–1 and 4.1–2 and solving for outdoor temperature.

T_v = the outdoor temperature at which the unit, when operating at the intermediate compressor speed used during the section 3.2.4 E_v test of this appendix, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=v}(T_v) = BL(T_v)$), °F. Determine T_v by equating Equations 4.1.4–3 and 4.1–2 and solving for outdoor temperature.

T_2 = the outdoor temperature at which the unit, when operating at full compressor speed, provides a space cooling capacity that is equal to the building load ($\dot{Q}_c^{k=2}(T_2) = BL(T_2)$), °F. Determine T_2 by equating Equations 4.1.3–3 and 4.1–2 and solving for outdoor temperature.

$$EER^{k=1}(T_1) = \frac{\dot{Q}_c^{k=1}(T_1)\,[Equation\ 4.1.4-1,\ \ substituting\ T_1\ for\ T_j]}{\dot{E}_c^{k=1}(T_1)\,[Equation\ 4.1.4-2,\ \ substituting\ T_1\ for\ T_j]}, \text{ Btu/h per W}$$

$$EER^{k=v}(T_v) = \frac{\dot{Q}_c^{k=v}(T_v)\,[Equation\ 4.1.4-3,\ \ substituting\ T_v\ for\ T_j]}{\dot{E}_c^{k=v}(T_v)\,[Equation\ 4.1.4-4,\ \ substituting\ T_v\ for\ T_j]}, \text{ Btu/h per W}$$

$$EER^{k=2}(T_2) = \frac{\dot{Q}_c^{k=2}(T_2)\,[Equation\ 4.1.3-3,\ \ substituting\ T_2\ for\ T_j]}{\dot{E}_c^{k=2}(T_2)\,[Equation\ 4.1.3-4,\ \ substituting\ T_2\ for\ T_j]}, \text{ Btu/h per W}$$

* * * * *

4.2 * * *

4.2.3

Additional Steps for Calculating the HSPF of a Heat Pump Having a Two-Capacity Compressor

The calculation of the Equation 4.2–1 quantities differ depending upon whether the heat pump would operate at low capacity (section 4.2.3.1 of this appendix), cycle between low and high capacity (section 4.2.3.2 of this appendix), or operate at high capacity (sections 4.2.3.3 and 4.2.3.4 of this appendix) in responding to the building load. For heat pumps that lock out low capacity operation at low outdoor temperatures, the outdoor temperature at which the unit locks out must be that specified by the manufacturer in the certification report so that the appropriate equations can be selected.

* * * * *

4.2.3.3 Heat Pump Only Operates at High (k=2) Compressor Capacity at Temperature T_j and Its Capacity Is Greater Than the Building Heating Load, $BL(T_j) < \dot{Q}_h^{k=2}(T_j)$

* * * * *

$X^{k=2}(T_j) = BL(T_j)/\dot{Q}_h^{k=2}(T_j)$; and

$PLF_j = 1 - C_D^{h\ (k=2)} * [1 - X^{k=2}(T_j)]$.

* * * * *

4.2.3.4 Heat Pump Must Operate Continuously at High (k=2) Compressor Capacity at Temperature T_j, $BL(T_j) \geq \dot{Q}_h^{k=2}(T_j)$

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j) * \delta'(T_j) * \frac{n_j}{N}$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - [\dot{Q}_h^{k=2}(T_j) * \delta'(T_j)]}{3.413\frac{Btu}{Wh}} * \frac{n_j}{N}$$

where:

$$\delta'(T_j) = \begin{cases} 0, & if\ T_j \le T_{off}\ \ or\ \ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} < 1 \\ \dfrac{1}{2}, & if\ T_{off} < T_j \le T_{on}\ \ and\ \ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \ge 1 \\ 1, & if\ T_j > T_{on}\ \ and\ \ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \ge 1 \end{cases}$$

* * * * *

■ 9. Appendix M1 to subpart B of part 430 is amended by:

■ a. Adding in alphabetical order definitions for ''Variable-speed Communicating Coil-only Central Air Conditioner or Heat Pump'' and ''Variable-speed Non-communicating Coil-only Central Air Conditioner or Heat Pump'' in section 1.2;

■ b. Revising paragraph (B) and the undesignated paragraph following it in section 2;

■ c. Revising section 3.1.2;

■ d. Revising paragraphs a. and b. in section 3.1.4.1.1;

■ e. Revising paragraphs a. and b. and adding paragraph f in section 3.1.4.2:

■ f. Revising paragraph b. and adding paragraph d. in section 3.1.4.3;

■ g. Revising paragraph a. in section 3.1.4.4.3;

■ h. Adding paragraph d. in section 3.1.4.6;

■ i. Revising section 3.1.4.7;

■ j. Revising paragraph a., adding paragraph d., and revising Table 8 in section 3.2.4;

■ k. Revising paragraph d., redesignating paragraph e. as paragraph f., and adding a new paragraph e. in section 3.3;

■ l. Revising the introductory text, redesignating paragraphs a. and b. as c. and d., respectively, adding new paragraphs a. and b., and revising newly redesignated paragraph c. in section 3.5.1;

■ m. Revising Table 11 in section 3.6.1;

■ n. Revising Table 12 in section 3.6.2;

■ o. Revising Table 13 in section 3.6.3

■ p. Revising section 3.6.4 and adding sections 3.6.4.1 and 3.6.4.2.;

■ q. Revising Table 15 in section 3.6.6;

■ r. Revising paragraph c., redesignating paragraphs d. and e. as e. and f., respectively, and adding new paragraph d. in section 3.7;

■ s. Revising paragraph b. in section 3.8;

■ t. Revising paragraph b. in section 3.9.1;

■ u. Revising section 4.1.4;

■ v. Adding sections 4.1.4.2.1 and 4.1.4.2.2;

■ w. Revising the language after ''Table 20'' and before paragraph a., including Equation 4.2–2, in section 4.2;

■ x. Revising the introductory text for section 4.2.3.;

■ y. Revising section 4.2.3.4;

■ z. Revising paragraphs a., b., c., and e., in section 4.2.4;

■ aa. Revising sections 4.2.4.1 and 4.2.4.2; and

■ bb. Removing the language ''and $X^{k=3}(T_j) = X^{k=2}(T_j)$'' and adding in its place ''and $X^{k=3}(T_j) = 1 - X^{k=2}(T_j)$,'' in section 4.2.6.5.

The revisions and additions read as follows:

Appendix M1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Central Air Conditioners and Heat Pumps

* * * * *

1.2 * * *

Variable-speed Communicating Coil-only Central Air Conditioner or Heat Pump means a variable-speed compressor system having a coil-only indoor unit that is installed with a control system that:

(a) Communicates the difference in space temperature and space setpoint temperature (not a setpoint value inferred from on/off thermostat signals) to the control that sets compressor speed;

(b) Provides a signal to the indoor fan to set fan speed appropriate for compressor staging; and

(c) Has installation instructions indicating that the control system having these capabilities must be installed.

* * * * *

Variable-speed Non-communicating Coil-only Central Air Conditioner or Heat Pump means a variable-speed compressor system having a coil-only indoor unit that is does not meet the definition of variable-speed communicating coil-only central air conditioner or heat pump.

* * * * *

2 * * *

(B) For systems other than VRF, only a subset of the sections listed in this test procedure apply when testing and determining represented values for a particular unit. Table 1 shows the sections of the test procedure that apply to each system. This table is meant to assist manufacturers in finding the appropriate sections of the test procedure. Manufacturers are responsible for determining which sections apply to each unit tested based on the model characteristics. The appendix sections provide the specific requirements for testing. To use Table 1, first refer to the sections listed under ''all units''. Then refer to additional requirements based on:

(1) System configuration(s),

(2) The compressor staging or modulation capability, and

(3) Any special features.

Testing requirements for space-constrained products do not differ from similar products that are not space-constrained, and thus space-constrained products are not listed separately in this table. Air conditioners and heat pumps are not listed separately in this table, but heating procedures and calculations apply only to heat pumps.

The ''manufacturer's published instructions,'' as stated in section 8.2 of ASHRAE Standard 37–2009 (incorporated by reference, see § 430.3) and ''manufacturer's installation instructions'' discussed in this appendix mean the manufacturer's installation instructions that come packaged with the unit or appear in the labels applied to the unit. Manufacturer's installation instructions do not include online manuals. Installation instructions that appear in the labels applied to the unit shall take precedence over installation instructions that come packaged with the unit.

* * * * *

3.1.2 Manufacturer-Provided Equipment Overrides

Where needed, the manufacturer must provide a means for overriding the controls of the test unit so that the compressor(s) operates at the specified speed or capacity and the indoor blower operates at the specified speed or delivers the specified air volume rate. For variable-speed non-communicating coil-only air conditioners and heat pumps, the control system shall be provided with a control signal indicating operation at high or low stage, rather than testing with the compressor speed fixed at specific speeds, with the exception that compressor speed override may be used for heating mode test $H1_2$.

* * * * *

3.1.4.1.1 * * *

a. For all ducted blower coil systems, except those having a constant-air-volume-rate indoor blower:

Step (1) Operate the unit under conditions specified for the A test (for single-stage units) or A_2 test (for non-single-stage units) using the certified fan speed or controls settings, and adjust the exhaust fan of the airflow

measuring apparatus to achieve the certified Cooling full-load air volume rate;

Step (2) Measure the external static pressure;

Step (3) If this external static pressure is equal to or greater than the applicable minimum external static pressure cited in Table 4, the pressure requirement is satisfied; proceed to step 7 of this section. If this external static pressure is not equal to or greater than the applicable minimum external static pressure cited in Table 4, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until the first to occur of:

(i) The applicable Table 4 minimum is equaled or

(ii) The measured air volume rate equals 90 percent or less of the Cooling full-load air volume rate;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.,* next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning above, at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until the applicable Table 4 minimum is equaled; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the Cooling full-load air volume rate. Use the final indoor fan speed or control settings of the unit under test for all tests that use the Cooling full-load air volume rate. Adjust the fan of the airflow measurement apparatus if needed to obtain the same full-load air volume rate (in scfm) for all such tests, unless the system modulates indoor blower speed with outdoor dry bulb temperature or to adjust the sensible to total cooling capacity ratio—in this case, use an air volume rate that represents a normal installation and calculate the target external static pressure as described in section 3.1.4.2 of this appendix.

b. For ducted blower coil systems with a constant-air-volume-rate indoor blower. For all tests that specify the Cooling full-load air volume rate, obtain an external static pressure as close to (but not less than) the applicable Table 4 value that does not cause either automatic shutdown of the indoor blower or a value of air volume rate variation Q_{Var}, defined as follows, that is greater than 10 percent.

$$Q_{var} = \left[\frac{Q_{max} - Q_{min}}{\left(\frac{Q_{max} + Q_{min}}{2}\right)}\right] * 100$$

Where:

Q_{max} = maximum measured airflow value
Q_{min} = minimum measured airflow value
Q_{Var} = airflow variance, percent

Additional test steps as described in section 3.3.f of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

* * * * *

3.1.4.2 * * *

a. For a ducted blower coil system without a constant-air-volume indoor blower, adjust for external static pressure as follows:

Step (1) Operate the unit under conditions specified for the B_1 test using the certified fan speed or controls settings, and adjust the exhaust fan of the airflow measuring apparatus to achieve the certified cooling minimum air volume rate;

Step (2) Measure the external static pressure;

Step (3) If this pressure is equal to or greater than the minimum external static pressure computed above, the pressure requirement is satisfied; proceed to step 7 of this section. If this pressure is not equal to or greater than the minimum external static pressure computed above, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either:

(i) The pressure is equal to the minimum external static pressure, ΔP_{st_i}, computed above or

(ii) The measured air volume rate equals 90 percent or less of the cooling minimum air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.,* next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning above, at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until it equals the minimum external static pressure computed above; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the cooling minimum air volume rate. Use the final indoor fan speed or control settings of the unit under test for all tests that use the cooling minimum air volume rate. Adjust the fan of the airflow measurement apparatus if needed to obtain the same cooling minimum air volume rate (in scfm) for all such tests, unless the system modulates the indoor blower speed with outdoor dry bulb temperature or to adjust the sensible to total cooling capacity ratio—in this case, use an air volume rate that represents a normal installation and calculate the target minimum external static pressure as described in this section 3.1.4.2.

b. For ducted units with constant-air-volume indoor blowers, conduct all tests that specify the cooling minimum air volume rate—(*i.e.,* the A_1, B_1, C_1, F_1, and G_1 Tests)—at an external static pressure that does not cause either an automatic shutdown of the indoor blower or a value of air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, that is greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.3.f of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

* * * * *

f. For ducted variable-speed compressor systems tested with a coil-only indoor unit, the cooling minimum air volume rate is the higher of:

(1) The rate specified by the installation instructions included with the unit by the manufacturer; or

(2) 75 percent of the cooling full-load air volume rate. During the laboratory tests on a coil-only (fanless) system, obtain this cooling minimum air volume rate regardless of the pressure drop across the indoor coil assembly.

* * * * *

3.1.4.3 * * *

b. For a ducted blower coil system with a constant-air-volume indoor blower, conduct the E_V Test at an external static pressure that does not cause either an automatic shutdown of the indoor blower or a value of air volume rate variation Q_{Var}, defined in section 3.1.4.1.1.b of this appendix, that is greater than 10 percent, while being as close to, but not less than the target minimum external static pressure. Additional test steps as described in section 3.3.f of this appendix are required if the measured external static pressure exceeds the target value by more than 0.03 inches of water.

* * * * *

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the cooling minimum air volume rate as determined in section 3.1.4.2(f) of this appendix, without regard to the pressure drop across the indoor coil assembly.

* * * * *

3.1.4.4.3 * * *

a. For all ducted heating-only blower coil system heat pumps, except those having a constant-air-volume-rate indoor blower: Conduct the following steps only during the first test, the H1 or $H1_2$ test:

Step (1) Adjust the exhaust fan of the airflow measuring apparatus to achieve the certified heating full-load air volume rate.

Step (2) Measure the external static pressure.

Step (3) If this pressure is equal to or greater than the Table 4 minimum external static pressure that applies given the heating-only heat pump's rated heating capacity, the pressure requirement is satisfied; proceed to step 7 of this section. If this pressure is not equal to or greater than the applicable Table 4 minimum external static pressure, proceed to step 4 of this section;

Step (4) Increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until either:

(i) The pressure is equal to the applicable Table 4 minimum external static pressure; or

(ii) The measured air volume rate equals 90 percent or less of the heating full-load air volume rate, whichever occurs first;

Step (5) If the conditions of step 4 (i) of this section occur first, the pressure requirement is satisfied; proceed to step 7 of this section. If the conditions of step 4 (ii) of this section occur first, proceed to step 6 of this section;

Step (6) Make an incremental change to the setup of the indoor blower (*e.g.,* next highest fan motor pin setting, next highest fan motor speed) and repeat the evaluation process beginning above, at step 1 of this section. If the indoor blower setup cannot be further changed, increase the external static pressure by adjusting the exhaust fan of the airflow measuring apparatus until it equals the applicable Table 4 minimum external static pressure; proceed to step 7 of this section;

Step (7) The airflow constraints have been satisfied. Use the measured air volume rate as the heating full-load air volume rate. Use the final indoor fan speed or control settings of the unit under test for all tests that use the heating full-load air volume rate. Adjust the fan of the airflow measurement apparatus if needed to obtain the same heating full-load air volume rate (in scfm) for all such tests, unless the system modulates indoor blower speed with outdoor dry bulb temperature—in this case, use an air volume rate that represents a normal installation and calculate the target minimum external static pressure as described in section 3.1.4.2 of this appendix.

* * * * *

3.1.4.6 * * *

d. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the heating minimum air volume rate, which (as specified in section 3.1.4.5.1.a.(3) of this appendix) is equal to the cooling minimum air volume rate, without regard to the pressure drop across the indoor coil assembly.

* * * * *

3.1.4.7 Heating Nominal Air Volume Rate

The manufacturer must specify the heating nominal air volume rate and the instructions for setting fan speed or controls. Calculate target minimum external static pressure as described in section 3.1.4.2 of this appendix. Make adjustments as described in section 3.1.4.6 of this appendix for heating intermediate air volume rate so that the target minimum external static pressure is met or exceeded. For ducted variable-speed compressor systems tested with a coil-only indoor unit, use the heating full-load air volume rate as the heating nominal air volume rate.

* * * * *

3.2.4 * * *

a. Conduct five steady-state wet coil tests: The A_2, E_V, B_2, B_1, and F_1 Tests (the E_V test is not applicable for variable speed non-communicating coil-only air conditioners and heat pumps). Use the two optional dry-coil tests, the steady-state G_1 Test and the cyclic I_1 Test, to determine the cooling mode cyclic degradation coefficient, $C_D{}^c$. If the two optional tests are conducted and yield a tested $C_D{}^c$ that exceeds the default $C_D{}^c$ or if the two optional tests are not conducted, assign $C_D{}^c$ the default value of 0.25. Table 8 specifies test conditions for these seven tests. The compressor shall operate at the same cooling full speed, measured by RPM or power input frequency (Hz), for both the A_2 and B_2 tests. The compressor shall operate at the same cooling minimum speed, measured by RPM or power input frequency (Hz), for the B_1, F_1, G_1, and I_1 tests. Determine the cooling intermediate compressor speed cited in Table 8, as required, using:

$$\text{Cooling intermediate speed} = \text{Cooling minimum speed} + \frac{\text{Cooling full speed} - \text{Cooling minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

* * * * *

d. For variable-speed non-communicating coil-only air conditioners and heat pumps, the manufacturer-provided equipment overrides for full and minimum compressor speed described in section 3.1.2 of appendix M1 shall be limited to two stages of digital on/off control.

TABLE 8—COOLING MODE TEST CONDITION FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Cooling air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
A_2 Test—required (steady, wet coil).	80	67	95	[1] 75	Cooling Full	[2] Cooling Full-Load.
B_2 Test—required (steady, wet coil).	80	67	82	[1] 65	Cooling Full	[2] Cooling Full-Load.
E_V Test—required [7] (steady, wet coil).	80	67	87	[1] 69	Cooling Intermediate.	[3] Cooling Intermediate.
B_1 Test—required (steady, wet coil).	80	67	82	[1] 65	Cooling Minimum ...	[4] Cooling Minimum.
F_1 Test—required (steady, wet coil).	80	67	67	[1] 53.5	Cooling Minimum ...	[4] Cooling Minimum.
G_1 Test [5]—optional (steady, dry-coil).	80	([6])	67	.....	Cooling Minimum ...	[4] Cooling Minimum.
I_1 Test [5]—optional (cyclic, dry-coil).	80	([6])	67	.....	Cooling Minimum ...	([6])

[1] The specified test condition only applies if the unit rejects condensate to the outdoor coil.
[2] Defined in section 3.1.4.1 of this appendix.
[3] Defined in section 3.1.4.3 of this appendix.
[4] Defined in section 3.1.4.2 of this appendix.
[5] The entering air must have a low enough moisture content so no condensate forms on the indoor coil. DOE recommends using an indoor air wet bulb temperature of 57 °F or less.
[6] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure difference or velocity pressure as measured during the G_1 Test.
[7] The E_V test is not applicable for variable-speed non-communicating coil-only air conditioners and heat pumps.

* * * * *

3.3 * * *

d. For mobile home and space-constrained ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state wet coil tests that specify the cooling minimum air volume rate or cooling intermediate air volume rate (*i.e.,* the A_1, B_1, E_V, and F_1 tests) and for which the minimum or intermediate air volume rate is 75 percent of the cooling full-load air volume rate:

$$\text{decrease } Q_c{}^k(T) \text{ by: } \frac{1130\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_c{}^k(T) \text{ by: } \frac{331\ W}{1000\ scfm} * \dot{V}_S$$

(2) For two-stage or variable-speed systems, for all steady-state wet coil tests that specify the cooling full-load air volume rate (*i.e.,* the A_2 and B_2 tests) or tests using a minimum or intermediate air volume rate that is greater than 75 percent of the cooling full-load air volume rate:

decrease $Q_c{}^k(T)$ by: $\frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{406\ W}{1000\ scfm} * \dot{V}_S$

(3) For single-stage systems, for all steady-state wet coil tests (*i.e.,* the A and B tests) –

decrease $Q_c{}^k(T)$ by: $\frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{406\ W}{1000\ scfm} * \dot{V}_S$

where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

e. For non-mobile, non-space-constrained home ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state wet coil tests that specify the cooling minimum air volume rate or cooling intermediate air volume rate (*i.e.,* the A_1, B_1, E_V, and F_1 tests) and for which the minimum or intermediate air volume rate is 75 percent of the cooling full-load air volume rate:

decrease $Q_c{}^k(T)$ by: $\frac{1228\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{360\ W}{1000\ scfm} * \dot{V}_S$

(2) For two-stage or variable-speed systems, for all steady-state wet coil tests that specify the cooling full-load air volume rate (*i.e.,* the A_2 and B_2 tests) or tests using a minimum or intermediate air volume rate that is greater than 75 percent of the cooling full-load air volume rate:

decrease $Q_c{}^k(T)$ by: $\frac{1505\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{441\ W}{1000\ scfm} * \dot{V}_S$

(3) For single-stage systems, for all steady-state wet coil tests (*i.e.,* the A and B tests) –

decrease $Q_c{}^k(T)$ by: $\frac{1505\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{441\ W}{1000\ scfm} * \dot{V}_S$

where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

TABLE 9—TEST OPERATING AND TEST CONDITION TOLERANCES FOR SECTION 3.3 STEADY-STATE WET COIL COOLING MODE TESTS AND SECTION 3.4 DRY COIL COOLING MODE TESTS

	Test operating tolerance [1]	Test condition tolerance [1]
Indoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	2.0	.....
Indoor wet-bulb, °F:		
Entering temperature	1.0	[2] 0.3
Leaving temperature	[2] 1.0	.....
Outdoor dry-bulb, °F:		
Entering temperature	2.0	0.5
Leaving temperature	[3] 2.0	.....
Outdoor wet-bulb, °F:		
Entering temperature	1.0	[4] 0.3
Leaving temperature	[3] 1.0	.....
External resistance to airflow, inches of water	0.05	[5] 0.02
Electrical voltage, % of reading	2.0	1.5
Nozzle pressure drop, % of reading	2.0	.....

[1] See section 1.2 of this appendix, Definitions.
[2] Only applies during wet coil tests; does not apply during steady-state, dry coil cooling mode tests.
[3] Only applies when using the outdoor air enthalpy method.
[4] Only applies during wet coil cooling mode tests where the unit rejects condensate to the outdoor coil.
[5] Only applies when testing non-ducted units.

* * * * *

3.5.1 * * *

The automatic controls that are installed in the test unit must govern the OFF/ON cycling of the air moving equipment on the indoor side (*i.e.* the exhaust fan of the airflow measuring apparatus and the indoor blower of the test unit). For ducted coil-only systems rated based on using a fan time-delay relay, control the indoor coil airflow according to the OFF delay listed by the manufacturer in the certification report. For ducted units having a variable-speed indoor blower that has been disabled (and possibly removed), start and stop the indoor airflow at the same instances as if the fan were enabled. For all other ducted coil-only systems, cycle the indoor coil airflow in unison with the cycling of the compressor. If air damper boxes are used, close them on the inlet and outlet side during the OFF period. Airflow through the indoor coil should stop within 3 seconds after the automatic controls of the test unit de-energize (or if the airflow system has been disabled (and possibly removed), within 3 seconds after the automatic controls of the test unit *would have* de-energized) the indoor blower.

a. For mobile home and space-constrained ducted coil-only systems,

(1) For two-stage or variable-speed systems, for all cyclic dry-coil tests that specify the cooling minimum air volume rate (*i.e.,* the D_1 and I_1 tests) and for which the minimum air volume rate is 75 percent of the cooling full-load air volume rate, increase $e_{cyc,dry}$ by the quantity,

Equation 3.5-2. $\frac{331W}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$

and increase $q_{cyc,dry}$ by the quantity,

Equation 3.5-3. $\frac{1130\,Btu/h}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$

where $\dot{V}_S$ is the average indoor air volume rate from the section 3.4 dry coil steady-state test and is expressed in units of cubic feet per minute of standard air (scfm).

(2) For two-stage or variable-speed systems, for all cyclic dry-coil tests that specify the cooling full-load air volume rate (*i.e.,* the D_2 test) or tests using a minimum air volume rate that is greater than 75 percent of the cooling full-load air volume rate increase $e_{cyc,dry}$ by the quantity,

Equation 3.5-4. $\frac{406\,W}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$

and decrease $q_{cyc,dry}$ by the quantity,

Equation 3.5-5. $\frac{1385\,Btu/h}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$

(3) For single-stage systems, for all cyclic dry-coil tests (*i.e.,* the D test) increase $e_{cyc,dry}$ by the quantity calculated in Equation 3.5–4 and decrease $q_{cyc,dry}$ by the quantity calculated in Equation 3.5–5

b. For ducted, non-mobile, non-space-constrained home coil-only units,

(1) For two-stage or variable-speed systems, for all cyclic dry-coil tests that specify the cooling minimum air volume rate (*i.e.,* the D_1 and I_1 tests) and for which the minimum air volume rate is 75 percent of the cooling full-load air volume rate, increase $e_{cyc,dry}$ by the quantity,

Equation 3.5-6. $\frac{360\,W}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$

and decrease $q_{cyc,dry}$ by the quantity,

Equation 3.5-7. $\frac{1228\,Btu/h}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$

(2) For two-stage or variable-speed systems, for all cyclic dry-coil tests that specify the cooling full-load air volume rate (*i.e.,* the D_2 test) or tests using a minimum air volume rate that is greater than 75 percent of the cooling full-load air volume rate increase $e_{cyc,dry}$ by the quantity,

$$\text{Equation 3.5-8. } \frac{441\,W}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

and decrease $q_{cyc,dry}$ by the quantity,

$$\text{Equation 3.5-9. } \frac{1505\,Btu/h}{1000\,scfm} * \dot{V}_S * [\tau_2 - \tau_1]$$

(3) For single-stage systems, for all cyclic dry-coil tests (*i.e.,* the D test) increase $e_{cyc,dry}$ by the quantity calculated in Equation 3.5–8 and decrease $q_{cyc,dry}$ by the quantity calculated in Equation 3.5–9

c. For units having a variable-speed indoor blower that is disabled during the cyclic test, increase $e_{cyc,dry}$ and decrease $q_{cyc,dry}$ based on: The product of $[\tau_2 - \tau_1]$ and the indoor blower power (in W) measured during or following the dry coil steady-state test; or,

* * * * *

3.6 * * *

3.6.1 Tests for a Heat Pump Having a Single-Speed Compressor and Fixed Heating Air Volume Rate

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TABLE 11—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A SINGLE-SPEED COMPRESSOR AND A FIXED-SPEED INDOOR BLOWER, A CONSTANT AIR VOLUME RATE INDOOR BLOWER, OR COIL-ONLY

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
H1 test (required, steady)	70	60 (max)	47	43	Heating Full-Load.[1]
H1C test (optional, cyclic)	70	60 (max)	47	43	([2])
H2 test (required)	70	60 (max)	35	33	Heating Full-Load.[1]
H3 test (required, steady)	70	60 (max)	17	15	Heating Full-Load.[1]
H4 test (optional, steady)	70	60 (max)	5	4 (max)	Heating Full-Load.[1]

[1] Defined in section 3.1.4.4 of this appendix.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the H1 test.

* * * * *

3.6.2 Tests for a Heat Pump Having a Single-Speed Compressor and a Single Indoor Unit Having Either (1) a Variable-Speed, Variable-Air-Rate Indoor Blower Whose Capacity Modulation Correlates With Outdoor Dry Bulb Temperature or (2) Multiple Indoor Blowers

* * * * *

TABLE 12—HEATING MODE TEST CONDITIONS FOR UNITS WITH A SINGLE-SPEED COMPRESSOR THAT MEET THE SECTION 3.6.2 INDOOR UNIT REQUIREMENTS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb	
$H1_2$ test (required, steady)	70	60 (max)	47	43	Heating Full-Load.[1]
$H1_1$ test (required, steady)	70	60 (max)	47	43	Heating Minimum.[2]
$H1C_1$ test (optional, cyclic)	70	60 (max)	47	43	([3])
$H2_2$ test (required)	70	60 (max)	35	33	Heating Full-Load.[1]
$H2_1$ test (optional)	70	60 (max)	35	33	Heating Minimum.[2]
$H3_2$ test (required, steady)	70	60 (max)	17	15	Heating Full-Load.[1]
$H3_1$ test (required, steady)	70	60 (max)	17	15	Heating Minimum[2]
$H4_2$ test (optional, steady)	70	60 (max)	5	4 (max)	Heating Full-Load.[1]

[1] Defined in section 3.1.4.4 of this appendix.
[2] Defined in section 3.1.4.5 of this appendix.

[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.

* * * * *

3.6.3 Tests for a Heat Pump Having a Two-Capacity Compressor (see Section 1.2 of This Appendix, Definitions), Including Two-Capacity, Northern Heat Pumps (see Section 1.2 of This Appendix, Definitions)

* * * * *

TABLE 13—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A TWO-CAPACITY COMPRESSOR

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady).	70	60 (max)	62	56.5	Low	Heating Minimum.[1]
$H1_2$ test (required, steady).	70	60 (max)	47	43	High	Heating Full-Load.[2]
$H1C_2$ test (optional,[7] cyclic).	70	60 (max)	47	43	High	([3])
$H1_1$ test (required, steady).	70	60 (max)	47	43	Low	Heating Minimum.[1]
$H1C_1$ test (optional, cyclic).	70	60 (max)	47	43	Low	([4])
$H2_2$ test (required)	70	60 (max)	35	33	High	Heating Full-Load.[2]
$H2_1$ test[5,6] (required)	70	60 (max)	35	33	Low	Heating Minimum.[1]
$H3_2$ test (required, steady).	70	60 (max)	17	15	High	Heating Full-Load.[2]
$H3_1$ test[5] (required, steady).	70	60 (max)	17	15	Low	Heating Minimum.[1]
$H4_2$ test (optional, steady).	70	60 (max)	5	4 (max)	High	Heating Full-Load.[2]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Defined in section 3.1.4.4 of this appendix.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_2$ test.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.
[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the section 4.2.3 HSPF2 calculations.
[6] If table note #5 applies, the section 3.6.3 equations for $Q_h^{k=1}$ (35) and $E_h^{k=1}$ (17) may be used in lieu of conducting the $H2_1$ test.
[7] Required only if the heat pump locks out low-capacity operation at lower outdoor temperatures.

* * * * *

3.6.4 Tests for a Heat Pump Having a Variable-Speed Compressor

3.6.4.1. Variable-Speed Compressor Other Than Non-communicating Coil-Only Heat Pumps

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_N$ and $H1_1$), one frost accumulation test ($H2_V$), and one low temperature test ($H3_2$). Conducting one or more of the following tests is optional: an additional high temperature test ($H1_2$), an additional frost accumulation test ($H2_2$), and a very low temperature test ($H4_2$). Conduct the optional high temperature cyclic ($H1C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. If this optional test is conducted and yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for the nine tests are specified in Table 14A. The compressor shall operate for the $H1_2$, $H2_2$ and $H3_2$ Tests at the same heating full speed, measured by RPM or power input frequency (Hz), as the maximum speed at which the system controls would operate the compressor in normal operation in 17 °F ambient temperature. The compressor shall operate for the $H1_N$ test at the maximum speed at which the system controls would operate the compressor in normal operation in 47 °F ambient temperature. Additionally, for a cooling/heating heat pump, the compressor shall operate for the $H1_N$ test at a speed, measured by RPM or power input frequency (Hz), no lower than the speed used in the A_2 test if the tested $H1_N$ heating capacity is less than the tested A_2 cooling capacity. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H1C_1$, and $H1_1$ Tests. Determine the heating intermediate compressor speed cited in Table 14A using the heating mode full and minimum compressors speeds and:

$$\text{Heating intermediate speed} = \text{Heating minimum speed} + \frac{\text{Heating full speed} - \text{Heating minimum speed}}{3}$$

where a tolerance of plus 5 percent or the next higher inverter frequency step from that calculated is allowed.

b. If one of the high temperature tests ($H1_2$ or $H1_N$) is conducted using the same compressor speed (RPM or power input frequency) as the $H3_2$ test, set the 47 °F capacity and power input values used for calculation of HSPF2 equal to the measured values for that test:

$$\dot{Q}_{hcalc}^{k=2}(47) = \dot{Q}_h^{k=2}(47);\ \dot{E}_{hcalc}^{k=2}(47) = \dot{E}_h^{k=2}(47)$$

where:

$\dot{Q}_{hcalc}^{k=2}(47)$ and $\dot{E}_{hcalc}^{k=2}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}_h^{k=2}(47)$ is the capacity measured in the high temperature test ($H1_2$ or $H1_N$) that used the same compressor speed as the $H3_2$ test, and

$\dot{E}_h^{k=2}(47)$ is the power input measured in the high temperature test ($H1_2$ or $H1_N$) which used the same compressor speed as the $H3_2$ test.

Evaluate the quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ according to section 3.7 of this appendix.

Otherwise (if no high temperature test is conducted using the same speed (RPM or power input frequency) as the $H3_2$ test), calculate the 47 °F capacity and power input values used for calculation of HSPF2 as follows:

$$\dot{Q}_{hcalc}^{k=2}(47) = \dot{Q}_h^{k=2}(17) * (1 + 30°F * CSF);$$

$$\dot{E}_{hcalc}^{k=2}(47) = \dot{E}_h^{k=2}(17) * (1 + 30°F * PSF)$$

where:

$\dot{Q}_{hcalc}^{k=2}(47)$ and $\dot{E}_{hcalc}^{k=2}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}_h^{k=2}(17)$ is the capacity measured in the $H3_2$ test,

$\dot{E}_h^{k=2}(17)$ is the power input measured in the $H3_2$ test,

CSF is the capacity slope factor, equal to 0.0204/°F for split systems and 0.0262/°F for single-package systems, and

PSF is the Power Slope Factor, equal to 0.00455/°F.

c. If the $H2_2$ test is not done, use the following equations to approximate the capacity and electrical power at the $H2_2$ test conditions:

$$\dot{Q}_h^{k=2}(35) = 0.90 * \left\{\dot{Q}_h^{k=2}(17) + 0.6 * \left[\dot{Q}_{hcalc}^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right]\right\}$$

$$\dot{E}_h^{k=2}(35) = 0.985 * \left\{\dot{E}_h^{k=2}(17) + 0.6 * \left[\dot{E}_{hcalc}^{k=2}(47) - \dot{E}_h^{k=2}(17)\right]\right\}$$

where:

$\dot{Q}_{hcalc}^{k=2}(47)$ and $\dot{E}_{hcalc}^{k=2}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations, calculated as described in section b above, and

$\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ and are the capacity and power input measured in the $H3_2$ test.

d. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test, determine the quantities $\dot{Q}_h^{k=2}(5)$ and $\dot{E}_h^{k=2}(5)$ from the $H4_2$ test, and evaluate all four according to section 3.10 of this appendix.

e. For multiple-split heat pumps (only), the following procedures supersede the above requirements. For all Table 14A tests specified for a minimum compressor speed, turn off at least one indoor unit. The manufacturer shall designate the particular indoor unit(s) to be turned off. The manufacturer must also specify the compressor speed used for the Table 14A $H2_V$ test, a heating mode intermediate compressor speed that falls within ¼ and ¾ of the difference between the full and minimum heating mode speeds. The manufacturer should prescribe an intermediate speed that is expected to yield the highest COP for the given $H2_V$ test conditions and bracketed compressor speed range. The manufacturer can designate that one or more specific indoor units are turned off for the $H2_V$ test.

TABLE 14A—HEATING MODE TEST CONDITIONS FOR UNITS HAVING A VARIABLE-SPEED COMPRESSOR OTHER THAN VARIABLE-SPEED NON-COMMUNICATING COIL-ONLY HEAT PUMPS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady)	70	60 (max)	62	56.5	Heating Minimum	Heating Minimum.[1]
$H1_2$ test (optional, steady)	70	60 (max)	47	43	Heating Full[4]	Heating Full-Load.[3]
$H1_1$ test (required, steady)	70	60 (max)	47	43	Heating Minimum	Heating Minimum.[1]
$H1_N$ test (required, steady)	70	60 (max)	47	43	Heating Full[5]	Heating Nominal[7]
$H1C_1$ test (optional, cyclic)	70	60 (max)	47	43	Heating Minimum	([2])
$H2_2$ test (optional)	70	60 (max)	35	33	Heating Full[4]	Heating Full-Load.[3]
$H2_V$ test (required)	70	60 (max)	35	33	Heating Intermediate	Heating Intermediate.[6]
$H3_2$ test (required, steady)	70	60 (max)	17	15	Heating Full[4]	Heating Full-Load.[3]
$H4_2$ test (optional, steady)	70	60 (max)	5	4 (max)	Heating Full[8]	Heating Full-Load.[3]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.
[3] Defined in section 3.1.4.4 of this appendix.
[4] Maximum speed that the system controls would operate the compressor in normal operation in 17 °F ambient temperature. The $H1_2$ test is not needed if the $H1_N$ test uses this same compressor speed.
[5] Maximum speed that the system controls would operate the compressor in normal operation in 47 °F ambient temperature.
[6] Defined in section 3.1.4.6 of this appendix.
[7] Defined in section 3.1.4.7 of this appendix.
[8] Maximum speed that the system controls would operate the compressor in normal operation at 5 °F ambient temperature.

3.6.4.2. Variable-Speed Compressor With Non-communicating Coil-Only Heat Pumps

a. Conduct one maximum temperature test ($H0_1$), two high temperature tests ($H1_N$ and $H1_1$), two frost accumulation test ($H2_2$ and $H2_1$), and two low temperature tests ($H3_2$ and $H3_1$). Conducting one or both of the following tests is optional: An additional high temperature test ($H1_2$) and a very low temperature test ($H4_2$). Conduct the optional high temperature cyclic ($H1C_1$) test to determine the heating mode cyclic-degradation coefficient, C_D^h. If this optional test is conducted and yields a tested C_D^h that exceeds the default C_D^h or if the optional test is not conducted, assign C_D^h the default value of 0.25. Test conditions for the ten tests are specified in Table 14B. The compressor shall operate for the $H1_2$ and $H3_2$ tests at the same heating full speed, measured by RPM or power input frequency (Hz), as the maximum speed at which the system controls would operate the compressor in normal operation in 17 °F ambient temperature. The compressor shall operate for the $H1_N$ test at the maximum speed at which the system controls would operate the compressor in normal operation in 47 °F ambient temperature. Additionally, for a cooling/heating heat pump, the compressor shall operate for the $H1_N$ test at a speed, measured by RPM or power input frequency (Hz), no lower than the speed used in the A_2 test if the tested $H1_N$ heating capacity is less than the tested A_2 cooling capacity. The compressor shall operate at the same heating minimum speed, measured by RPM or power input frequency (Hz), for the $H0_1$, $H1C_1$, and $H1_1$ tests.

b. If one of the high temperature tests ($H1_2$ or $H1_N$) is conducted using the same compressor speed (RPM or power

input frequency) as the $H3_2$ test, set the 47 °F capacity and power input values used for calculation of HSPF2 equal to the measured values for that test:

$$\dot{Q}_{hcalc}^{k=2}(47) = \dot{Q}_{h}^{k=2}(47);\ \dot{E}_{hcalc}^{k=2}(47) = \dot{E}_{h}^{k=2}(47)$$

where:

$\dot{Q}_{hcalc}^{k=2}(47)$ and $\dot{E}_{hcalc}^{k=2}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}_h^{k=2}(47)$ is the capacity measured in the high temperature test ($H1_2$ or $H1_N$) which used the same compressor speed as the $H3_2$ test, and

$\dot{E}_h^{k=2}(47)$ is the power input measured in the high temperature test ($H1_2$ or $H1_N$) which used the same compressor speed as the $H3_2$ test.

Evaluate the quantities $\dot{Q}_h^{k=2}(47)$ and $\dot{E}_h^{k=2}(47)$ according to section 3.7 of this appendix.

Otherwise (if no high temperature test is conducted using the same speed (RPM or power input frequency) as the $H3_2$ test), calculate the 47 °F capacity and power input values used for calculation of HSPF2 as follows:

$$\dot{Q}_{hcalc}^{k=2}(47) = \dot{Q}_{h}^{k=2}(17) * (1 + 30°F * CSF);\ \text{and}$$

$$\dot{E}_{hcalc}^{k=2}(47) = \dot{E}_{h}^{k=2}(17) * (1 + 30°F * PSF)$$

where:

$\dot{Q}_{hcalc}^{k=2}(47)$ and $\dot{E}_{hcalc}^{k=2}(47)$ are the capacity and power input, respectively, representing full-speed operation at 47 °F for the HSPF2 calculations,

$\dot{Q}_h^{k=2}(17)$ is the capacity measured in the $H3_2$ test,

$\dot{E}_h^{k=2}(17)$ is the power input measured in the $H3_2$ test,

CSF is the capacity slope factor, equal to 0.0204/°F for split systems, and

PSF is the Power Slope Factor, equal to 0.00455/°F.

c. Determine the quantities $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test, determine the quantities $\dot{Q}_h^{k=2}(5)$ and $\dot{E}_h^{k=2}(5)$ from the $H4_2$ test, and evaluate all four according to section 3.10 of this appendix.

TABLE 14B—HEATING MODE TEST CONDITIONS FOR VARIABLE-SPEED NON-COMMUNICATING COIL-ONLY HEAT PUMPS

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ test (required, steady)	70	60 (max)	62	56.5	Heating Minimum	Heating Minimum.[1]
$H1_2$ test (optional, steady)	70	60 (max)	47	43	Heating Full[4]	Heating Full-Load.[3]
$H1_1$ test (required, steady)	70	60 (max)	47	43	Heating Minimum	Heating Minimum.[1]
$H1_N$ test (required, steady)	70	60 (max)	47	43	Heating Full[5]	Heating Full-Load.[3]
$H1C_1$ test (optional, cyclic)	70	60 (max)	47	43	Heating Minimum	([2])
$H2_2$ test (required)	70	60 (max)	35	33	Heating Full[6]	Heating Full-Load.[3]
$H2_1$ test (required)	70	60 (max)	35	33	Heating Minimum[7]	Heating Minimum.[1]
$H3_2$ test (required, steady)	70	60 (max)	17	15	Heating Full[4]	Heating Full-Load.[3]

TABLE 14B—HEATING MODE TEST CONDITIONS FOR VARIABLE-SPEED NON-COMMUNICATING COIL-ONLY HEAT PUMPS—Continued

Test description	Air entering indoor unit temperature (°F)		Air entering outdoor unit temperature (°F)		Compressor speed	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H3_1$ test (required, steady)	70	60 (max)	17	15	Heating Minimum [8]	Heating Minimum.[1]
$H4_2$ test (optional, steady)	70	60 (max)	5	4 (max)	Heating Full [9]	Heating Full-Load.[3]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during an ON period at the same pressure or velocity as measured during the $H1_1$ test.
[3] Defined in section 3.1.4.4 of this appendix.
[4] Maximum speed that the system controls would operate the compressor in normal operation in 17 °F ambient temperature. The $H1_2$ test is not needed if the $H1_N$ test uses this same compressor speed.
[5] Maximum speed that the system controls would operate the compressor in normal operation in 47 °F ambient temperature.
[6] Maximum speed that the system controls would operate the compressor in normal operation in 35 °F ambient temperature.
[7] Minimum speed that the system controls would operate the compressor in normal operation in 35 °F ambient temperature.
[8] Minimum speed that the system controls would operate the compressor in normal operation in 17 °F ambient temperature.
[9] Maximum speed that the system controls would operate the compressor in normal operation in 5 °F ambient temperature.

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3.6.6. Heating Mode Tests for Northern Heat Pumps with Triple-Capacity Compressors

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TABLE 15—HEATING MODE TEST CONDITIONS FOR UNITS WITH A TRIPLE-CAPACITY COMPRESSOR

Test description	Air entering indoor unit (°F)		Air entering outdoor unit (°F)		Compressor capacity	Heating air volume rate
	Dry bulb	Wet bulb	Dry bulb	Wet bulb		
$H0_1$ Test (required, steady)	70	60 (max)	62	56.5	Low	Heating Minimum.[1]
$H1_2$ (required, steady)	70	60 (max)	47	43	High	Heating Full-Load.[2]
$H1C_2$ Test (optional,[8] cyclic	70	60 (max)	47	43	High	([3])
$H1_1$ Test (required, steady)	70	60 (max)	47	43	Low	Heating Minimum.[1]
$H1C_1$ Test (optional, cyclic)	70	60 (max)	47	43	Low	([4])
$H2_3$ Test (optional, steady)	70	60 (max)	35	33	Booster	Heating Full-Load.[2]
$H2_2$ Test (required)	70	60 (max)	35	33	High	Heating Full-Load.[2]
$H2_1$ Test (required)	70	60 (max)	35	33	Low	Heating Minimum.[1]
$H3_3$ Test (required, steady)	70	60 (max)	17	15	Booster	Heating Full-Load.[2]
$H3C_3$ Test [5] [6] (optional, cyclic)	70	60 (max)	17	15	Booster	([7])
$H3_2$ Test (required, steady)	70	60 (max)	17	15	High	Heating Full-Load.[2]
$H3_1$ Test [5] (required, steady)	70	60 (max)	17	15	Low	Heating Minimum.[1]
$H4_3$ Test (required, steady)	70	60 (max)	5	4 (max)	Booster	Heating Full-Load.[2]

[1] Defined in section 3.1.4.5 of this appendix.
[2] Defined in section 3.1.4.4 of this appendix.
[3] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_2$ test.
[4] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H1_1$ test.
[5] Required only if the heat pump's performance when operating at low compressor capacity and outdoor temperatures less than 37 °F is needed to complete the section 4.2.6 HSPF2 calculations.
[6] If table note [5] applies, the section 3.6.6 equations for $\dot{Q}_h^{k=1}(35)$ and $\dot{E}^{hk=1}(17)$ may be used in lieu of conducting the $H2_1$ test.
[7] Maintain the airflow nozzle(s) static pressure difference or velocity pressure during the ON period at the same pressure or velocity as measured during the $H3_3$ test.
[8] Required only if the heat pump locks out low-capacity operation at lower outdoor temperatures

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3.7 * * *

c. For mobile home and space-constrained ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state maximum temperature and high temperature tests that specify the heating minimum air volume rate or the heating intermediate air volume rate (*i.e.,* the $H0_1$ and $H1_1$ tests) and for which the minimum or intermediate air volume rate is 75 percent of the cooling full-load air volume rate:

$$\text{increase } Q_c{}^k(T) \text{ by: } \frac{1130\ Btu/h}{1000\ scfm} * \dot{V}_S \text{ , and}$$

$$\text{increase } \dot{E}_c{}^k(T) \text{ by: } \frac{331\ W}{1000\ scfm} * \dot{V}_S.$$

(2) For two-stage or variable-speed systems, for all steady-state maximum temperature and high temperature tests that specify the heating full-load air volume rate or the heating nominal air volume rate (*i.e.,* the $H1_2$ and the $H1_N$ tests) or tests using a minimum or intermediate air volume rate that is greater than 75 percent of the cooling full-load air volume rate:

$$\text{increase } Q_c{}^k(T) \text{ by: } \frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_c{}^k(T) \text{ by: } \frac{406\ W}{1000\ scfm} * \dot{V}_S.$$

(3) For single-stage systems, for all steady-state maximum temperature and high temperature tests (*i.e.,* the H1 test)—

$$\text{increase } Q_c{}^k(T) \text{ by: } \frac{1385\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_c{}^k(T) \text{ by: } \frac{406\ W}{1000\ scfm} * \dot{V}_S.$$

Where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

d. For non-mobile, non-space-constrained home ducted coil-only system tests,

(1) For two-stage or variable-speed systems, for all steady-state maximum temperature and high temperature tests that specify the heating minimum air volume rate or the heating intermediate air volume rate (*i.e.,* the $H0_1$ and $H1_1$ tests) and for which the minimum or intermediate air volume rate is 75 percent of the cooling full-load air volume rate:

$$\text{increase } Q_c{}^k(T) \text{ by: } \frac{1228\ Btu/h}{1000\ scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_c{}^k(T) \text{ by: } \frac{360\ W}{1000\ scfm} * \dot{V}_S.$$

(2) For two-stage or variable-speed systems, for all steady-state maximum temperature and high temperature tests that specify the heating full-load air volume rate or the heating nominal air volume rate (*i.e.,* the $H1_2$ and the $H1_N$ tests) or tests using a minimum or intermediate air volume rate that is greater than 75 percent of the cooling full-load air volume rate:

increase $Q_c{}^k(T)$ by: $\frac{1505\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{441\ W}{1000\ scfm} * \dot{V}_S$.

(3) For single-stage systems, for all steady-state maximum temperature and high temperature tests (*i.e.*, the H1 test) –

increase $Q_c{}^k(T)$ by: $\frac{1505\ Btu/h}{1000\ scfm} * \dot{V}_S$, and

increase $\dot{E}_c{}^k(T)$ by: $\frac{441\ W}{1000\ scfm} * \dot{V}_S$.

where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

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3.8 * * *

b. For ducted coil-only system heat pumps (excluding the special case where a variable-speed fan is temporarily removed),

(1) For mobile home and space-constrained ducted coil-only systems

(i) For two-stage or variable-speed systems, for all cyclic heating tests that specify the heating minimum air volume rate (*i.e.,* the $H1C_1$ test), increase q_{cyc} by the amount calculated using Equation 3.5–3. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–2.

(ii) For two-stage or variable-speed systems, for all cyclic heating tests that specify the heating full-load air volume rate (*i.e.,* the $H1C_2$ test), increase q_{cyc} by the amount calculated using Equation 3.5–5. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–4.

(iii) For single-stage systems, for all cyclic heating tests (*i.e.,* the H1C and $H1C_1$ tests), increase q_{cyc} by the amount calculated using Equation 3.5–5. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–4.

(2) For non-mobile home and non-space-constrained ducted coil-only systems

(i) For two-stage or variable-speed systems, for all cyclic heating tests that specify the heating minimum air volume rate (*i.e.,* the $H1C_1$ test)—increase q_{cyc} by the amount calculated using Equation 3.5–7. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–6.

(ii) For two-stage or variable-speed systems, for all cyclic heating tests that specify the heating full-load air volume rate (*i.e.,* the $H1C_2$ test)—increase q_{cyc} by the amount calculated using Equation 3.5–9. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–8.

(iii) For single-stage systems, for all cyclic heating tests (*i.e.,* the H1C and $H1C_1$ tests)—increase q_{cyc} by the amount calculated using Equation 3.5–9. Additionally, increase e_{cyc} by the amount calculated using Equation 3.5–8.

In making these calculations, use the average indoor air volume rate ($\dot{V}_S$) determined from the section 3.7 of this appendix steady-state heating mode test conducted at the same test conditions.

* * * * *

3.9.1 * * *

b. Evaluate average electrical power, $\dot{E}_h{}^k(35) = \frac{e_{def}(35)}{\Delta_{\tau_{FR}}}$, when expressed in units of watts, using:

(1) For mobile home and space-constrained ducted coil-only system tests,

(i) For two-stage or variable-speed systems, for all frost accumulation tests that specify the heating minimum air volume rate or the heating intermediate air volume rate (*i.e.,* the $H2_1$ and $H2_V$ tests) and for which the minimum or intermediate air volume rate is 75 percent of the cooling full-load air volume rate,

$$\text{increase } Q_h{}^k(35) \text{ by } \frac{1130^{Btu}/_h}{1000\,scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_h{}^k(35) \text{ by, } \frac{331\,W}{1000\,scfm} * \dot{V}_S.$$

(ii) For two-stage and variable-speed systems, for all frost accumulation tests that specify the heating full-load air volume rate or the heating nominal air volume rate (*i.e.,* the $H2_2$ test) or tests using a minimum or intermediate air volume rate that is greater than 75 percent of the cooling full-load air volume rate:

$$\text{increase } Q_h{}^k(35) \text{ by } \frac{1385^{Btu}/_h}{1000\,scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_h{}^k(35) \text{ by, } \frac{406\,W}{1000\,scfm} * \dot{V}_S.$$

(iii) For single-stage systems, for all frost accumulation tests (*i.e.,* the H2 test) –

$$\text{increase } Q_h{}^k(35) \text{ by } \frac{1385^{Btu}/_h}{1000\,scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_h{}^k(35) \text{ by, } \frac{406\,W}{1000\,scfm} * \dot{V}_S.$$

where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

(2) For non-mobile home and non-space-constrained ducted coil-only systems,

(i) For two-stage or variable-speed systems, for all frost accumulation tests that specify the heating minimum air volume rate or the heating intermediate air volume rate (*i.e.,* the H21 and H2V tests) and for which the minimum or intermediate air volume rate is 75 percent of the cooling full-load air volume rate,

$$\text{increase } Q_h{}^k(35) \text{ by } \frac{1228^{Btu}/_h}{1000\,scfm} * \dot{V}_S, \text{ and}$$

$$\text{increase } \dot{E}_h{}^k(35) \text{ by,}$$

$$\frac{360\,W}{1000\,scfm} * \dot{V}_S.$$

(ii) For two-stage and variable-speed systems, for all frost accumulation tests that specify the heating full-load air volume rate or the heating nominal air volume rate (*i.e.,* the H22 test) or tests using a minimum or intermediate air volume rate that is greater than 75 percent of the cooling full-load air volume rate:

increase $Q_h{}^k(35)$ by $\frac{1505^{Btu/h}}{1000\,scfm} * \dot{V}_S$, and

increase $\dot{E}_h{}^k(35)$ by, $\frac{441\,W}{1000\,scfm} * \dot{V}_S$.

(iii) For single-stage systems, for all frost accumulation tests (i.e., the H2 test) –

increase $Q_h{}^k(35)$ by $\frac{1505^{Btu/h}}{1000\,scfm} * \dot{V}_S$, and

increase $\dot{E}_h{}^k(35)$ by, $\frac{441\,W}{1000\,scfm} * \dot{V}_S$.

where $\dot{V}_S$ is the average measured indoor air volume rate expressed in units of cubic feet per minute of standard air (scfm).

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4.1.4 SEER2 Calculations for an Air Conditioner or Heat Pump Having a Variable-Speed Compressor

Calculate SEER2 using Equation 4.1–1. Evaluate the space cooling capacity, $\dot{Q}_c^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=1}(T_j)$, of the test unit when operating at minimum compressor speed and outdoor temperature T_j.. Use,

Equation 4.1.4-1 $$\dot{Q}_c^{k=1}(T_j) = \dot{Q}_c^{k=1}(67) + \frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (T_j - 67)$$

Equation 4.1.4-2 $$\dot{E}_c^{k=1}(T_j) = \dot{E}_c^{k=1}(67) + \frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (T_j - 67)$$

where $\dot{Q}_c^{k=1}(82)$ and $\dot{E}_c^{k=1}(82)$ are determined from the B_1 test, $\dot{Q}_c^{k=1}(67)$ and $\dot{E}_c^{k=1}(67)$ are determined from the F1 test, and all four quantities are calculated as specified in section 3.3 of this appendix. Evaluate the space cooling capacity, $\dot{Q}_c^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=2}(T_j)$, of the test unit when operating at full compressor speed and outdoor temperature T_j. Use Equations 4.1.3–3 and 4.1.3–4, respectively, where $\dot{Q}_c^{k=2}(95)$ and $\dot{E}_c^{k=2}(95)$ are determined from the A_2 test, $\dot{Q}_c^{k=2}(82)$ and $\dot{E}_c^{k=2}(82)$ are determined from the B_2 test, and all four quantities are calculated as specified in section 3.3 of this appendix. For units other than variable-speed non-communicating coil-only air-conditioners or heat pumps, calculate the space cooling capacity, $\dot{Q}_c^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_c^{k=v}(T_j)$, of the test unit when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.2.4 (and Table 8) E_V test of this appendix using,

Equation 4.1.4-3 $$\dot{Q}_c^{k=v}(T_j) = \dot{Q}_c^{k=v}(87) + M_Q * (T_j - 87)$$

Equation 4.1.4-4 $$\dot{E}_c^{k=v}(T_j) = \dot{E}_h^{k=v}(87) + M_E * (T_j - 87)$$

where $\dot{Q}_c^{k=v}(87)$ and $\dot{E}_c^{k=v}(87)$ are determined from the E_V test and calculated as specified in section 3.3 of this appendix. Approximate the slopes of the k=v intermediate speed cooling capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_c^{k=1}(82) - \dot{Q}_c^{k=1}(67)}{82-67} * (1 - N_Q)\right] + \left[N_Q * \frac{\dot{Q}_c^{k=2}(95) - \dot{Q}_c^{k=2}(82)}{95-82}\right]$$

$$M_E = \left[\frac{\dot{E}_c^{k=1}(82) - \dot{E}_c^{k=1}(67)}{82-67} * (1 - N_E)\right] + \left[N_E * \frac{\dot{E}_c^{k=2}(95) - \dot{E}_c^{k=2}(82)}{95-82}\right]$$

where,

$$N_Q = \frac{\dot{Q}_c^{k=v}(87) - \dot{Q}_c^{k=1}(87)}{\dot{Q}_c^{k=2}(87) - \dot{Q}_c^{k=1}(87)} \quad \text{and} \quad N_E = \frac{\dot{E}_c^{k=v}(87) - \dot{E}_c^{k=1}(87)}{\dot{E}_c^{k=2}(87) - \dot{E}_c^{k=1}(87)}$$

Use Equations 4.1.4–1 and 4.1.4–2, respectively, to calculate $\dot{Q}_c^{k=1}(87)$ and $\dot{E}_c^{k=1}(87)$.

* * * * *

4.1.4.2.1 Units That Are Not Variable-Speed Non-Communicating Coil-Only Air Conditioners or Heat Pumps

If the unit operates at an intermediate compressor speed (k=i) in order to match the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = \dot{Q}_c^{k=i}(T_j) * \frac{n_j}{N} \qquad \frac{e_c(T_j)}{N} = \dot{E}_c^{k=i}(T_j) * \frac{n_j}{N}$$

Where:

$\dot{Q}_c^{k=1}(T_j) = BL(T_j)$, the space cooling capacity delivered by the unit in matching the building load at temperature T_j, in Btu/h. The matching occurs with the unit operating at compressor speed k = i.

$\dot{E}_c^{k=i}(T_j) = \frac{\dot{Q}_c^{k=i}(T_j)}{EER^{k=i}(T_j)}$ the electrical power input required by the test unit when operating at a compressor speed of k = i and temperature T_j, in W.

$EER^{k=i}(T_j)$ = the steady-state energy efficiency ratio of the test unit when operating at a compressor speed of k = i and temperature T_j, Btu/h per W.

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 19 of this section. For each temperature bin where the unit operates at an intermediate compressor speed, determine the energy efficiency ratio $EER^{k=i}(T_j)$ using the following equations,

For each temperature bin where $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=v}(T_j)$,

$$EER^{k=i}(T_j) = EER^{k=1}(T_j) + \frac{EER^{k=v}(T_j) - EER^{k=1}(T_j)}{Q^{k=v}(T_j) - Q^{k=1}(T_j)} * (BL(T_j) - Q^{k=1}(T_j))$$

For each temperature bin where $\dot{Q}_c^{k=v}(T_j) \leq BL(T_j) < \dot{Q}_c^{k=2}(T_j)$,

$$EER^{k=i}(T_j) = EER^{k=v}(T_j) + \frac{EER^{k=2}(T_j) - EER^{k=v}(T_j)}{Q^{k=2}(T_j) - Q^{k=v}(T_j)} * (BL(T_j) - Q^{k=v}(T_j))$$

where:

$EER^{k=1}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at minimum compressor speed and temperature Tj, in Btu/h per W, calculated using capacity $\dot{Q}_c^{k=1}(T_j)$ calculated using Equation 4.1.4–1 and electrical power consumption $\dot{E}_c^{k=1}(T_j)$ calculated using Equation 4.1.4–2;

$EER^{k=v}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at intermediate compressor speed and temperature Tj, in Btu/h per W, calculated using capacity $\dot{Q}_c^{k=v}(T_j)$ calculated using Equation 4.1.4–3 and electrical power consumption $\dot{E}_c^{k=v}(T_j)$ calculated using Equation 4.1.4–4;

$EER^{k=2}(T_j)$ is the steady-state energy efficiency ratio of the test unit when operating at full compressor speed and temperature Tj, Btu/h per W, calculated using capacity $\dot{Q}_c^{k=2}(T_j)$ and electrical power consumption $\dot{E}_c^{k=2}(T_j)$, both calculated as described in section 4.1.4 of this appendix; and

$BL(T_j)$ is the building cooling load at temperature T_j, Btu/h.

4.1.4.2.2 Variable-Speed Non-Communicating Coil-Only Air Conditioners or Heat Pumps

If the unit alternates between high (k=2) and low (k=1) compressor capacity to satisfy the building cooling load at temperature T_j, $\dot{Q}_c^{k=1}(T_j) < BL(T_j) < \dot{Q}_c^{k=2}(T_j)$.

$$\frac{q_c(T_j)}{N} = [X^{k=1}(T_j) * \dot{Q}_c^{k=1}(T_j) + X^{k=2}(T_j) * \dot{Q}_c^{k=2}(T_j)] * \frac{n_j}{N}$$

$$\frac{e_c(T_j)}{N} = [X^{k=1}(T_j) * \dot{E}_c^{k=1}(T_j) + X^{k=2}(T_j) * \dot{E}_c^{k=2}(T_j)] * \frac{n_j}{N}$$

where:

$X^{k=1}(T_j) = \frac{\dot{Q}_c^{k=2}(T_j) - BL(T_j)}{\dot{Q}_c^{k=2}(T_j) - \dot{Q}_c^{k=1}(T_j)}$ the cooling mode, low capacity load factor for temperature bin j (dimensionless); and

$X^{k=2}(T_j) = 1 - X^{k=1}(T_j)$, the cooling mode, high capacity load factor for temperature bin j (dimensionless).

Obtain the fractional bin hours for the cooling season, n_j/N, from Table 19.

Obtain $\dot{Q}_c^{k=1}(T_j)$, $\dot{E}_c^{k=1}(T_j)$, $\dot{Q}_c^{k=2}(T_j)$, and $\dot{E}_c^{k=2}(T_j)$ as described in section 4.1.4 of this appendix.

* * * * *

4.2 * * *

Evaluate the building heating load using

Equation 4.2-2 $$BL(T_j) = \frac{T_{zl} - T_j}{T_{zl} - 5°F} * C * \dot{Q}_c(95°F)$$

where,

T_j = the outdoor bin temperature, °F;

T_{zl} = the zero-load temperature, °F, which varies by climate region according to Table 20;

C = slope (adjustment) factor, which varies by climate region according to Table 20. When calculating building load for a variable-speed compressor system, substitute C_{VS} for C;

$Q_c(95\ °F)$ = the cooling capacity at 95 °F determined from the A or A_2 test, Btu/h. For heating-only heat pump units, replace $Q_c(95\ °F)$ in Equation 4.2–2 with $Q_h(47\ °F)$;

$Q_h(47\ °F)$ = the heating capacity at 47 °F determined from the H1 test for units having a single-speed compressor, $H1_2$ for units having a two-capacity compressor, and $H1_N$ test for units having a variable-speed compressor, Btu/h.

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4.2.3 * * *

The calculation of the Equation 4.2–1 quantities differ depending upon whether the heat pump would operate at low capacity (section 4.2.3.1 of this appendix), cycle between low and high capacity (section 4.2.3.2 of this appendix), or operate at high capacity (sections 4.2.3.3 and 4.2.3.4 of this appendix) in responding to the building load. For heat pumps that lock out low capacity operation at low outdoor temperatures, the outdoor temperature at which the unit locks out must be that specified by the manufacturer in the certification report so that the appropriate equations can be selected.

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4.2.3.4 Heat Pump Must Operate Continuously at High (k=2) Compressor Capacity at Temperature T_j, $BL(T_j) \geq Q_h^{k=2}(T_j)$

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=2}(T_j) * \delta'(T_j) * \frac{n_j}{N}$$

$$\frac{RH(T_j)}{N} = \frac{BL(T_j) - \left[\dot{Q}_h^{k=2} * \delta'(T_j)\right]}{3.413\frac{Btu}{Wh}} * \frac{n_j}{N}$$

where:

$$\delta'(T_j) = \begin{cases} 0, & if\ T_j \le T_{off}\ \ or\ \ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} < 1 \\ \dfrac{1}{2}, & if\ T_{off} < T_j \le T_{on}\ \ and\ \ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \ge 1 \\ 1, & if\ T_j > T_{on}\ \ and\ \ \dfrac{\dot{Q}_h^{k=2}(T_j)}{3.413 * \dot{E}_h^{k=2}(T_j)} \ge 1 \end{cases}$$

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4.2.4 * * *

a. Minimum Compressor Speed.

For units other than variable-speed non-communicating coil-only heat pumps, evaluate the space heating capacity, $Q_h^{k=1}(T_j)$, and electrical power consumption, $E_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using

Equation 4.2.4-1

$$\dot{Q}_h^{k=1}(T_j) = \dot{Q}_h^{k=1}(47) + \frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62-47} * (T_j - 47);\ \text{and}$$

Equation 4.2.4-2

$$\dot{E}_h^{k=1}(T_j) = \dot{E}_h^{k=1}(47) + \frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62-47} * (T_j - 47)$$

where $Q_h^{k=1}(62)$ and $E_h^{k=1}(62)$ are determined from the $H0_1$ test, $Q_h^{k=1}(47)$ and $E_h^{k=1}(47)$ are determined from the $H1_1$ test, and all four quantities are calculated as specified in section 3.7 of this appendix.

For variable-speed non-communicating coil-only heat pumps, when T_j is greater than or equal to 47 °F, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed as described in Equations 4.2.4–1 and 4.2.4–2, respectively. When T_j is less than 47 °F, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$ using

Equation 4.2.4-3

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(35) + \dfrac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=1}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °\mathrm{F} \leq T_j < 47\ °\mathrm{F} \\ \dot{Q}_h^{k=1}(17) + \dfrac{\left[\dot{Q}_h^{k=1}(35) - \dot{Q}_h^{k=1}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °\mathrm{F} \leq T_j < 35\ °\mathrm{F} \\ \dot{Q}_h^{k=2}(T_j) * \left(\dot{Q}_h^{k=1}(17) / \dot{Q}_h^{k=2}(17)\right), & if\ T_j < 17\ °\mathrm{F} \end{cases}$$

and

Equation 4.2.4-4

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(35) + \dfrac{\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=1}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °\mathrm{F} \leq T_j < 47\ °\mathrm{F} \\ \dot{E}_h^{k=1}(17) + \dfrac{\left[\dot{E}_h^{k=1}(35) - \dot{E}_h^{k=1}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °\mathrm{F} \leq T_j < 35\ °\mathrm{F} \\ \dot{E}_h^{k=2}(T_j) * \left(\dot{E}_h^{k=1}(17) / \dot{E}_h^{k=2}(17)\right), & if\ T_j < 17\ °\mathrm{F} \end{cases}$$

where $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ test, and both quantities are calculated as specified in section 3.7 of this appendix; $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$ are determined from the $H2_1$ test, and are calculated as specified in section 3.9 of this appendix; $\dot{Q}_h^{k=1}(17)$ and $\dot{E}_h^{k=1}(17)$ are determined from the $H3_1$ test, and are calculated as specified in section 3.10 of this appendix; and $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ are calculated as described in section 4.2.4.c or 4.2.4.d of this appendix, as appropriate.

b. Minimum Compressor Speed for Minimum-speed-limiting Variable-speed Heat Pumps: For units other than variable-speed non-communicating coil-only heat pumps, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump when operating at minimum compressor speed and outdoor temperature T_j using

Equation 4.2.4-5

$$\dot{Q}_h^{k=1}(T_j) = \begin{cases} \dot{Q}_h^{k=1}(47) + \dfrac{\left[\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)\right] * (T_j - 47)}{62 - 47}, & if\ T_j \geq 47\ °F \\ \dot{Q}_h^{k=v}(35) + \dfrac{\left[\dot{Q}_h^{k=1}(47) - \dot{Q}_h^{k=v}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °F \leq T_j < 47\ °F \\ \dot{Q}_h^{k=v}(T_j), & if\ T_j < 35\ °F \end{cases}$$

and

Equation 4.2.4-6

$$\dot{E}_h^{k=1}(T_j) = \begin{cases} \dot{E}_h^{k=1}(47) + \dfrac{\left[\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)\right] * (T_j - 47)}{62 - 47}, & if\ T_j \geq 47\ °F \\ \dot{E}_h^{k=v}(35) + \dfrac{\left[\dot{E}_h^{k=1}(47) - \dot{E}_h^{k=v}(35)\right] * (T_j - 35)}{47 - 35}, & if\ 35\ °F \leq T_j < 47\ °F \\ \dot{E}_h^{k=v}(T_j), & if\ T_j < 35\ °F \end{cases}$$

where $\dot{Q}_h^{k=1}(62)$ and $\dot{E}_h^{k=1}(62)$ are determined from the $H0_1$ test, $\dot{Q}_h^{k=1}(47)$ and $\dot{E}_h^{k=1}(47)$ are determined from the $H1_1$ test, and all four quantities are calculated as specified in section 3.7 of this appendix; $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_v$ test and are calculated as specified in section 3.9 of this appendix; and $\dot{Q}_h^{k=v}(T_j)$ and $\dot{E}_h^{k=v}(T_j)$ are calculated using equations 4.2.4–7 and 4.2.4–8, respectively.

For variable-speed non-communicating coil-only heat pumps, evaluate the space heating capacity, $\dot{Q}_h^{k=1}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=1}(T_j)$, of the heat pump as described in section 4.2.4.a, using Equations 4.2.4–1, 4.2.4–2, 4.2.4–3 and 4.2.4–4, as appropriate.

c. Full Compressor Speed for Heat Pumps for which the $H4_2$ test is not conducted.

Evaluate the space heating capacity, $\dot{Q}_h^{k=2}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=2}(T_j)$, of the heat pump when operating at full compressor speed and outdoor temperature T_j using

$$\dot{Q}_h^{k=2}(T_j) =$$

$$\begin{cases} \left\{\dot{Q}_h^{k=2}(17) + \dfrac{\left[\dot{Q}_{hcalc}^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right] * (T_j - 17)}{47 - 17}\right\} * \left(\dfrac{\dot{Q}_h^{k=N}(47)}{\dot{Q}_{hcalc}^{k=2}(47)}\right), & if\ T_j \geq 45\ °F \\ \dot{Q}_h^{k=2}(17) + \dfrac{\left[\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °F \leq T_j < 45\ °F \\ \dot{Q}_h^{k=2}(17) + \dfrac{\left[\dot{Q}_{hcalc}^{k=2}(47) - \dot{Q}_h^{k=2}(17)\right] * (T_j - 17)}{47 - 17}, & if\ T_j < 17\ °F \end{cases}$$

and

$$\dot{E}_h^{k=2}(T_j) =$$

$$\begin{cases} \left\{\dot{E}_h^{k=2}(17) + \dfrac{\left[\dot{E}_{hcalc}^{k=2}(47) - \dot{E}_h^{k=2}(17)\right] * (T_j - 17)}{47 - 17}\right\} * \left(\dfrac{\dot{E}_h^{k=N}(47)}{\dot{E}_{hcalc}^{k=2}(47)}\right), & if\ T_j \geq 45\ °\mathrm{F} \\ \dot{E}_h^{k=2}(17) + \dfrac{\left[\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)\right] * (T_j - 17)}{35 - 17}, & if\ 17\ °\mathrm{F} \leq T_j < 45\ °\mathrm{F} \\ \dot{E}_h^{k=2}(17) + \dfrac{\left[\dot{E}_{hcalc}^{k=2}(47) - \dot{E}_h^{k=2}(17)\right] * (T_j - 17)}{47 - 17}, & if\ T_j < 17\ °\mathrm{F} \end{cases}$$

Determine $\dot{Q}_h^{k=N}(47)$ and $\dot{E}_h^{k=N}(47)$ from the $H1_N$ test and the calculations specified in section 3.7 of this appendix. See section 3.6.4.b of this appendix regarding determination of the capacity $\dot{Q}_{hcalc}^{k=2}(47)$ and power input $\dot{E}_{hcacl}^{k=2}(47)$ used in the HSPF2 calculations to represent the $H1_2$ Test. Determine $\dot{Q}_h^{k=2}(35)$ and $\dot{E}_h^{k=2}(35)$ from the $H2_2$ test and the calculations specified in section 3.9 of this appendix or, if the $H2_2$ test is not conducted, by conducting the calculations specified in section 3.6.4 of this appendix. Determine $\dot{Q}_h^{k=2}(17)$ and $\dot{E}_h^{k=2}(17)$ from the $H3_2$ test and the methods specified in section 3.10 of this appendix.

* * * * *

e. Intermediate Compressor Speed. For units other than variable-speed non-communicating coil-only heat pumps, calculate the space heating capacity, $\dot{Q}_h^{k=v}(T_j)$, and electrical power consumption, $\dot{E}_h^{k=v}(T_j)$, of the heat pump when operating at outdoor temperature T_j and the intermediate compressor speed used during the section 3.6.4 $H2_V$ test using

Equation 4.2.4-7 $$\dot{Q}_h^{k=v}(T_j) = \dot{Q}_h^{k=v}(35) + M_Q * (T_j - 35), \text{ and}$$

Equation 4.2.4-8 $$\dot{E}_h^{k=v}(T_j) = \dot{E}_h^{k=v}(35) + M_E * (T_j - 35)$$

where $\dot{Q}_h^{k=v}(35)$ and $\dot{E}_h^{k=v}(35)$ are determined from the $H2_V$ test and calculated as specified in section 3.9 of this appendix. Approximate the slopes of the k=v intermediate speed heating capacity and electrical power input curves, M_Q and M_E, as follows:

$$M_Q = \left[\frac{\dot{Q}_h^{k=1}(62) - \dot{Q}_h^{k=1}(47)}{62 - 47} * (1 - N_Q)\right] + \left[N_Q * \frac{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=2}(17)}{35 - 17}\right]$$

$$M_E = \left[\frac{\dot{E}_h^{k=1}(62) - \dot{E}_h^{k=1}(47)}{62 - 47} * (1 - N_E)\right] + \left[N_E * \frac{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=2}(17)}{35 - 17}\right]$$

where,

$$N_Q = \frac{\dot{Q}_h^{k=v}(35) - \dot{Q}_h^{k=1}(35)}{\dot{Q}_h^{k=2}(35) - \dot{Q}_h^{k=1}(35)} \quad \text{and} \quad N_E = \frac{\dot{E}_h^{k=v}(35) - \dot{E}_h^{k=1}(35)}{\dot{E}_h^{k=2}(35) - \dot{E}_h^{k=1}(35)}$$

Use Equations 4.2.4–1 and 4.2.4–2, respectively, to calculate $\dot{Q}_h^{k=1}(35)$ and $\dot{E}_h^{k=1}(35)$, whether or not the heat pump is a minimum-speed-limiting variable-speed heat pump.

For variable-speed non-communicating coil-only heat pumps, there is no intermediate speed.

4.2.4.1 Steady-State Space Heating Capacity When Operating at Minimum Compressor Speed is Greater Than or Equal to the Building Heating Load at Temperature T_j, $\dot{Q}_h^{k=1}(T_j \geq BL(T_j)$.

Evaluate the Equation 4.2–1 quantities

$$\frac{RH(T_j)}{N} \quad \text{and} \quad \frac{e_h(T_j)}{N}$$

as specified in section 4.2.3.1 of this appendix. Except now use Equations 4.2.4–1 and 4.2.4–2 (for heat pumps that are not minimum-speed-limiting and are not variable-speed non-communicating coil-only heat pumps), Equations 4.2.4–1, 4.2.4–2, 4.2.4–3 and 4.2.4–4 as appropriate (for variable-speed non-communicating coil-only heat pumps), or Equations 4.2.4–5 and 4.2.4.-6 (for minimum-speed-limiting variable-speed heat pumps that are not variable-speed non-communicating coil-only heat pumps) to evaluate $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$, respectively, and replace section 4.2.3.1 references to ''low capacity'' and section 3.6.3 of this

appendix with ''minimum speed'' and section 3.6.4 of this appendix.

4.2.4.2 Heat Pump Operates at an Intermediate Compressor Speed (k=i) or, for a Variable-Speed Non-Communicating Coil-Only Heat Pump, Cycles Between High and Low Speeds, in Order to Match the Building Heating Load at a Temperature T_j, $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=2}(T_j)$.

For units that are not variable-speed non-communicating coil-only heat pumps, calculate

$\frac{RH(T_j)}{N}$ using Equation 4.2.3-2 while evaluating $\frac{e_h(T_j)}{N}$ using,

$$\frac{e_h(T_j)}{N} = \dot{E}_h^{k=i}(T_j) * \delta(T_j) * \frac{n_j}{N}$$

where:

$$\dot{E}_h^{k=i}(T_j) = \frac{\dot{Q}_h^{k=i}(T_j)}{3.413\frac{Btu/h}{W} * COP^{k=i}(T_j)}$$

and $\delta(T_j)$ is evaluated using Equation 4.2.3–3, while

$\dot{Q}_h^{k=i}(T_j) = BL(T_j)$, the space heating capacity delivered by the unit in matching the building load at temperature (T_j), in Btu/h. The matching occurs with the heat pump operating at compressor speed k=i, and

$COP^{k=i}(T_j)$ = the steady-state coefficient of performance of the heat pump when operating at compressor speed k=i and temperature T_j (dimensionless).

For each temperature bin where the heat pump operates at an intermediate compressor speed, determine $COP^{k=i}(T_j)$ using the following equations,

For each temperature bin where $\dot{Q}_h^{k=1}(T_j) < BL(T_j) < \dot{Q}_h^{k=v}(T_j)$,

$$COP_h^{k=i}(T_j) = COP_h^{k=1}(T_j) + \frac{COP_h^{k=v}(T_j) - COP_h^{k=1}(T_j)}{Q_h^{k=v}(T_j) - Q_h^{k=1}(T_j)} * (BL(T_j) - Q_h^{k=1}(T_j))$$

For each temperature bin where $\dot{Q}_h^{k=v}(T_j) \leq BL(T_j) < \dot{Q}_h^{k=2}(T_j)$,

$$COP_h^{k=i}(T_j) = COP_h^{k=v}(T_j) + \frac{COP_h^{k=2}(T_j) - COP_h^{k=v}(T_j)}{Q_h^{k=2}(T_j) - Q_h^{k=v}(T_j)} * (BL(T_j) - Q_h^{k=v}(T_j))$$

where:

$COP_h^{k=1}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at minimum compressor speed and temperature Tj, dimensionless, calculated using capacity $\dot{Q}_h^{k=1}(T_j)$ calculated using Equation 4.2.4–1 or 4.2.4–3 and electrical power consumption $\dot{E}_h^{k=1}(T_j)$ calculated using Equation 4.2.4–2 or 4.2.4–4;

$COP_h^{k=v}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at intermediate compressor speed and temperature Tj, dimensionless, calculated using capacity $\dot{Q}_h^{k=v}(T_j)$ calculated using Equation 4.2.4–7 and electrical power consumption $\dot{E}_h^{k=v}(T_j)$ calculated using Equation 4.2.4–8;

$COP_h^{k=2}(T_j)$ is the steady-state coefficient of performance of the heat pump when operating at full compressor speed and temperature Tj (dimensionless), calculated using capacity $\dot{Q}_h^{k=2}(T_j)$ and electrical power consumption $\dot{E}_h^{k=2}(T_j)$, both calculated as described in section 4.2.4; and

$BL(T_j)$ is the building heating load at temperature T_j, in Btu/h.

For variable-speed non-communicating heat pumps, calculate $\frac{RH(T_j)}{N}$ and $\frac{e_h(T_j)}{N}$ as described in section 4.2.3.2 of this appendix with the understanding that $\dot{Q}_h^{k=2}(T_j)$ and $\dot{E}_h^{k=2}(T_j)$ correspond to full compressor speed operation, $\dot{Q}_h^{k=1}(T_j)$ and $\dot{E}_h^{k=1}(T_j)$ correspond to minimum compressor speed operation, and all four quantities are derived from the results of the specified section 3.6.4 tests of this appendix.

* * * * *

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Part III

Securities and Exchange Commission

17 CFR Part 275

Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 275

[Release Nos. IA–5955; File No. S7–03–22]

RIN 3235–AN07

Private Fund Advisers; Documentation of Registered Investment Adviser Compliance Reviews

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (the ''Commission'' or the ''SEC'') is proposing new rules under the Investment Advisers Act of 1940 (the ''Advisers Act'' or the ''Act''). We propose to require registered investment advisers to private funds to provide transparency to their investors regarding the full cost of investing in private funds and the performance of such private funds. We also are proposing rules that would require a registered private fund adviser to obtain an annual financial statement audit of each private fund it advises and, in connection with an adviser-led secondary transaction, a fairness opinion from an independent opinion provider. In addition, we are proposing rules that would prohibit all private fund advisers, including those that are not registered with the Commission, from engaging in certain sales practices, conflicts of interest, and compensation schemes that are contrary to the public interest and the protection of investors. All private fund advisers would also be prohibited from providing preferential treatment to certain investors in a private fund, unless the adviser discloses such treatment to other current and prospective investors. We are proposing corresponding amendments to the Advisers Act books and records rule to facilitate compliance with these proposed new rules and assist our examination staff. Finally, we are proposing amendments to the Advisers Act compliance rule, which would affect all registered investment advisers, to better enable our staff to conduct examinations.

DATES: Comments should be received on or before April 25, 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*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–03–22 on the subject line.

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 S7–03–22. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's website (*https://www.sec.gov/rules/proposed.shtml*). Comments are also 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. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change; we do not edit personal identifying information from 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 the Commission's 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: Christine Schleppegrell, Senior Counsel; Thomas Strumpf, Senior Counsel; Melissa Roverts Harke, Senior Special Counsel; Michael C. Neus, Private Funds Attorney Fellow; or Melissa S. Gainor, Assistant Director, Investment Adviser Rulemaking Office, or Marc Mehrespand, Branch Chief, Chief Counsel's Office, at (202) 551–6787 or *IArules@sec.gov,* Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') is proposing for public comment 17 CFR 275.206(4)–10 (new rule 206(4)–10), 17 CFR 275.211(h)(1)–1 (new rule 211(h)(1)–1), 17 CFR 275.211(h)(1)–2 (new rule 211(h)(1)–2), 17 CFR 275.211(h)(2)–1 (new rule 211(h)(2)–1), 17 CFR 275.211(h)(2)–2 (new rule 211(h)(2)–2), and 17 CFR 275.211(h)(2)–3 (new rule 211(h)(2)–3) under the Investment Advisers Act of 1940 [15 U.S.C. 80b–1 *et seq.*] (the ''Advisers Act''); [1] and amendments to 17 CFR 275.204–2 (rule 204–2) and 17 CFR 275.206(4)–7 (rule 206(4)–7) under the Advisers Act.

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[1] Unless otherwise noted, when we refer to the Advisers Act, or any section of the Advisers Act, we are referring to 15 U.S.C. 80b, at which the Advisers Act is codified. When we refer to rules under the Advisers Act, or any section of those rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR part 275], in which these rules are published.

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I. Background and Need for Reform

In the wake of the 2007–2008 financial crisis, Congress passed and the President signed the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which increased the Commission's oversight responsibility for private fund advisers.[2] Among other things, the Dodd-Frank Act amended the Advisers Act generally to require advisers to private funds to register with the Commission and to require the Commission to establish reporting and recordkeeping requirements for advisers to private funds for investor protection and systemic risk purposes.[3] The Dodd-Frank Act also added section 211(h) to the Advisers Act, which, among other things, directs the Commission to ''facilitate the provision of simple and clear disclosures to investors regarding the terms of their relationships with . . . investment advisers'' and ''promulgate rules prohibiting or restricting certain sales practices, conflicts of interest, and compensation schemes for investment advisers.''[4]

Registration and reporting on both Form ADV and Form PF have been critical to increasing transparency and protecting investors in private funds and assessing systemic risk.[5] They also have substantially improved our ability to understand private fund advisers' operations and relationships with investors as private funds play an increasingly important role in the financial system and private funds continue growing in size, complexity, and number. There are currently 5,037 registered private fund advisers with over $18 trillion in private fund assets under management.[6] In addition, private funds and their advisers play an increasing role in the economy. For example, hedge funds engage in trillions of dollars in listed equity and futures transactions each month.[7] Private equity and other private funds are involved in mergers and acquisitions, non-bank lending, and restructurings and bankruptcies. Venture capital funds provide funding to start-ups and early stage companies. Private funds and their advisers also play an increasingly important role in the lives of everyday Americans saving for retirement or college tuition. Some of the largest groups of private fund investors include state and municipal pension plans, college and university endowments, non-profit organizations, and high net worth individuals.[8] Numerous investors also have indirect exposure to private funds through private pension plans, endowments, feeder funds established by banks and other financial institutions, foundations, and certain other retirement plans.

During our decade overseeing most private fund advisers, our staff has examined private fund advisers to assess both the issues and risks presented by their business models and the firms' compliance with their existing legal obligations.[9] The

[2] Section 202(a)(29) of the Advisers Act defines the term ''private fund'' as an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3) (''Investment Company Act''), but for section 3(c)(1) or 3(c)(7) of that Act. We use ''private fund'' and ''fund'' interchangeably throughout this release.

[3] *See, e.g., Rule Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 3221 (June 22, 2011) (''Implementing Release''); *Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,* Investment Advisers Act Release No. 3308 (Oct. 31, 2011).

[4] Dodd-Frank Wall Street Reform and Consumer Protection Act, section 913(h), Public Law 111–203, 124 Stat. 1376 (2010).

[5] The Financial Stability Oversight Council uses these and other tools to assess private fund impact on systemic risk. *See also* U.S. Securities and Exchange Commission, Division of Investment Management, Analytics Office, Private Fund Statistics, *available at https://www.sec.gov/divisions/investment/private-funds-statistics.shtml* (providing a summary of private fund industry statistics and trends based on data collected through Form PF and Form ADV). Staff reports, statistics, and other staff documents (including those cited herein) represent the views of Commission staff and are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved the content of these documents and, like all staff statements, they have no legal force or effect, do not alter or amend applicable law, and create no new or additional obligations for any person. The Commission has expressed no view regarding the analysis, findings, or conclusions contained therein.

[6] Form ADV data current as of November 30, 2021.

[7] *See* Division of Investment Management: Analytics Office, Private Funds Statistics Report: First Calendar Quarter 2021 (Nov. 1, 2021) (''Form PF Statistics Report''), at 31, *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2021-q1.pdf* (showing aggregate portfolio turnover for hedge funds managed by large hedge fund advisers (*i.e.,* advisers with at least $1.5 billion in hedge fund assets under management) as reported on Form PF).

[8] *See* Form PF Statistics Report, *supra* at footnote 7, at 15 (showing beneficial ownership of all funds by category as reported on Form PF). *See also, e.g.,* Public Investors, Private Funds, and State Law, Baylor Law Review, Professor William Clayton (June 15, 2020) (''Professor Clayton Article''), at 354 (noting that public pension plans have dramatically increased their investment in private funds).

[9] *See, e.g.,* OCIE National Examination Program Risk Alert: Observations from Examinations of Investment Advisers Managing Private Funds (June 23, 2020) (''EXAMS Private Funds Risk Alert 2020''), *available at https://www.sec.gov/files/*

Continued

Commission also has pursued enforcement actions against private fund advisers for practices that have caused private funds to pay more in fees and expenses than they should have, which negatively affected returns for private fund investors, or resulted in investors not being informed of relevant conflicts of interest concerning the private fund adviser and the fund.[10] Despite our examination and enforcement efforts, these activities persist.[11]

First, we continue to observe that private fund investments are often opaque; advisers frequently do not provide investors with sufficiently detailed information about private fund investments. Without sufficiently clear, comparable information, even sophisticated investors would be unable to protect their interests or make sound investment decisions. For example, some investors do not have sufficient information regarding private fund or portfolio company fees and expenses to make informed investment decisions, given those fees and expenses can be subject to complicated calculation methodologies (that often include the application of offsets, waivers, and other limits); may have varied labels across private funds; and can affect individual investors' returns differently because of alternative fee arrangements set forth in side letter agreements. In addition, advisers often provide private fund investors with laundry lists of potential fees and expenses, without giving details on the magnitude and scope of fees and expenses charged. Beyond management fees, performance-based compensation, and the expenses charged directly to the funds, some private fund advisers and their related persons charge a number of fees and expenses to the fund's portfolio companies. These can include consulting fees, monitoring fees, servicing fees, transaction fees, director's fees, and others. At the time of the initial investment and as fund operations continue, many investors do not have sufficient information regarding these fee streams that flow to the adviser or its related persons and reduce the return on their investment.

Investors also often lack sufficient transparency into how private fund performance is calculated. Advisers frequently present fund performance reflecting different assumptions, making it difficult to measure and compare data across funds and advisers or compare the fund's performance to the investor's chosen benchmarks, even where the assumptions are disclosed. For example, one adviser may show fund performance that reflects the use of a subscription line of credit initially to fund investments and pay expenses rather than investor capital. Another adviser may present only unlevered performance results that do not reflect the effect of a subscription line. More standardized requirements for performance metrics would allow private fund investors to make apples to apples comparisons when assessing the returns of similar fund strategies over different market environments and over time. More standardized requirements for performance information also would improve investors' ability to interpret complex performance reporting, and assess the relationship between the fees paid in connection with an investment and the return on that investment as they monitor their investment and consider potential future investments.

Similarly, investors may not have information regarding the preferred terms granted to certain investors (*e.g.,* seed investors, strategic investors, those with large commitments, and employees, friends, and family). Advisers frequently grant preferred terms to certain investors that often are not attainable for smaller institutional investors or individual investors. In some cases, these terms materially disadvantage other investors in the private fund.[12]

This lack of transparency regarding costs, performance, and preferential terms causes an information imbalance between advisers and private fund investors, which, in many cases, prevents private bilateral negotiations from effectively remedying shortcomings in the private funds market. We believe that this imbalance serves only the adviser's interest and leaves many investors without the tools they need to effectively protect their interests, whether through negotiations or otherwise. Moreover, certain advisers may only provide sufficiently detailed information following an investor's admission to the fund when the primary bargaining window has closed, particularly for closed-end funds where investors have no, or very limited, options to withdraw.

Enhanced information about costs, performance, and preferential treatment, would help an investor better decide whether to invest or to remain invested in a particular private fund, how to invest other assets in the investor's portfolio, and whether to invest in private funds managed by the adviser or its related persons in the future. More standardized information would improve comparability among private funds with similar characteristics. This information also would help a private fund investor better monitor and assess the true cost of its investments, the value of the services for which the fund is paying, and potential conflicts of interest. For example, enhanced cost information could allow an investor to identify when the private fund has incorrectly, or improperly, assessed a fee or expense by the adviser contrary to the adviser's fiduciary duty, contractual obligations to the fund, or

Private%20Fund%20Risk%20Alert_0.pdf. As of December 17, 2020, the Office of Compliance, Inspections and Examinations (''OCIE'') was renamed the Division of Examinations (''EXAMS'').

[10] *See, e.g., In re Kohlberg Kravis Roberts & Co. L.P.,* Investment Advisers Act Release No. 4131 (June 29, 2015) (settled action) (alleging private fund adviser misallocated more than $17 million in so-called ''broken deal'' expenses to its flagship private equity fund); *In re Blackstone Management Partners L.L.C., et al.,* Investment Advisers Act Release No. 4219 (Oct. 7, 2015) (settled action) (alleging private fund advisers failed to inform investors about benefits that the advisers obtained from accelerated monitoring fees and discounts on legal fees); *In re NB Alternatives Advisers LLC,* Investment Advisers Act Release No. 5079 (Dec. 17, 2018) (settled action) (alleging private fund adviser improperly allocated approximately $2 million of compensation-related expenses to three private equity funds it advised).

[11] *See, e.g., In the Matter of Diastole Wealth Management, Inc.,* Investment Advisers Act Release No. 5855 (Sept. 10, 2021) (settled action) (alleging private fund adviser failed to disclose to investors that the adviser periodically made loans to a company owned by the son of the principal of the advisory firm and that the private fund's investment in the company could be used to repay the loans made by the adviser); *In re Global Infrastructure Management, LLC,* Investment Advisers Act Release No. 5930 (Dec. 20, 2021) (settled action) (alleging private fund adviser failed to properly offset management fees to private equity funds it managed and made false and misleading statements to investors and potential investors in those funds concerning management fee offsets); *In the Matter of EDG Management Company, LLC,* Investment Advisers Act Release No. 5617 (Oct. 22, 2020) (settled action) (alleging that private equity fund adviser failed to apply the management fee calculation method specified in the limited partnership agreement by failing to account for write downs of portfolio securities causing the fund and investors to overpay management fees); *In the Matter of Mitchell J. Friedman,* Investment Advisers Act Release No. 5338 (Sept. 4, 2019) (settled action) (alleging that the co-owner of a private fund advisory firm failed to disclose material conflicts of interest to the private fund it managed and misled two investors by misrepresenting an investment opportunity).

[12] *See, e.g., Securities and Exchange Commission* v. *Philip A. Falcone, Harbinger Capital Partners Offshore Manager, L.L.C. and Harbinger Capital Partners Special Situations GP, L.L.C., Civil Action No. 12 Civ. 5027 (PAC) (S.D.N.Y.) and Securities and Exchange Commission* v. *and* (sic) *Harbinger Capital Partners LLC, Philip A. Falcone and Peter A. Jenson, Civil Action No. 12 Civ. 5028 (PAC) (S.D.N.Y.), Civil Action No. 12 Civ. 5027 (PAC) (S.D.N.Y.),* U.S. Securities and Exchange Commission Litigation Release No. 22831A (Oct. 2, 2013) (''Harbinger Capital'') (private fund adviser granted favorable redemption and liquidity terms to certain large investors in a private fund without disclosing these arrangements to the fund's board of directors and the other fund investors). *See also* 17 CFR 275.206(4)–8 (rule 206(4)–8 under the Advisers Act).

disclosures by the fund or the adviser. Ultimately, this information would help investors better understand marketplace dynamics and potentially improve efficiency for future investments, for example, by expediting the process for reviewing and negotiating fees and expenses. More competition and transparency also could lower the costs of capital for portfolio companies raising money and increase returns to investors, potentially bringing greater efficiencies to this part of the capital markets.

We also have continued to observe instances of advisers acting on conflicts of interest that are not transparent to investors, provide substantial financial benefits to the adviser, and potentially have significant negative impacts on the private fund's returns.[13] These issues are widespread in the private fund context because, in many cases, the adviser can influence or control the portfolio company and can extract compensation without the knowledge of the fund or its investors. In addition, private funds typically lack governance mechanisms that would help check overreaching by private fund advisers. For example, although some private funds may have limited partner advisory committees (''LPACs'') or boards of directors, these types of bodies may not have the necessary independence, authority, or accountability to oversee and consent to these conflicts or other harmful practices. Private funds also do not have comprehensive mechanisms for private fund investors to exercise effective governance, which is exacerbated by the fact that private fund advisers often provide certain investors with preferential terms that can create potential conflicts among the fund's investors. Moreover, the interests of one or more private fund investors may not represent the interests of, or may otherwise conflict with the interests of, other investors in the private fund due to, among other things, business or personal relationships or other private fund investments. To the extent investors are afforded governance or similar rights, such as LPAC representation, certain fund agreements permit such investors to exercise their rights in a manner that places their interests ahead of the private fund or the investors as a whole. For example, certain fund agreements state that, subject to applicable law, LPAC members owe no duties to the private fund or to any of the other investors in the private fund and are not obligated to act in the interests of the private fund or the other investors as a whole.

As an example of advisers acting on conflicts of interest, certain venture capital fund advisers use private funds to obtain a controlling or influential interest in a non-publicly traded early stage company and then instruct that company to hire the adviser or its related persons to provide certain services. In these circumstances, the adviser often sets the terms of the engagement, including the price paid for the services. In cases where the adviser causes the fund to overpay for services because the services were not negotiated in an arm's-length process, the adviser's practice of hiring its related persons harms investors by diminishing the private fund's returns. For example, the adviser sometimes instructs the company to pay certain of the adviser's bills, to reimburse the adviser for expenses incurred in managing its investment in the company, or to add to its payroll adviser employees who manage the investment. In contrast, outside of the private fund context, an adviser often uses private fund clients to buy shares in a company and may vote proxies or engage with management and the board, but absent taking some extraordinary steps, the adviser's ability to influence or control the company is generally constrained. In addition, if the company is publicly traded, the adviser's attempts to seize control or make a variety of other changes are generally visible to its clients and the public at large.

Although many conflicts of interest can involve problematic sales practices or compensation schemes, some can be managed. For example, advisers have a conflict of interest with private funds and investors in those funds when they value the fund's assets and use that valuation as the basis for the calculation of the adviser's fees and fund performance.[14] Similarly, advisers or their related persons have a conflict of interest with the fund and its investors when they offer existing fund investors the option to sell or exchange their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons (an ''adviser-led secondary transaction''). In both of these examples, there are opportunities for advisers, funds, and investors to benefit, but there is also a potential for significant harm if the adviser's conflicts are not appropriately handled, including diminishing the fund's returns because of excess fees and expenses paid to the fund's adviser or its related persons. In these cases, enhanced protections in the form of an annual private fund audit and a fairness opinion in connection with an adviser-led secondary transaction would help address the concerns presented by these conflicts.

Other conflicts of interest are contrary to the public interest and the protection of investors, and cannot be managed given the lack of governance mechanisms frequent in private funds as discussed above. For example, we have observed situations where the adviser causes one fund to bear more than its pro rata share of expenses related to a portfolio investment.[15] In these circumstances, an adviser may unfairly allocate fees and expenses to benefit certain favored clients at the expense of others, indirectly benefiting the adviser. Through our examinations, our staff also has encountered instances where advisers seek to limit their fiduciary duty or otherwise provide that the adviser and its related persons will not be liable to the private fund or investors for breaching its duties (including fiduciary duties) or liabilities (that exist at law or in equity).[16] We believe an adviser that seeks to limit its liability in such a manner harms the private fund (and, by extension, the private fund investors) by putting the adviser's interests ahead of the interests of its private fund client.

Accordingly, based on our experience overseeing private fund advisers, as well as private funds' impact on our financial

[13] *See, e.g., In the Matter of Bluecrest Capital Management Limited,* Investment Advisers Act Release No. 5642 (Dec. 8, 2020) (settled action) (alleging that hedge fund adviser strategically re-allocated its best performing personnel (traders) from its flagship hedge fund to its proprietary hedge fund, which followed an overlapping trading strategy and that hedge fund adviser failed to adequately disclose the existence of its proprietary hedge fund, the movement of traders, and related conflicts of interest); *In the Matter of Monomoy Capital Management, L.P.,* Investment Advisers Act Release No. 5485 (Apr. 22, 2020) (settled order) (alleging that private fund adviser charged the fund's portfolio company for the services of its in-house operations group without fulling disclosing this practice).

[14] *See, e.g., SEC* v. *Joseph W. Daniel,* Litigation Release No. 19427 (Oct. 13, 2005) and *In re Joseph W. Daniel,* Investment Advisers Act Release No. 2450 (Nov. 29, 2005) (settled action) (alleging adviser failed to properly value holdings of its hedge fund client, which inflated the management fees investor paid); *In the Matter of Swapnil Rege,* Investment Advisers Act Release No. 5303 (July 18, 2019) (settled action) (alleging that an employee of a private fund adviser mispriced the private fund's investments, which resulted in the adviser charging the fund excess management fees).

[15] *See, e.g., In the Matter of Lincolnshire Management, Inc.,* Investment Advisers Act Release No. 3927 (Sept. 27, 2014) (settled action) (alleging private equity adviser to two private funds misallocated expenses between the funds).

[16] *See, e.g.,* EXAMS National Examination Program Risk Alert: Observations from Examinations of Private Fund Advisers (Jan. 27, 2022) (''EXAMS Private Funds Risk Alert 2022''), *available at https://www.sec.gov/files/private-fund-risk-alert-pt-2.pdf.*

system, our economy, and American investors' savings, there is a need to enhance the regulation of private fund advisers to protect investors, promote more efficient capital markets, and encourage capital formation. The Commission believes that many of the practices it has observed are contrary to the public interest and protection of investors and that these practices, if left unchecked, would continue to harm investors.

In addition, given the lack of strong governance mechanisms at private funds, their compliance programs take on added importance in protecting investors.[17] We are proposing an amendment to the Advisers Act compliance rule to require all SEC-registered advisers, including those that do not manage private funds, to document the annual review of their compliance policies and procedures in writing.[18] Based on staff experience, some investment advisers do not make and preserve written documentation of the annual review of their compliance policies and procedures, which our examination staff relies on to help it understand an adviser's compliance program, determine whether the adviser is complying with the rule, and identify potential weaknesses in the compliance program. Advisers can also rely on written documentation of the annual review to promote an internal culture of compliance and accountability. We believe that requiring written documentation would focus renewed attention on the importance of the annual compliance review process and would result in records of annual compliance reviews that would allow our staff to assess whether an adviser has complied with the review requirement of the compliance rule.

II. Discussion of Proposed Rules for Private Fund Advisers

We are proposing a series of rules under the Advisers Act that would specifically address these practices by advisers to private funds. The goal of this package of proposed reforms is to protect those who directly or indirectly invest in private funds by increasing visibility into certain practices, establishing requirements to address certain practices that have the potential to lead to investor harm, and prohibiting adviser activity that we believe is contrary to the public interest and the protection of investors. While some of the investor protection concerns identified herein may relate to an adviser's activities with regard to other client types (*e.g.,* separately managed accounts, pooled vehicles that are not private funds as defined in the Advisers Act), the proposed reforms are designed to address concerns that arise out of the opacity that is prevalent in the private fund structure. We also are proposing corresponding amendments to the books and records requirements in rule 204–2.

We request comment on the following aspects of the package of proposed reforms:

- Are there certain activities that this package of proposed reforms would address in the private fund context that we should also address in other contexts (*e.g.,* separately managed accounts)? Why or why not?
- Are there certain activities in the private fund context that this package of proposed reforms is not addressing but that we should address?

A. Quarterly Statements

The proposed rule would require an investment adviser that is registered or required to be registered with the Commission to prepare a quarterly statement that includes certain information regarding fees, expenses, and performance for any private fund that it advises and distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless a quarterly statement that complies with the proposed rule is prepared and distributed by another person.[19] We believe that periodic statements detailing such information are necessary to improve the quality of information provided to fund investors, allowing them to assess and compare their private fund investments better. This information also would improve their ability to monitor the private fund adviser to ensure compliance with the private fund's governing agreements and disclosures. While private fund advisers may currently provide statements to investors, there is no requirement for advisers to do so under the Advisers Act regulatory regime.

We believe advisers should provide statements to help an investor better understand the relationship between the fees and expenses the investor bears and the performance the investor receives from the investment because of the opaque nature of the fees and expenses typically associated with private fund investments. For example, a private fund's governing documents (*e.g.,* limited partnership agreement, limited liability company agreement, or offering document) may include broad characterizations of the types of potential fees and expenses. In other cases, the fund's governing documents may give the adviser significant discretion to determine which fees and expenses relate to, and should be borne by, the fund. Examples of broad fee and expense characterizations include ''any and all fees and expenses related to the fund's business or activities,'' ''any and all fees and expenses incurred in connection with the operation of the fund,'' and ''any and all fees and expenses that the adviser shall determine to be related to the establishment and operation of the fund.'' These provisions do not provide investors sufficiently detailed information regarding what fees and expenses will be charged, how much those fees and expenses will be, and how often fees and expenses will be charged.

We believe that periodic statements containing certain required information would allow investors to understand and monitor their private fund investments better. For example, investors could check fees and expenses paid directly or indirectly by the private fund against the private fund's governing documents. This information may allow an investor to identify when the private fund is incorrectly, or improperly, assessed a fee or expense by the adviser contrary to the adviser's fiduciary duty or the fund's governing agreements or disclosures. As discussed in more detail below, the proposed quarterly statement also would improve transparency for investors into both the myriad ways an adviser and its related persons benefit from their relationship with the private fund and the scope of potential conflicts of interests.

In addition, the proposed quarterly statement would allow a private fund investor to compare cost and performance information across its private fund investments. This information would help inform investment decisions, including whether to remain invested in certain private funds or to invest in other private funds managed by the adviser or its related persons. More broadly, this disclosure would help inform investors about the cost and performance dynamics of this marketplace and potentially improve efficiency for future investments. For example, if an investor owns interests in funds with similar investment strategies, the investor may be in a better position to negotiate lower fee rates for future investments because the investor would be aware of the rates charged by certain advisers in that segment of the market.

We recognize that many private fund advisers contractually agree to provide

[17] *Id.*

[18] Proposed rule 206(4)–7(b).

[19] Proposed rule 211(h)(1)–2.

fee, expense, and performance reporting to investors. For example, advisers may provide investors with financial statements, schedules, or other reports regarding the fund and its activities. However, not all private fund investors are able to obtain this information. Others may be able to obtain information, but it may not be sufficiently clear or detailed reporting regarding the costs and performance of a particular private fund. For example, some advisers report only aggregated expenses, or do not provide detailed information about the calculation and implementation of any negotiated rebates, credits, or offsets. Without clear, detailed disclosure, investors are unable to measure and assess the impact fees and expenses have on their investment returns.

Reporting practices also vary across the private funds industry due to, among other things, different forms and templates. Because the proposed requirement of quarterly statements would involve a degree of standardization across the industry, we believe that investors would be able to find and compare key information regarding fees, expenses, and performance for funds with similar characteristics more easily than is the case today. This has the potential to, in our view, bring greater efficiencies to the marketplace by improving investor decision making. For example, investors likely would be able to compare adviser compensation across similar funds, which may assist investors in determining whether to negotiate or renegotiate economic terms or whether to invest or continue to invest in private funds managed by the adviser.

The proposed quarterly statement requirement would provide fund-wide reporting. We believe this approach would help private fund investors compare the costs of investing across private funds. We are not proposing to require private fund advisers to provide personalized account statements showing each individual investor's fees, expenses, and performance. The proposed quarterly statements are designed, in part, to allow individual private fund investors to use fund-level information to perform more personal, customized calculations. In addition, these proposed requirements do not prevent an adviser from providing (or causing a third party, such as an administrator, consultant, or other service provider, to provide), or an investor from negotiating, personalized reporting. In the registered fund context, fund-level reporting has, in our view, enabled retail investors to understand their investments better. We believe a comparable approach, but one that is more suitable to the needs of investors in private funds, is appropriate here.

We request comment on the following aspects of the proposed rule:

- Should we, as proposed, require advisers to private funds to prepare a quarterly statement providing standardized disclosures regarding the cost of investing in the private fund and the private fund's performance and distribute the quarterly statement to the fund's investors? Should we instead require advisers to provide investors with personalized information that takes into account the investors' individual ownership stake in the fund in addition to, or in lieu of, a statement covering the private fund? If so, what information should be included in the personalized disclosure? For example, should the statement reflect specific fee arrangements, including any offsets or waivers applicable only to the investors receiving the statement? Do advisers currently provide personalized fee, expense, and performance disclosures? If so, what other types of information do advisers or funds typically include? Do they automate such disclosures? How expensive and complex would it be for advisers to create and deliver personalized disclosures? How useful would it be for investors to receive personalized disclosures?
- Would investors find data regarding the private fund's fees, expenses, and performance useful given that certain investors may have different economic arrangements with the adviser, such as fee breaks or expense caps? Should we require advisers to disclose in the quarterly statement whether investors are subject to different economic arrangements, whether documented in side letters or other written agreements or, to the extent applicable, as a result of different class terms? If so, should we require advisers to list the rates or otherwise show a range?
- Should the quarterly statement rule apply to registered advisers to private funds as proposed or should it apply to all advisers to private funds? Should it apply to exempt reporting advisers? Should the rule include any exceptions for categories of advisers? If so, what conditions should apply to such an exception?
- Should the rule require advisers to prepare and distribute the quarterly statements only to private fund investors, as proposed? Alternatively, should the rule require advisers to provide quarterly statements to investors in other types of pooled investment vehicles, such as a vehicle that relies on an exclusion from the definition of ''investment company'' in section 3 of the Investment Company Act other than section 3(c)(1) or 3(c)(7) of that Act? For example, should we require advisers to provide quarterly statements to investors in pooled investment vehicles that rely on the exclusion from the definition of ''investment company'' in section 3(c)(5)(C) of that Act?[20]
- The proposed rule would require an adviser to distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless such a quarterly statement is prepared and distributed by another person. Would this provision eliminate burdens where there are multiple advisers to the same fund, while still providing the fund's investors with the benefits of the quarterly statement? Would the fund's primary adviser typically prepare and distribute the quarterly statement in these circumstances? How would advisers that do not prepare and distribute a quarterly statement in reliance on another adviser demonstrate compliance with this requirement?
- The proposed rule would require advisers to prepare and distribute a quarterly statement disclosing certain information regarding a private fund's fees, expenses, and performance. Are there alternative approaches we should require to improve investor protection and bring greater efficiencies to the market? For example, should we establish maximum fees that advisers may charge at the fund level? Should we prohibit certain compensation arrangements, such as the ''2 and 20'' model? Should we prohibit advisers from receiving compensation from portfolio investments to the extent they also receive management fees from the fund? Should we require advisers to disclose their anticipated management fee revenue and operating budget to private fund investors or an LPAC or other similar body (despite the limitations of private fund governance mechanisms, as discussed above) on an annual or more frequent basis? Should we impose limitations on management fees (which are typically paid regardless of whether the fund generates a profit), but not impose limitations on performance-based compensation (which is typically tied to the success of the fund)? Should we prohibit

[20] Section 3(c)(5)(C) of the Investment Company Act provides an exclusion from the definition of investment company for any person who is not engaged in the business of issuing redeemable securities, face-amount certificates of the installment type or periodic payment plan certificates, and who is primarily engaged in the business of purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.

management fees from being charged as a percentage of committed capital and instead only permit management fees to be based on invested capital, net asset value, and other similar types of fee bases? Should we prohibit certain expense practices or arrangements, such as expense caps provided to certain, but not all, investors?

• Similarly, should we prohibit certain types of private fund performance information in the quarterly statement? For example, should we prohibit advisers from presenting performance with the impact of fund-level subscription facilities? Should we prohibit advisers from presenting combined performance for multiple funds, such as a main fund and a co-investment fund that pays lower or no fees?

• Do private fund advisers or their related persons receive other economic benefits that the rule should require advisers to disclose in the quarterly statement? For example, should the quarterly statement also require disclosure and quantification of the kinds of economic benefits commonly received by advisers or their related persons from broker-dealers or other service providers to private funds, such as hedge funds? Why or why not?

1. Fee and Expense Disclosure

The proposed rule would require an investment adviser that is registered or required to be registered to prepare and distribute quarterly statements with certain information regarding fees and expenses, including fees and expenses paid by underlying portfolio investments to the adviser or its related persons. While the types of fees and expenses charged to private funds can vary across the industry, private funds are often more expensive than other asset classes because the scope and magnitude of fees and expenses paid directly and indirectly by private fund investors can be extensive. Investors typically compensate the adviser for managing the affairs of the fund, often in the form of management fees.[21] On top of that, investors typically pay or otherwise bear performance-based compensation.[22] A fund's portfolio investments also may pay fees to the adviser or its related persons. For example, principals of the adviser may receive cash or non-cash compensation—such as equity awards or stock options—for serving as directors of a portfolio investment owned by the private fund. Portfolio investment compensation is typically in addition to compensation paid or allocated to the adviser or its related persons at the fund level, unless the fund's governing documents require the adviser to offset portfolio investment compensation against other revenue streams or otherwise provide a rebate to investors. Compensation at the ''portfolio investment-level'' is more common for certain private funds—such as private equity funds or real estate funds—and less common for others—such as hedge funds.

Investors generally are required to bear all expenses related to the operation of the fund and its portfolio investments. In addition to expenses such as organizational and offering expenses, private fund investors also frequently bear expenses that vary based on the private fund's strategy and contractual agreements. For example, hedge fund investors indirectly bear trading expenses. Investors in private equity and venture capital funds indirectly bear expenses associated with fund investments, such as deal sourcing and due diligence expenses, including for investments that are unconsummated. Investors in private funds with a real estate investment strategy also indirectly bear expenses related to property management, environmental reviews, and site inspections. These expenses generally are uncapped, and, unlike a fund's performance-based compensation, private fund investors are typically required to bear them regardless of whether the fund or the applicable investment generates a positive return for investors.

Investors often lack transparency regarding the total cost of such fees and expenses.[23] For example, even though investors indirectly bear the costs associated with a portfolio investment paying fees to the adviser or its related persons, advisers often do not disclose the magnitude or scope of these fees to investors. Opaque reporting practices make it difficult for investors to measure and evaluate performance accurately and to make informed investment decisions.[24] Moreover, such reporting practices may prevent private fund investors from assessing whether the type and amount of fees and expenses borne by the private fund comply with the fund's governing agreements and can lead to problematic compensation schemes and sales practices with investors bearing excess or improper fees and expenses. The Commission has brought enforcement actions related to the disclosure and allocation of fees and expenses by private fund advisers. For example, we have alleged in settled enforcement actions that advisers have received undisclosed fees,[25] improperly shifted expenses away from the adviser,[26] and misallocated fees and expenses among private fund clients.[27] Staff has observed similarly problematic compensation schemes and sales practices in its examinations of private fund advisers.[28] For example, staff has observed advisers that charge private funds for expenses not permitted under the fund documents. Staff has also observed advisers improperly allocate shared expenses, such as broken-deal, due diligence, and consultant expenses, among private fund clients and their own accounts.

We have seen a significant increase in investors seeking transparency regarding fees and expenses. For example, certain investors and industry groups have encouraged advisers to adopt uniform reporting templates to promote transparency and alignment of interests between advisers and

[21] Certain private fund advisers utilize a pass-through expense model where the private fund pays for most, if not all, expenses, including the adviser's expenses, but the adviser does not charge a management fee. *See infra* section II.D.2. for a discussion of such pass-through expense models.

[22] Investors typically enter into agreements under which the private fund pays such compensation directly to the adviser or its affiliates. Investors generally bear such compensation indirectly through their investment in the private fund; however, certain agreements may require investors to pay the adviser directly.

[23] *See* Hedge Fund Transparency: Cutting Through the Black Box, The Hedge Fund Journal, James R. Hedges IV (Oct. 2006) (stating that ''the biggest challenges facing today's hedge fund industry may well be the issues of transparency and disclosure''), *available at https://thehedgefundjournal.com/hedge-fund-transparency/*; Fees & Expenses, Private Funds CFO (Nov. 2020) at 12 (noting that it is becoming increasingly complicated for investors to determine what the management fee covers versus what is a partnership expense and stating that the ''formulas for management fees are complex and unique to different investors.''), *available at https://www.troutman.com/images/content/2/6/269858/PFCFO-FeesExpenses-Nov20-Final.pdf.*

[24] *See, e.g.,* Letter from State Treasurers and Comptrollers to Mary Jo White, U.S. Securities & Exchange Commission (July 21, 2015), *available at http://comptroller.nyc.gov/wp-content/uploads/documents/SEC_SignOnPDF.pdf*; *see also* Letter from Americans for Financial Reform Education Fund to Chairman Gary Gensler, U.S. Securities & Exch. Commission (July 6, 2021), *available at https://ourfinancialsecurity.org/wp-content/uploads/2021/07/Letter-to-SEC-re_-Private-Equity-7.6.21.pdf* .

[25] *See, e.g., In the Matter of Blackstone Management Partners, L.L.C., et. al.,* Investment Advisers Act Release No. 4219 (Oct. 7, 2015) (settled action).

[26] *See, e.g., In the Matter of Cherokee Investment Partners, LLC and Cherokee Advisers, LLC,* Investment Advisers Act Release No. 4258 (Nov. 5, 2015) (settled action).

[27] *See, e.g., In the Matter of Lincolnshire Management, Inc.,* Investment Advisers Act Release No. 3927 (Sept. 22, 2014) (settled action).

[28] *See* EXAMS Private Funds Risk Alert 2020, *supra* footnote 9.

investors.[29] Despite these efforts, many advisers still do not voluntarily provide adequate disclosure to investors. The proposed quarterly statement rule would mandate them to provide it.

a. Private Fund-Level Disclosure

The proposed quarterly statement rule would require private fund advisers to disclose the following information to investors in a table format:

(1) A detailed accounting of all compensation, fees, and other amounts allocated or paid to the adviser or any of its related persons by the private fund during the reporting period (''adviser compensation'');

(2) A detailed accounting of all fees and expenses paid by the private fund during the reporting period other than those listed in paragraph (1) above (''fund expenses''); and

(3) The amount of any offsets or rebates carried forward during the reporting period to subsequent quarterly periods to reduce future payments or allocations to the adviser or its related persons.[30]

The table would provide investors with comprehensive fee and expense disclosure for the prior quarterly period (or, in the case of a newly formed private fund's initial quarterly statement, its first two full calendar quarters of operating results).[31] We will discuss each of these elements in turn.

Adviser Compensation. The proposed rule would require the fund table to show a detailed accounting of all adviser compensation during the reporting period, with separate line items for each category of allocation or payment reflecting the total dollar amount.[32] The proposed rule is designed to capture all compensation, fees, and other amounts allocated or paid to the investment adviser or any of its related persons by the fund, including, but not limited to, management, advisory, sub-advisory, or similar fees or payments, and performance-based compensation.[33]

We believe requiring advisers to disclose all forms of adviser compensation as separate line items (without prescribing particular categories of fees) is appropriate because it would encompass the various forms of adviser compensation across the private funds industry. Many private funds compensate advisers with a ''2 and 20'' arrangement, consisting of a 2% management fee and a 20% share of any profits generated by the fund. Certain advisers, however, receive other forms of compensation from private funds in addition to, or in lieu of, such amounts. For example, certain advisers charge private funds administration fees or servicing fees. The proposal would help ensure disclosure of the various forms of adviser compensation, and the corresponding dollar amounts of each type of compensation, to current investors regardless of how an adviser characterizes the compensation and regardless of the different economic arrangements in place. This would allow investors to understand and assess the magnitude and scope of adviser compensation better and help validate that adviser compensation conforms to contractual agreements.

In addition to compensation paid to the adviser, the proposed rule would require disclosure of compensation, fees, and other amounts allocated or paid to the adviser's ''related persons.'' We propose to define ''related persons'' to include: (i) All officers, partners, or directors (or any person performing similar functions) of the adviser; (ii) all persons directly or indirectly controlling or controlled by the adviser; (iii) all current employees (other than employees performing only clerical, administrative, support or similar functions) of the adviser; and (iv) any person under common control with the adviser.[34] The term ''control'' would be defined to mean the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.[35]

Many advisers conduct a single advisory business through multiple separate legal entities or provide services to a private fund through different affiliated entities. The proposed ''related person'' definition is designed to capture the various entities and personnel an adviser may use to provide advisory services to, and receive compensation from, private fund clients. We considered, but are not proposing, a broader definition of related persons to include additional entities related to the adviser or its personnel, such as entities the adviser or its personnel own a financial interest in but do not control. We are not proposing a broader definition because it would likely capture entities or persons outside of the ones advisers typically use to conduct a single advisory business. In addition, the proposed definition is consistent with the definition of related person used on Form ADV, which advisers have experience assessing as part of their disclosure obligations on that form. We believe that the proposed definition captures the relevant entities without being overly broad.

Fund Fees and Expenses. The proposed rule would also require the fund table to show a detailed accounting of all fees and expenses paid by the private fund during the reporting period, other than those disclosed as adviser compensation, with separate line items for each category of fee or

[29] *See, e.g.,* Institutional Limited Partners Association (''ILPA'') Reporting Template, *available at https://ilpa.org/reporting-template/(stating* that, since its release, more than one hundred and forty organizations have endorsed the ILPA reporting template, including more than twenty advisers).

[30] Proposed rule 211(h)(1)–2(b).

[31] *See* proposed rule 211(h)(1)–1 (defining ''reporting period'' as the private fund's calendar quarter covered by the quarterly statement or, for the initial quarterly statement of a newly formed private fund, the period covering the private fund's first two full calendar quarters of operating results). To the extent a newly formed private fund begins generating operating results on a day other than the first day of a calendar quarter (*e.g.,* January 1), the adviser should include such partial quarter and the immediately succeeding calendar quarters in the newly formed private fund's initial quarterly statement. For example, if a fund begins generating operating results on February 1, the reporting period for the initial quarterly statement would cover the period beginning on February 1 and ending on September 30.

[32] Proposed rule 211(h)(1)–2(b)(1).

[33] We propose to define ''performance-based compensation'' as allocations, payments, or distributions of capital based on the private fund's (or its portfolio investments') capital gains and/or capital appreciation. This definition's scope is broad and includes cash or non-cash compensation, including, for example, in-kind allocations, payments, or distributions of performance-based compensation. We believe that the broad scope of the definition, which would capture, without limitation, carried interest, incentive fees, incentive allocations, or profit allocations, among other forms of compensation, is appropriate given the various forms and types of performance-based compensation across the private funds industry.

[34] Proposed rule 211(h)(1)–1. Form ADV also uses the same definition. The regulations at 17 CFR 275.206(4)–2 (rule 206(4)–2) use a similar definition by defining related person to include any person, directly or indirectly, controlling or controlled by the adviser, and any person that is under common control with the adviser.

[35] Proposed rule 211(h)(1)–1. The definition, in addition, provides that (i) each of an investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser; (ii) a person is presumed to control a corporation if the person: (A) Directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities; or (B) has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities; (iii) a person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the partnership; (iv) a person is presumed to control a limited liability company if the person: (A) Directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company; (B) has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the limited liability company; or (C) is an elected manager of the limited liability company; or (v) a person is presumed to control a trust if the person is a trustee or managing agent of the trust. Form ADV also uses the same definition.

expense reflecting the total dollar amount.[36] Similar to the approach taken with respect to adviser compensation discussed above, the proposed rule would capture all fund fees and expenses paid during the reporting period including, but not limited to, organizational, accounting, legal, administration, audit, tax, due diligence, and travel expenses.

We have observed two general trends in the private funds industry that support this approach. First, fund expenses have risen significantly in recent years for certain private funds due to, among other things, complex fund structures, global marketing and investment efforts, and increased service provider costs.[37] Advisers often pass on such increases to the private funds they advise, without providing investors with detailed disclosure about the magnitude or type of expenses actually charged to the fund. Second, certain advisers have shifted expenses related to their advisory business to private fund clients.[38] For example, some advisers charge private fund clients for salaries and benefits related to personnel of the adviser. Such expenses historically have been paid by advisers with management fee proceeds or other revenue streams, but are increasingly being charged as separate expenses that may not be transparent to fund investors.[39]

The proposed quarterly statement rule would require a detailed accounting of each category of fund expense. This would require advisers to list each specific category of expense as a separate line item, rather than permit advisers to group fund expenses into broad categories. For example, if a fund paid insurance premiums, administrator expenses, and audit fees during the reporting period, a general reference to ''fund expenses'' on the quarterly statement would not satisfy the detailed accounting requirement. Instead, an adviser would be required to list each specific category of expense (*i.e.,* insurance premiums, administrator expenses, and audit fees), and the corresponding dollar amount, separately. As with adviser compensation, we believe this approach would provide private fund investors with sufficient detail to validate that the fund expenses borne by the fund conform to contractual agreements.

To the extent a fund expense also could be characterized as adviser compensation under the proposed rule, the proposed rule would require advisers to disclose such payment or allocation as adviser compensation and not as a fund expense in the quarterly statement. For example, certain private funds may engage the adviser or its related persons to provide services to the fund, such as consulting, legal, or back-office services. An adviser would disclose any compensation, fees, or other amounts allocated or paid by the fund for such services as part of the detailed accounting of adviser compensation. This approach would help ensure that investors understand the entire amount of adviser compensation allocated or paid to the adviser and its related persons during the reporting period.

Offsets, Rebates, and Waivers. We are proposing to require advisers to disclose adviser compensation and fund expenses in the fund table both before and after the application of any offsets, rebates, or waivers.[40] Specifically, the proposed rule would require an adviser to present the dollar amount of each category of adviser compensation or fund expense before and after any such reduction for the reporting period.

Advisers may offset, rebate, or waive adviser compensation or fund expenses in a number of circumstances. For example, a private equity adviser may enter into a management services agreement with a fund's portfolio company, requiring the company to pay the adviser a fee for those services. To the extent the fund's governing agreement requires the adviser to share the fee with the fund investors through an offset to the management fee, the management fee would typically be reduced, on a dollar-for-dollar basis, by an amount equal to the fee.[41] Under the proposed rule, the adviser would be required to list the management fee both before and after the application of the fee offset.[42]

We considered whether to require advisers to disclose adviser compensation and fund expenses only after the application of offsets, rebates, and waivers, rather than before and after. We recognize that investors may find the reduced numbers more meaningful, given that they generally reflect the actual amounts borne by the fund during the reporting period. We believe, however, that presenting both figures would provide investors with greater transparency into advisers' fee and expense practices, particularly with respect to how offsets, rebates, and waivers affect adviser compensation. Transparency into fee and expense practices is important because it would assist investors in monitoring their private fund investments and, for certain investors, would ease their own efforts at complying with their reporting obligations.[43] We also believe that advisers would have this information readily available and both sets of figures would be helpful to investors in monitoring whether and how offsets, rebates, and waivers are applied.

In addition, we are proposing to require advisers to disclose the amount of any offsets or rebates carried forward during the reporting period to subsequent periods to reduce future adviser compensation.[44] This information would allow investors to understand whether they are or the fund is entitled to additional reductions in future periods.[45] Further, we believe that this information would assist investors with their liquidity management and cash flow models, as they would have greater insight into the fund's projected cash flows and their obligations to satisfy future capital calls for adviser compensation with cash on hand.

We request comment on all aspects of the proposed content of the fund fee and expense table, including the following items:

- Should we require advisers to disclose all compensation and fund expenses as proposed? Do commenters

[36] Proposed rule 211(h)(1)–2(b)(2).

[37] *See, e.g.,* Coming to Terms: Private Equity Investors Face Rising Costs, Extra Fees (Dec. 20, 2021), *available at https://www.wsj.com/articles/coming-to-terms-private-equity-investors-face-rising-costs-extra-fees-11640001604#:~:text=Coming%20to%20Terms%3A%20Private-Equity%20Investors%20Face%20Rising%20Costs%2C,and%20some%20expenses%20are%20excluded%20from%20annual%20fees.*; Key Findings ILPA Industry Intelligence Report ''What is Market in Fund Terms?'' (2021) (''ILPA Key Findings Report''), *available at https://ilpa.org/wp-content/uploads/2021/10/Key-Findings-Industry-Intelligence-Report-Fund-Terms.pdf.*

[38] Such practice is often not disclosed, or not fully disclosed, in private fund documents.

[39] *See* ILPA Key Findings Report, *supra* footnote 37.

[40] Proposed rule 211(h)(1)–2(b).

[41] The offset shifts some or all of the economic benefit of the fee from the adviser to the private fund investors.

[42] Offsets, rebates, and waivers applicable to certain, but not all, investors through one or more separate arrangements would be required to be reflected and described prominently in the fund-wide numbers presented in the quarterly statement. *See* proposed rule 211(h)(1)–2(d) and (g).

[43] For example, certain investors, such as U.S. state pension plans, may be required to report complete information regarding fees and expenses paid to the adviser and its related persons.

[44] Proposed rule 211(h)(1)–2(b)(3).

[45] To the extent advisers are required to offset fund-level compensation (*e.g.,* management fees) by portfolio investment compensation (*e.g.,* monitoring fees), they typically do not reduce adviser compensation below zero, meaning that, in the event the monitoring fee offset amount exceeds the management fee for the applicable period, some fund documents provide for ''carryforwards'' of the unused amount. The carryforwards are used to offset the management fee in subsequent periods.

agree with the scope of the proposal? Why or why not?

• Would the proposed content result in fund-level fee and expense disclosure that is meaningful to investors? Are there other items that advisers should be required to disclose in the fund table? Are there any proposed items that we should eliminate? Would more or less information about the fees and expenses charged to the fund be helpful for investors? Are there any revisions to the descriptions of fees that would make the proposed disclosure more useful to investors?

• Instead of the proposed approach, should we prescribe a template for the fund table? Would the increased comparability of a template be useful to investors? Would a template be flexible enough to accommodate changes in the types of fees and expenses as well as the types of offsets, rebates, or waivers used by private fund advisers? Would a template necessitate repeated updating as the industry evolves?

• Should we include any additional definitions of terms or phrases for the fund table? Should we omit any definitions we have proposed for the fund table?

• The proposed rule would require an adviser to include the compensation paid to a related person sub-adviser in its quarterly statement. For private funds that have sub-advisers that are not related persons, should we require a single quarterly statement showing all adviser compensation (at both the adviser and sub-adviser levels)? In cases where a non-related person sub-adviser does not prepare a quarterly account statement in reliance on the adviser's preparation and distribution of the quarterly statement to the fund's investors, how would advisers reflect the compensation paid to the sub-adviser and its related persons? Do commenters agree that such compensation would be captured as a fund expense? Should we require a separate table covering these fees and expenses, as well as a separate table showing portfolio investment compensation paid to the sub-adviser or its related person? How would advisers operationalize this requirement in these circumstances?

• Should we adopt the proposed definitions of ''related persons'' and ''control'' as proposed? Are they too broad? Are the proposed definitions broad enough? Should we add former personnel of the adviser or its related persons to the proposed definition? If so, for how long after a departure from the adviser or its related persons should such personnel fall into the definition? Should the definition of related person include family members of adviser personnel or persons who share the same household with adviser personnel? Should the definition capture any person directly or indirectly controlled by the adviser's officers, partners, or directors (including any consulting firms controlled by such persons)? Should it capture operational partners, senior advisors, or other similar consultants of the adviser, the private fund, or its portfolio investments? Should we add any entity more than five percent of the ownership of which is held, directly or indirectly, by the adviser or its personnel? Should the definition include any person that receives, directly or indirectly, management fees or performance based compensation from, or in respect of, the fund; or any person that has an interest in the investment adviser or general partner (or similar control person) of the fund? If we adopt a different definition of ''related person'' than what is being proposed, should we use a different defined term (such as ''related party'') to avoid confusion given that the term ''related person'' is defined in Form ADV?

• For purposes of the definition of ''control,'' are the control presumptions appropriate in this context? Should we eliminate or modify any of the presumptions? For example, should we eliminate aspects of the definition that may capture passive investors who do not have the power to direct the management or policies of the relevant entity? Why or why not? Should we add any additional control presumptions? For example, should an entity be presumed to be controlled by an adviser to the extent the adviser has authority over the entity's budget or whether to hire personnel or terminate their employment?

• The proposed rule includes a non-exhaustive list of certain types of adviser compensation and fund expenses.[46] Would this information assist advisers in complying with the rule? Should we add any additional types? If so, which ones and why?

• Do private fund advisers or their related persons receive other economic benefits that the rule should require advisers to disclose in the quarterly statement? For example, should we require hedge fund advisers to disclose the dollar amount of any soft dollar or similar benefits provided by broker-dealers that execute trades for the funds, or any benefits provided by hedge fund prime brokers?

• Do commenters agree with the scope of the proposed definition of ''performance-based compensation''? Should we specify the types of compensation that should be included in the definition? For example, should the definition specify that the term includes carried interest, incentive fees, incentive allocations, performance fees, or profit allocations?

• Should we only require the table to disclose adviser compensation and fund expenses after the application of any offsets, rebates, or waivers, rather than before and after, as proposed? If so, why?

• Should we define offsets, rebates, and waivers? If so, what definitions should we use and why? Are there any types of offsets, rebates, and waivers that we should not require advisers to reflect in the fund table? If so, which ones and why? To the extent that offsets, rebates, or waivers are available to certain, but not all, investors, are there any operational concerns with reflecting and describing those offsets, rebates, or waivers in the fund-wide numbers presented in the quarterly statement? Are there alternatives we should use?

• Should we require advisers to disclose the amount of any offsets or rebates carried forward during the reporting period to subsequent periods to reduce future adviser compensation as proposed? Would this information be helpful for investors? Do advisers already provide this information in the fund's financial statements or otherwise?

• Should we require advisers to provide any additional disclosures regarding fees and expenses in the quarterly statement? In particular, should we require any disclosures from an investment adviser's Form ADV Part 2A narrative brochure (if applicable) to be included in the quarterly statement, such as more details about an investment adviser's fees?

• Should we tailor the disclosure requirements based on fund type? For example, should the requirements or format for hedge funds differ from the requirements and format for private equity funds? Are there unique fees or expenses for types of funds that advisers should be required to disclose or otherwise list as a separate line item? If so, how should we define these types of funds for these purposes? For example, should we use the definitions of such terms used on Form ADV?

[46] Proposed rule 211(h)(1)–2(b)(1) includes the following non-exhaustive list of adviser compensation: Management, advisory, sub-advisory, or similar fees or payments, and performance-based compensation. Proposed rule 211(h)(1)–2(b)(2) includes the following non-exhaustive list of fund expenses: Organizational, accounting, legal, administration, audit, tax, due diligence, and travel fees and expenses.

• Do any of the proposed requirements impose unnecessary costs or compliance challenges? Please provide specific data. Are there any modifications to the proposal that we could make that would lower those costs or mitigate those challenges? Please provide examples.

• The proposed quarterly statement prescribes minimum fee and expense information that must be included. What are the benefits and drawbacks of prescribing the minimum disclosure to be included in the quarterly statement and otherwise permitting advisers to include additional information? Do commenters agree that we should allow advisers to include additional information? Would the inclusion of additional information affect whether investors review the quarterly statement?

• Certain advisers use management fee waivers where the amount of management fees paid by the fund to the adviser is reduced in exchange for an increased interest in fund profits.[47] Because fund agreements often document such waivers with complex and highly technical tax provisions, should we provide guidance to assist advisers in complying with the proposed requirement to describe the manner in which they are calculated or specify a methodology for such calculations?

• Should we permit advisers to exclude expenses from the quarterly statement if they are below a certain threshold? Alternatively, should we permit advisers to group expenses into broad categories and disclose them under single line item—such as ''Miscellaneous Expenses'' or ''Other Expenses''—if the aggregate amount is *de minimis* relative to the fund's size? Why or why not?

• The proposed rule would require the initial quarterly statement for newly formed funds to include start-up and organizational fees of the fund if they were paid during the reporting period. Instead, should the proposed rule exclude those fees and expenses?

• Should the table provide fee and expense information for any other periods? For example, should we require advisers to disclose all adviser compensation and fund expenses since inception (in addition to adviser compensation and fund expenses allocated or paid during the applicable reporting period)? If so, should we require since-inception information only for certain types of funds, such as closed-end private funds, and not for other types of funds, such as open-end private funds?

• We recognize that certain private fund advisers may already provide quarterly account or similar statements to investors, such as advisers that rely on an exemption from certain disclosure and recordkeeping requirements provided by U.S. Commodity Futures Trading Commission regulations at 17 CFR 4.7. How often are private fund advisers separately required to provide such quarterly statements, and how often do they do so even when not required? Would there be any overlap between the proposed quarterly statement and the existing quarterly account or similar statements currently prepared by advisers?

b. Portfolio Investment-Level Disclosure

The proposed quarterly statement rule would require advisers to disclose the following information with respect to any covered portfolio investment,[48] in a single table covering all such covered portfolio investments:

(1) A detailed accounting of all portfolio investment compensation allocated or paid by each covered portfolio investment during the reporting period;[49] and

(2) The private fund's ownership percentage of each such covered portfolio investment as of the end of the reporting period or, if the fund does not have an ownership interest in the covered portfolio investment, the adviser would be required to list zero percent as the fund's ownership percentage along with a brief description of the fund's investment in such covered portfolio investment.[50]

The proposed rule defines ''portfolio investment'' as any entity or issuer in which the private fund has invested directly or indirectly.[51] This definition is designed to capture any entity or issuer in which the private fund holds an investment including through holding companies, subsidiaries, acquisition vehicles, special purpose vehicles, and other vehicles through which investments are made or otherwise held by the private fund.[52] As a result, the proposed definition may capture more than one entity or issuer with respect to any single investment made by a private fund. For example, if a private fund invests directly in a holding company that owns two subsidiaries, the proposed definition would capture all three entities. Depending on a private fund's underlying investment structure, an adviser may have to determine, in good faith, which entity or entities constitute the portfolio investment under the proposed rule.

We considered, but are not proposing, using the term ''portfolio company,'' rather than ''portfolio investment.'' We believe that the term ''portfolio company'' would be too narrow given that some private funds do not invest in traditional operating companies. For example, certain private funds originate loans and invest in credit-related instruments, while others invest in more bespoke assets such as music royalties, aircraft, and tanker vessels. The proposed rule would define ''portfolio investment'' to apply to all types of private fund investments and structures. The proposed definition also is designed to remain evergreen, capturing new investment structures as they continue to evolve.

We recognize, however, that portfolio investments of certain private funds may not pay or allocate portfolio-investment compensation to an adviser or its related persons. For example, advisers to hedge funds focusing on passive investments in public companies may be less likely to receive portfolio-investment compensation than advisers to private equity funds focusing on control-oriented investments in private companies. Under the proposed rule, advisers would only be required to disclose information regarding *covered portfolio investments,* which we propose to define as portfolio investments that allocated or paid the investment adviser or its related persons portfolio investment compensation during the reporting period.[53] We

[47] Management fee waiver arrangements often provide certain economic benefits for the adviser, such as the possibility of reducing and/or deferring certain tax obligations.

[48] *See* proposed rule 211(h)(1)–1 (defining ''covered portfolio investment'' as a portfolio investment that allocated or paid the investment adviser or its related persons portfolio investment compensation during the reporting period).

[49] *See* proposed rule 211(h)(1)–1 (defining ''portfolio investment compensation'' as any compensation, fees, and other amounts allocated or paid to the investment adviser or any of its related persons by the portfolio investment attributable to the private fund's interest in such portfolio investment).

[50] Proposed rule 211(h)(1)–2(c).

[51] Proposed rule 211(h)(1)–1.

[52] Certain investment strategies can involve complex transactions and the use of negotiated instruments or contracts, such as derivatives, with counterparties. Although such trading involves a risk that a counterparty will not settle a transaction or otherwise fail to perform its obligations under the instrument or contract and thus result in losses to the fund, we would generally not consider the fund to have made an investment in the counterparty in this context. We believe this approach is appropriate because any gain or loss from the investment generally would be tied to the performance of the derivative and the underlying reference security, rather than the performance of the counterparty.

[53] *See* proposed rule 211(h)(1)–1 (defining ''covered portfolio investment'').

believe this approach is appropriate because the portfolio investment table is designed to highlight the scope and magnitude of any investment-level compensation as well as to improve transparency for investors into the potential conflicts of interest of the adviser and its related persons. If an adviser does not receive such compensation, we do not believe the adviser should have such a reporting obligation. Accordingly, the proposed rule would not require advisers to list any information regarding portfolio investments that do not fall within the *covered portfolio investment* definition for the applicable reporting period. These advisers, however, would need to identify portfolio investment payments and allocations in order to know whether they must provide the disclosures under this requirement.

Portfolio Investment Compensation. The proposed rule would require the portfolio investment table to show a detailed accounting of all portfolio investment compensation allocated or paid by each covered portfolio investment during the reporting period, with separate line items for each category of allocation of payment reflecting the total dollar amount, including (though it is not limited to) origination, management, consulting, monitoring, servicing, transaction, administrative, advisory, closing, disposition, directors, trustees or similar fees or payments by the covered portfolio investment to the investment adviser or any of its related persons. An adviser should disclose the identity of each covered portfolio investment to the extent necessary for an investor to understand the nature of the conflicts associated with such payments.

Similar to the approach taken with respect to adviser compensation and fund expenses discussed above, the proposed rule would require a detailed accounting of *all* portfolio investment compensation paid or allocated to the adviser and its related persons.[54] This would require advisers to list each specific type of portfolio investment compensation, and the corresponding dollar amount, as a separate line item. We believe that this approach is appropriate given that portfolio investment compensation can take many different forms and often varies based on fund type. For example, portfolio investments of private credit funds may pay the adviser a servicing fee for managing a pool of loans held directly or indirectly by the fund. Portfolio investments of private real estate funds may pay the adviser a property management fee or a mortgage-servicing fee for managing the real estate investments held directly or indirectly by the fund.

We believe that this disclosure would inform investors about the scope of portfolio investment compensation paid to the adviser and related persons, and could help provide insight into some of the conflicts of interest some advisers face. For example, in cases where the adviser controls the portfolio investment, the adviser also generally has discretion over whether to charge portfolio investment compensation and, if so, the rate, timing, method, amount, and recipient of such compensation. Additionally, where the private fund's governing documents require the adviser to offset portfolio investment compensation against other revenue streams or otherwise provide a rebate to investors, this information would also help investors monitor the application of such offsets or rebates.

The proposed rule would require the adviser to disclose the amount of portfolio investment compensation attributable to the private fund's interest in the covered portfolio investment.[55] Such amount would not reflect the portion attributable to any other person's interest in the covered portfolio investment. For example, if the private fund and another person co-invested in the same portfolio investment and the portfolio investment paid the private fund's adviser a monitoring fee, the table would only list the total dollar amount of the monitoring fee attributable to the fund's interest. We believe this approach is appropriate because it would reflect the amount borne by the fund and, by extension, the investors. This would be meaningful information for investors because the amount attributable to the fund's interest typically reduces the value of investors' indirect interest in the portfolio investment.[56] Subject to the requirements of the proposed rule, advisers may, but are not required to, also list the portion of the fee attributable to any other investor's interest in the portfolio investment.

Similar to the approach discussed above with respect to adviser compensation and fund expenses, an adviser would be required to list the amount of portfolio investment compensation allocated or paid with respect to each covered portfolio investment both *before and after* the application of any offsets, rebates, or waivers. This would require an adviser to present the aggregate dollar amount attributable to the fund's interest before and after any such reduction for the reporting period. Advisers would be required to disclose the amount of any portfolio investment compensation they initially charge and the amount they ultimately retain at the expense of the private fund and its investors. As with adviser compensation and fund expenses, we believe this approach would provide investors with sufficient detail to validate that portfolio investment compensation borne by the fund conforms to contractual agreements.

Ownership Percentage. The proposed rule would require the portfolio investment table to list the fund's ownership percentage of each covered portfolio investment that paid or allocated portfolio-investment compensation to the adviser or its related persons during the reporting period.[57] The adviser would be required to determine the fund's ownership percentage as of the end of the reporting period. We believe that this information would provide investors with helpful context of the amount of portfolio investment compensation paid or allocated to the adviser or its related persons relative to the fund's ownership. For example, portfolio investment compensation may be calculated based on the portfolio investment's total enterprise value or other similar metric. We believe that the fund's ownership percentage would help private fund investors understand and assess the magnitude of such compensation, as well as how it affects the value of the fund's investment.

We recognize that calculating the fund's ownership percentage may be difficult in certain circumstances, especially for funds that do not make equity investments in operating companies. For example, a private equity secondaries fund may own a preferred security or a hybrid instrument that entitles the fund to

[54] Because advisers often use separate legal entities to conduct a single advisory business, the proposed rule would capture portfolio investment compensation paid to an adviser's related persons.

[55] *See* proposed rule 211(h)(1)–1 (defining ''portfolio investment compensation'').

[56] We believe that this information would be meaningful for investors regardless of whether the private fund has an equity ownership interest or another kind of interest in the covered portfolio investment. For example, if a private fund's interest in a covered portfolio investment is represented by a debt instrument, the amount of portfolio-investment compensation paid or allocated to the adviser may hinder or prevent the covered portfolio investment from satisfying its obligations to the fund under the debt instrument.

[57] Proposed rule 211(h)(1)–2(c)(2). An adviser should also list zero percent as the ownership percentage if the fund has sold or completely written off its ownership interest in the covered portfolio investment during the reporting period.

priority distributions until it receives a certain return on its initial investment. A direct lending fund may provide a loan to a company that entitles the fund to receive interest payments and a return of principal. If the fund does not have an ownership interest in the covered portfolio investment, such as when the fund holds a debt instrument, the adviser would be required to list zero percent as the fund's ownership percentage, along with a brief description of the fund's investment in the portfolio investment table, if the covered portfolio investment paid or allocated portfolio-investment compensation to adviser or its related persons during the reporting period.

We request comment on all aspects of the proposed content of the portfolio investment table, including the following items:

- Would the proposed rule provide portfolio investment compensation disclosure that is meaningful to investors? Should the rule require advisers to disclose additional or different information in the portfolio-investment table? Would more information about the fees and expenses charged to portfolio investments be helpful for investors?
- Should we include any additional definitions of terms or phrases for the portfolio-investment table? Should we omit any definitions we have proposed for the portfolio-investment table?
- Is the proposed definition of ''portfolio investment'' clear? Should we modify or revise the proposed definition? For example, should we define ''portfolio investment'' as any person whose securities are beneficially owned by the private fund or any person in which the private fund owns an equity or debt interest? Alternatively, should we define ''portfolio investment'' as any underlying company, business, platform, issuer, or other person in which the private fund has made, directly or indirectly, an investment? Should we permit advisers to determine, in good faith, which entity or entities constitute the portfolio investment for purposes of the quarterly statement rule? For example, a fund of funds may indirectly invest in hundreds of issuers or entities. Depending on the underlying structure, control relationship, and reporting, the fund of funds' adviser may have limited knowledge regarding such underlying entities or issuers. Should we exclude such entities or issuers from the definition of portfolio investment for such advisers? Is there a different standard or test we should use? Should we require such adviser to conduct a reasonable amount of diligence consistent with past practice and/or industry standards? Why or why not?
- As discussed above, to the extent a private fund enters into a negotiated instrument, such as a derivative, with a counterparty, we would not consider the private fund to have made an investment in the counterparty. Do commenters agree with this approach? Why or why not? Should we adopt a different approach for derivatives or other similar instruments generally? For purposes of determining whether the fund has made an investment in an issuer or entity, should we only include equity investments? Should we exclude derivatives? Why or why not? How should exchange-traded (*i.e.,* not negotiated) derivatives, including swaps and options, be treated for purposes of the rule?
- The proposed definition of portfolio investment would not distinguish among different types of private funds. Is our approach in this respect appropriate or should we treat certain funds differently depending on their strategy or fund type? If so, how should we reflect that treatment? For example, should we modify the definition with respect to a real estate fund to reflect that such a fund generally invests in real estate assets, rather than operating companies? Because a secondaries fund may indirectly invest in a significant number of underlying operating companies or other assets, should we limit the ''indirect'' component of the definition for such funds (or any other funds that may have indirect exposure to a significant number of companies or assets)? Why or why not? Would additional definitions be appropriate or useful? Should the proposed rule define the term ''entity'' and/or ''issuer''? If so, how? Should the proposed rule treat hedge funds, liquidity funds, and other open-end private funds differently than private equity funds and other closed-end private funds?
- Should we adopt the approach with respect to portfolio-investment compensation as proposed? Do commenters agree with the scope of the proposal? Why or why not?
- The proposed rule includes non-exhaustive lists of certain types of fees. Would this information assist advisers in complying with the rule? Should we add any additional types? If so, which ones and why?
- Should we require advisers to list each type of portfolio-investment compensation as a separate line item as proposed? Would this level of detail be helpful for investors with respect to portfolio-investment reporting? Given that many funds require a management fee offset of all portfolio-investment compensation, is this level of detail necessary or useful to investors? Should we instead require advisers to provide aggregate information for each covered portfolio investment?
- Should the rule permit advisers to use project or deal names or other codes, and if so, what additional disclosures are necessary for an investor to understand the nature of the conflicts?
- We considered only requiring advisers to disclose the amount of portfolio investment compensation after the application of any offsets, rebates, or waivers, rather than before and after. We believe the proposed approach would be more helpful for investors because investors would have greater insight into the compensation advisers initially charge and the amount they ultimately retain at the expense of the private fund and its investors. Do commenters agree? Why or why not?
- Would information about a firm's services to portfolio investments be helpful for investors? Are there any elements of the proposed requirements that firms should or should not include? If so, which ones and why?
- We considered requiring advisers to disclose the total portfolio-investment compensation for the reporting period as an aggregate number, rather than providing the amount of compensation allocated or paid by each covered portfolio investment as proposed. However, we believe that investment-by-investment information would provide investors with greater transparency into advisers' fee and expense practices and thus be more helpful for investors. Do commenters agree? Should we require advisers to report a consolidated ''top-line'' number that covers all covered portfolio investments?
- Should we define the term ''ownership interest''? If so, how should we define it? For purposes of the rule, should a private fund be deemed to hold an ''ownership interest'' in a covered portfolio investment only to the extent the fund has made an equity investment in the covered portfolio investment? Why or why not? What types of funds may not hold an ''ownership interest'' in a covered portfolio investment?
- The proposed rule would require advisers to list the fund's ownership percentage of each covered portfolio investment. Because the definition of ''portfolio investment'' could capture more than one entity, will advisers be able to calculate the fund's ownership percentage? Are there any changes to the proposed rule text that could mitigate this challenge? If a portfolio investment captures multiple entities,

should we require advisers to list the fund's overall ownership of such entities? If so, what criteria should advisers use to determine a fund's overall ownership?

• Should we require advisers to disclose how they allocate or apportion portfolio-investment compensation among multiple private funds invested in the same covered portfolio investment? If so, how should the portfolio investment table reflect this information?

• Certain advisers have discretion or substantial influence over whether to cause a fund's portfolio investment to compensate the adviser or its related persons. Should the requirement to disclose portfolio-investment compensation apply only to advisers that have such discretion or authority? Should such requirement apply if the adviser is entitled to appoint one or more directors to the portfolio investment's board of directors or similar governing body (if applicable)? Is there another standard we should require?

• We recognize that certain private funds, such as quantitative and algorithmic funds and other similar funds, may have thousands of holdings and/or transactions during a quarter and that those funds typically do not receive portfolio investment compensation. While the proposed rule would not require an adviser to include any portfolio investment that did not pay or allocate portfolio-investment compensation to the adviser or its related persons during the reporting period in its quarterly statement, these advisers would need to consider how to identify such portfolio investment's payments and allocations for purposes of complying with this disclosure requirement. Should the rule provide any full or partial exceptions for such funds? Should we require investment-level disclosure for quantitative, algorithmic, and other similar funds only where they own above a specified threshold percentage of the portfolio investment? For example, should such funds only be required to provide investment-level disclosure where they own 25% or more ownership of any class of voting shares? Alternatively, should we use a lower ownership threshold, such as 20%, 10%, or 5%? Should we adopt a similar approach for all private funds, rather than just quantitative, algorithmic, and other similar funds? If so, what threshold should we apply? For instance, should it be 5%? Or 10%? A higher percentage?

• Should we exclude certain types of private funds from these disclosures? If so, which funds and how should we define them? For example, should we exclude private funds that only hold (or primarily hold) publicly traded securities, such as hedge funds?

• Should we require layered disclosure for the portfolio-investment table (*i.e.,* short summaries of certain information with references and links to other disclosures where interested investors can find more information)? Would this approach encourage investors to ask questions and seek more information about the adviser's practices? Are there modifications or alternatives we should impose to improve the utility of the information for private fund investors, such as requiring the quarterly statement to present information in a tabular format?

• Are there particular funds that may require longer quarterly statements than other funds? Please provide data regarding the number of funds that have covered portfolio investments and, with respect to those funds, the number of covered portfolio investments per private fund. Should the Commission take into account the fact that certain funds will have more covered portfolio investments than other funds? For example, should we require funds that have more than a specific number of covered portfolio investments, such as 50 or more covered portfolio investments, to provide only portfolio-investment level reporting for a subset of their covered portfolio investments, such as a specific number of their largest holdings during the reporting period (*e.g.,* their largest ten, fifteen, or twenty holdings)?

• The proposed rule would require advisers to list zero percent as the ownership percentage if the fund has completely sold or completely written off its ownership interest in the covered portfolio investment during the reporting period. Instead, should we require or permit advisers to exclude any such portfolio investments from the table? Why or why not?

• The proposed rule would require the adviser to disclose the amount of portfolio investment compensation attributable to the private fund's interest in the covered portfolio investment that is paid or allocated to the adviser and its related persons. Should we require disclosure of portfolio compensation paid to other persons (such as co-investors, joint venture partners, and other third parties) to the extent such compensation reduces the value of the private fund's interest in the portfolio investment?

c. Calculations and Cross References to Organizational and Offering Documents

The proposed quarterly statement rule would require each statement to include prominent disclosure regarding the manner in which expenses, payments, allocations, rebates, waivers, and offsets are calculated.[58] This would generally have the effect of requiring advisers to describe, for example, the structure of, and the method used to determine, any performance-based compensation set forth in the statement (such as the distribution waterfall, if applicable) and the criteria on which each type of compensation is based (*e.g.,* whether compensation is fixed, based on performance over a certain period, or based on the value of the fund's assets). We believe that this disclosure would assist private fund investors in understanding and evaluating the adviser's calculations.

To facilitate an investor's ability to seek additional information, the quarterly statement also must include cross references to the relevant sections of the private fund's organizational and offering documents that set forth the calculation methodology.[59] References to these disclosures would be valuable so that the investor can compare what the private fund's documents state the fund (and indirectly the investors) will be *obligated* to pay to what the fund (and indirectly the investors) *actually* paid during the reporting period and more easily determine the accuracy of the charges. For example, including this information on the quarterly statement would likely enable an investor to confirm that the adviser calculated advisory fees in accordance with the fund's organizational and offering documents and to identify whether the adviser deducted or charged incorrect or unauthorized amounts. We believe this information also would allow the investor to assess the effect those fees and costs have had on its investment.

We request comment on the following aspects of the proposed rule:

• Should we allow flexibility in the words advisers use, as proposed, or should we require advisers to include prescribed wording in disclosing calculation methodology? If the latter, what prescribed wording would be helpful for investors? Does the narrative style work or are there other presentation formats that we should require?

• Should we provide additional guidance or specify additional requirements regarding what type of

[58] Proposed rule 211(h)(1)–2(d).

[59] *Id.*

disclosure generally should or must be included to describe the manner in which expenses, payments, allocations, rebates, waivers, and offsets are calculated? For example, should we provide sample disclosures describing various calculations? Should the rule require advisers to restate disclosures from offering memoranda (if applicable) regarding the manner in which expenses, payments, allocations, rebates, waivers, and offsets are calculated in the quarterly statement? Do commenters believe that advisers would prefer to restate offering memoranda disclosures rather than drafting new disclosures to avoid conflicting interpretations of potentially complex fund terms? Should the rule only require advisers to provide a cross reference to the language in the fund's governing documents regarding this information (*e.g.,* identifying the relevant document and page or section numbers)?

- Would providing cross references, as proposed, to the relevant sections of the private fund's organizational and offering documents be helpful for investors? Would it permit investors to ''cross check'' or evaluate the adviser's calculations? Are there other alternatives that would achieve our objectives?

2. Performance Disclosure

In addition to providing information regarding fees and expenses, the proposed rule would require an adviser to include standardized fund performance information in each quarterly statement provided to fund investors. The proposed rule would require an adviser to a liquid fund (as defined below) to show performance based on net total return on an annual basis since the fund's inception, over prescribed time periods, and on a quarterly basis for the current year. For illiquid funds (also defined below), the proposed rule would require an adviser to show performance based on the internal rate of return and a multiple of invested capital. The proposed rule would require an adviser to display the different categories of required performance information with equal prominence.[60]

It is essential that quarterly statements include performance in order to enable investors to compare private fund investments and comprehensively understand their existing investments and determine what to do holistically with their overall investment portfolio. A quarterly statement that includes fee, expense, and performance information would allow investors to monitor for abnormalities and better understand the impact of fees and expenses on their investments. For example, a quarterly statement that includes fee and expense, but not performance, information would not allow an investor to perform a cost-benefit analysis to determine whether to retain the current investment or consider other options or, for an investor in an illiquid fund, to determine whether to invest in other private funds managed by the same adviser. In addition, current clients or investors may use fee, expense, and performance information about their current investments to inform their overall investment decisions (*e.g.,* whether to diversify) and their view of the market.

Although there are commonalities between the performance reporting elements of the proposed rule and the performance elements of our recently adopted marketing rule, the two rules satisfy somewhat different policy goals. Our experience has led us to believe that, while all clients and investors should be protected against misleading, deceptive, and confusing information, as is the policy goal of the marketing rule,[61] the needs of *current* clients and investors often differ in some respects from the needs of *prospective* clients and investors, as detailed below. Current investors should receive performance reporting that allows them to evaluate an investment alongside corresponding fee and expense information. Current investors also should receive performance reporting that is provided at timely, predictable intervals so that an investor can monitor and evaluate its investment progress over time, remain abreast of changes, compare information from quarter to quarter, and take action where possible.[62]

Currently, there are various approaches to report private fund performance to fund investors, often depending on the type of private fund (*e.g.,* the fund's strategy, structure, target asset class, investment horizon, or liquidity profile). Certain of these approaches may be misleading without the benefit of well-disclosed assumptions, and others may lead to investor confusion. For example, an adviser showing internal rate of return with the impact of fund-level subscription facilities could mislead investors because that method of calculation would artificially increase performance metrics.[63] An adviser showing private fund performance as compared to a public market equivalent (''PME'') in a case where the private fund does not have an appropriate benchmark could mislead investors to believe that the private fund performance will meet or exceed the performance of the PME. Certain investors may also mistakenly believe that their private fund investment has a liquidity profile that is similar to an investment in the PME or an index that is similar to the PME.

Without standardized performance metrics (and adequate disclosure of the criteria used and assumptions made in calculating the performance),[64] investors cannot compare their various private fund investments managed by the same adviser nor can they gauge the value of an adviser's investment management services by comparing the performance of private funds advised by different advisers.[65] Standardized performance information would help an investor decide whether to continue to invest in the private fund, if redemption is possible, as well as more holistically to make decisions about other components of the investor's portfolio. Furthermore, we believe that proposing to require advisers to show performance information alongside fee and expense information as part of the quarterly statement would paint a more complete picture of an investor's private fund investment. This would particularly provide context for investors that are

[60] Proposed rule 211(h)(1)–2(e)(2). For example, the proposed rule would require an adviser to an illiquid fund to show gross internal rate of return with the same prominence as net internal rate of return. Similarly, the proposed rule would require an adviser to a liquid fund to show the annual net total return for each calendar year with the same prominence as the cumulative net total return for the current calendar year as of the end of the most recent calendar quarter covered by the quarterly statement.

[61] *See Investment Adviser Marketing,* Investment Advisers Act Release No. 5653 (Dec. 22, 2021) (''Marketing Release''), at section II.A.2.a.iv (noting that the definition of ''advertisement'' includes a communication to a current investor that offers new or additional advisory services with regard to securities, provided that the communication otherwise satisfies the definition of ''advertisement.'').

[62] The marketing rule and its specific protections would generally not apply in the context of a quarterly statement. *See* Marketing Release, *supra* footnote 61, at sections II.A.2.a.iv and II.A.4. The compliance date for the Marketing Rule is November 4, 2022.

[63] *See infra* section II.A.2.b. (Performance Disclosure: Illiquid Funds).

[64] Private funds can have various types of complicated structures and involve complex financing mechanisms. As a result, an adviser may need to make certain assumptions when calculating performance for private funds, specifically illiquid funds.

[65] *See* David Snow, Private Equity: A Brief Overview: An introduction to the fundamentals of an expanding, global industry, PEI Media (2007), at 11 (discussing variations on private equity performance metrics).

paying performance-based compensation and would help investors understand the true cost of investing in the private fund. This proposed performance reporting would also provide greater transparency into how private fund performance is calculated, improving an investor's ability to interpret performance results.[66]

The proposed rule recognizes the need for different performance metrics for private funds based on certain fund characteristics, but also imposes a general framework to ensure there is sufficient standardization in order to provide useful, comparable information to investors. An adviser would remain free to include other performance metrics in the quarterly statement as long as the quarterly statement presents the performance metrics prescribed by the proposed rule and complies with the other requirements in the proposed rule. However, advisers that choose to include additional information should consider what other rules and regulations might apply. For example, although we would not consider information in the quarterly statement required by the proposed rule to be an ''advertisement'' under the marketing rule, an adviser that offers new or additional investment advisory services with regard to securities in the quarterly statement would need to consider whether such information would be subject to the marketing rule.[67] An adviser would also need to consider whether performance information presented outside of the required quarterly statement, even if it contains some of the same information as the quarterly statement, would be subject to, and meet the requirements of, the marketing rule. Regardless, the quarterly statement would be subject to the anti-fraud provisions of the Federal securities laws.[68]

Liquid v. Illiquid Fund Determination

The proposed performance disclosure requirements of the quarterly statement rule would require an adviser first to determine whether its private fund client is an illiquid or liquid fund, as defined in the proposed rule, no later than the time the adviser sends the initial quarterly statement.[69] The adviser would then be required to present certain performance information depending on this categorization. The purpose of these definitions is to distinguish which of the two particular performance reporting methods would apply and is most appropriate, resulting in a more accurate portrayal of the fund's returns over time and allowing for more standardized comparisons of the performance of similar funds.

We propose to define an illiquid fund as a private fund that: (i) Has a limited life; (ii) does not continuously raise capital; (iii) is not required to redeem interests upon an investor's request; (iv) has as a predominant operating strategy the return of the proceeds from disposition of investments to investors; (v) has limited opportunities, if any, for investors to withdraw before termination of the fund; and (vi) does not routinely acquire (directly or indirectly) as part of its investment strategy market-traded securities and derivative instruments.[70] We believe these factors are consistent with the characteristics of illiquid funds and these factors would align with the current factors for determining how certain types of private funds should report performance under U.S. Generally Accepted Accounting Principles (''U.S. GAAP'').[71]

Private funds that fall into the proposed ''illiquid fund'' definition are generally closed-end funds that do not offer periodic redemption options, other than in exceptional circumstances, such as in response to regulatory events. They also do not invest in publicly traded securities, except for investing a *de minimis* amount of liquid assets. We believe that many private equity, real estate, and venture capital funds would fall into the illiquid fund definition, and therefore, the proposed rule would require advisers to these types of funds to provide performance metrics that recognize their unique characteristics, such as irregular cash flows, which otherwise make measuring performance difficult for both advisers and investors as discussed below.

We propose to define a ''liquid fund'' as any private fund that is not an illiquid fund.[72] Private funds that fall into the ''liquid fund'' definition generally allow periodic investor redemptions, such as monthly, quarterly, or semi-annually. They also primarily invest in market-traded securities, except for a *de minimis* amount of illiquid assets, and therefore determine their net asset value on a regular basis. Most hedge funds would likely fall into the liquid fund definition, and therefore, the proposed rule would require advisers to these types of funds to provide performance metrics that show the year-over-year return using the market value of the underlying assets. We acknowledge, however, that there could be circumstances where an adviser would determine a hedge fund is an illiquid fund because it holds less liquid investments or has limited investors' ability to redeem some or all of their interests in the fund. We also recognize that some private funds may not neatly fit into the liquid or illiquid designations. For example, a hybrid fund is a type of private fund that can have characteristics of both liquid and illiquid funds, and whether the fund is treated as a liquid or illiquid fund under the rule would depend on the facts and circumstances.

In any case, the proposed rule would require advisers to provide performance reporting for each private fund as part of the fund's quarterly statement. The determination of whether a fund is liquid or illiquid dictates the type of performance reporting that must be included and, because it would result in funds with similar characteristics presenting the same type of performance metrics, we believe this approach would improve comparability of private fund performance reporting for fund investors. As indicated below, we welcome comment on whether these definitions lead to meaningful performance reporting for different types of private funds in light of the myriad fund strategies and structures.

We request comment on the following aspects of the proposed performance disclosure requirement:

- Should the proposed rule require advisers to include performance

[66] Private fund investors increasingly request additional disclosure regarding private fund performance, including transparency into the calculation of the performance metrics. *See, e.g.,* GPs feel the strain as LPs push for more transparency on portfolio performance and fee structures, Intertrust Group (July 6, 2020), *available at https://www.intertrustgroup.com/news/gps-feel-the-strain-as-lps-push-for-more-transparency-on-portfolio-performance-and-fee-structures/;* ILPA Principals 3.0, at 36 ''Financial and Performance Reporting'' and ''Fund Marketing Materials,'' *available at https://ilpa.org/wp-content/flash/ILPA%20Principles%203.0/?page=36.*

[67] *See* 17 CFR 275.206(4)–1 (rule 206(4)–1). A communication to a current investor is an ''advertisement'' when it offers new or additional investment advisory services with regard to securities.

[68] This would include the anti-fraud provisions of section 206 of the Advisers Act, rule 206(4)–8 under the Advisers Act, section 17(a) of the Securities Act, and section 10(b) of the Exchange Act (and 17 CFR 240.10b–5 (rule 10b–5 thereunder)), to the extent relevant.

[69] Proposed rule 211(h)(1)–2(e)(1). The proposed rule does not require the adviser to revisit the determination periodically; however, advisers should generally consider whether they are providing accurate information to investors and whether they need to revisit the liquid/illiquid determination based on changes in the fund.

[70] Proposed rule 211(h)(1)–1 (defining ''illiquid fund'').

[71] *See* GAAP ASC 946–205–50–23/24.

[72] Proposed rule 211(h)(1)–1 (defining ''liquid fund'').

information in investor quarterly statements? Why or why not?

• Should the proposed rule require advisers to determine whether a private fund is a liquid or illiquid fund and provide performance metrics based on that determination? Alternatively, should the rule eliminate the definitions and give advisers discretion to provide the proposed performance metrics that they believe most accurately portray the fund's returns?

• Should we define ''illiquid fund'' and ''liquid fund'' as proposed or are there alternative definitions we should use? Are there other terms we should use for these purposes? For example, should we refer to the types of funds that would provide annual net total returns under the rule as ''annual return funds'' and those that would provide internal rates of return (IRR) and a multiple of invested cash (MOIC) under the rule as ''IRR/MOIC funds''?

• Are the six factors used in the definition of ''illiquid fund'' sufficient to capture most funds for which an annual net total return is not an appropriate measure of performance? Are there any factors we should add? For example, should we add a factor regarding whether the fund produces irregular cash flows or whether the fund takes into account unrealized gains when calculating performance-based compensation? Should we add as a factor whether the private fund pays carried interest? Are there factors we should eliminate?

• Should we define additional terms or phrases used within the definition of ''illiquid fund,'' such as ''has as a predominant operating strategy the return of the proceeds from disposition of investments to investors''? Would this characteristic carve out certain funds, such as real estate funds and credit funds, for which we generally believe internal rates of return and a multiple of invested capital are the appropriate performance measures? If so, why? Should we eliminate or modify this characteristic in the definition of ''illiquid fund''?

• Should the proposed rule define a ''liquid fund'' based on certain characteristics? If so, what characteristics? For example, should we define it as a private fund that requires investors to contribute all, or substantially all, of their capital at the time of investment, and invests no more than a *de minimis* amount of assets in illiquid investments? If so, how should we define ''illiquid investments''? Are there other characteristics relating to redemptions, cash flows, or tax treatment that we should use to define the types of funds that should provide annual net total return metrics?

• Will advisers be able to determine whether a private fund it manages is a liquid or illiquid fund? For example, how would an adviser classify certain types of hybrid funds under the proposed rule? Should the rule include a third category of funds for hybrid or other funds? If so, what definition should we use? Should we amend the proposed definitions if we adopt a third category of funds (*e.g.,* should we revise the definition of ''liquid fund'' given that the proposal defines ''liquid fund'' as any private fund that is not an illiquid fund)? If a fund falls within the third category, should the rule require or permit the private fund to provide performance metrics that most accurately portray the fund's returns?

• Are there scenarios in which an adviser might initially classify a fund as illiquid, but the fund later transitions to a liquid fund (or vice versa)? Should we provide additional flexibility in these circumstances? Should the proposed rule require advisers to revisit periodically their determination of a fund's liquidity status? For example, should the proposed rule require advisers to revisit the liquid/illiquid determination annually, semi-annually, or quarterly?

• How would an adviser to a private fund with an illiquid side pocket classify the private fund under the proposed rule's definitions for liquid and illiquid funds? For example, would the adviser treat the entire private fund as illiquid because of the side pocket? Why or why not? Should we permit or require the adviser to classify the side pocket as an illiquid fund, with the remaining portion of the private fund classified as a liquid fund?

• Instead of requiring advisers to show performance with equal prominence, should the proposed rule instead allow advisers to feature certain performance with greater prominence than other performance as long as all of the information is included in the quarterly statement? Why or why not?

a. Liquid Funds

The proposed rule would require advisers to liquid funds to disclose performance information in quarterly statements for the following periods. First, an adviser to a liquid fund would be required to disclose the liquid fund's annual net total returns for each calendar year since inception. For example, a liquid fund that commenced operations four calendar years ago would show annual net total returns for each of the first four years since its inception.[73] We believe this information would provide fund investors with a comprehensive overview of the fund's performance over the life of the fund and improve an investor's ability to compare the fund's performance with other similar funds. As noted above, investors can use performance information in connection with fee and expense information to analyze the value of their private fund investments. The proposed requirement would prevent advisers from including only recent performance results or presenting only results or periods with strong performance. For similar reasons, it also would require an adviser to present these various time periods with equal prominence.

Second, the adviser would be required to show the liquid fund's average annual net total returns over the one-, five-, and ten-calendar year periods.[74] However, if the private fund did not exist for one of these prescribed time periods, then the adviser would not be required to provide that information. Requiring performance over these time periods would provide investors with standardized performance metrics that would reflect how the private fund performed during different market or economic conditions. These time periods would provide reference points for private fund investors, particularly when comparing two or more private fund investments, and would provide private fund investors with aggregate performance information that can serve as a helpful summary of the fund's performance.

Third, the adviser would be required to show the liquid fund's cumulative net total return for the current calendar year as of the end of the most recent calendar quarter covered by the quarterly statement. For example, a liquid fund that has been in operations for four calendar years (beginning on January 1) and seven months would show the cumulative net total return for the current calendar year through the end of the second quarter. We believe this information would provide fund investors with insight into the fund's most recent performance, which investors could use to assess the fund's performance during current market

[73] If a private fund's inception date were other than on the first day of a calendar year, the private fund would show performance for a stub period and then show calendar year performance. For example, if the four-year period ended on October 31, 2021, and the fund's inception date was August 31, 2017, the fund would show full calendar year performance for 2018, 2019, and 2020, and partial year performance in 2017.

[74] Proposed rule 211(h)(1)–2(e)(2)(i)(B).

conditions. This quarterly performance information also would provide helpful context for reviewing and monitoring the fees and expenses borne by the fund during the quarter, which the quarterly statement would disclose.

We believe these performance metrics would allow investors to assess these funds' performance because they ordinarily invest in market-traded securities, which are primarily liquid. As a result, liquid funds generally are able to determine their net asset value on a regular basis and compute the year-over-year return using the market-based value of the underlying assets. We have taken a similar approach with regard to registered funds, which also invest a substantial amount of their assets in primarily liquid underlying holdings (*e.g.,* publicly traded securities).[75] As a result, liquid funds, like registered funds, currently generally report performance on an annual and quarterly basis. Investors in a private fund that is a liquid fund would similarly find this information helpful. Most traditional hedge funds would likely fall into the liquid bucket and would need to provide disclosures regarding the underlying assumptions of the performance (*e.g.,* whether dividends or other distributions are reinvested).[76]

We request comment on the following with respect to the proposed liquid fund performance requirement:

- Should we require advisers to provide annual net total returns for liquid funds, as proposed? Would showing annual net total returns for each calendar year since a private fund's inception be overly burdensome for older funds? Would performance information that is more than 10 years old be useful to investors? Why or why not?
- Should the proposed rule define ''annual net total return'' or specify the format in which advisers must present the annual net total returns? Should the proposed rule specify how advisers should calculate the annual net total return, similar to Form N–1A?[77]
- The proposed rule would require advisers to provide performance information for each calendar year since inception and over prescribed time periods (one-, five-, and ten-year periods). Should the proposed rule instead only require an adviser to satisfy one of these requirements (*i.e.,* provide performance each calendar year since inception *or* provide performance over the prescribed time periods)? For funds that have not been in existence for one of the prescribed time periods, should the proposed rule require the adviser to show the average annual net total return since inception, instead of the prescribed time period?
- The proposed rule would require advisers to provide average annual net total returns for the private fund over the one-, five-, and ten-calendar year periods. However, the proposal would not prohibit advisers from providing additional information. Should we allow advisers to provide performance information for annual periods other than calendar years?
- Should the proposed rule define ''average annual net total return'' or specify the format in which advisers must present the average annual net total returns?
- The proposed rule would require an adviser to provide ''the cumulative net total return for the current calendar year.'' Instead of using the word ''cumulative'' net total return, should the rule use the phrase ''year to date'' net total return?
- To the extent certain liquid funds quote yields rather than returns, should such funds be required or permitted to quote yields in addition to or instead of returns?

b. Illiquid Funds

The proposed rule would require advisers to illiquid funds to disclose the following performance measures in the quarterly statement, shown since inception of the illiquid fund and computed without the impact of any fund-level subscription facilities:

(i) Gross internal rate of return and gross multiple of invested capital for the illiquid fund;

(ii) Net internal rate of return and net multiple of invested capital for the illiquid fund; and

(iii) Gross internal rate of return and gross multiple of invested capital for the realized and unrealized portions of the illiquid fund's portfolio, with the realized and unrealized performance shown separately.

The proposed rule also would require advisers to provide investors with a statement of contributions and distributions for the illiquid fund.[78]

Since Inception. The proposed rule would require an adviser to disclose the illiquid fund's performance measures since inception. This proposed requirement would prevent advisers from including only recent performance results or presenting only results or periods with strong performance, which could mislead investors. We propose to require this for all illiquid fund performance measures under the proposed rule, including the measures for the realized and unrealized portions of the illiquid fund's portfolio.

The proposed rule would require an adviser to include performance measures for the illiquid fund through the end of the quarter covered by the quarterly statement. We recognize, however, that certain funds may need information from portfolio investments and other third parties to generate performance data and thus may not have the necessary information prior to the distribution of the quarterly statement. Accordingly, to the extent quarter-end numbers are not available at the time of distribution of the quarterly statement, an adviser would be required to include performance measures through the most recent practicable date, which we generally believe would be through the end of the quarter immediately preceding the quarter covered by the quarterly statement. The proposed rule would require the quarterly statement to reference the date the performance information is current through (*e.g.,* December 31, 2021).[79]

Computed Without the Impact of Fund-Level Subscription Facilities. The proposed rule would require advisers to calculate performance measures for each illiquid fund as if the private fund called investor capital, rather than drawing down on fund-level subscription facilities.[80] Such facilities enable the fund to use loan proceeds—rather than investor capital—to initially fund investments and pay expenses. This practice permits the fund to delay the calling of capital from investors, which has the potential to increase performance metrics artificially.

Many advisers currently provide performance figures that reflect the impact of fund-level subscription facilities. These ''levered'' performance figures often do not reflect the fund's actual performance and have the potential to mislead investors.[81] For

[75] *See* Form N–1A. This form requires registered investment companies to report to investors and file with the SEC documents containing the fund's annual total returns by calendar year and the highest and lowest returns for a calendar quarter, among other performance information.

[76] *See infra* section II.A.2.c (Prominent Disclosure of Performance Calculation Information).

[77] *See* Form N–1A, Item 26(b).

[78] Proposed rule 211(h)(1)–2(e)(2)(ii).

[79] Proposed rule 211(h)(1)–2(e)(2)(iii).

[80] As discussed below, the proposed rule would also require advisers to prominently disclose the criteria used, and assumptions made, in calculating performance. This would include the criteria and assumptions used to prepare an illiquid fund's unlevered performance measures.

[81] We recognize that fund-level subscription facilities can be an important cash management tool for both advisers and investors. For example, a fund may use a subscription facility to reduce the overall number of capital calls and to enhance its ability to execute deals quickly and efficiently.

example, an investor could reasonably believe that levered performance results are similar to those that the investor has achieved from its investment in the fund. We believe that unlevered performance figures would provide investors with more meaningful data and improve the comparability of returns.

We propose to define ''fund-level subscription facilities'' as any subscription facilities, subscription line financing, capital call facilities, capital commitment facilities, bridge lines, or other indebtedness incurred by the private fund that is secured by the unfunded capital commitments of the private fund's investors.[82] This definition is designed to capture the various types of subscription facilities prevalent in the market that serve as temporary replacements or substitutes for investor capital.[83]

We would generally interpret the phrase computed without the impact of fund-level subscription facilities to require advisers to exclude fees and expenses associated with the subscription facility, such as the interest expense, when calculating net performance figures and preparing the statement of contributions and distributions. This approach would cause the net returns for many funds to be higher than would be the case if such amounts were included. We believe that this approach is appropriate, however, because it is consistent with the policy goal of this aspect of the proposed rule (*i.e.,* requiring advisers to show private fund investors the returns the fund would have achieved if there were no subscription facility).[84] We request comment below on whether this approach is appropriate.

Fund-Level Performance. The proposed rule would require an adviser to disclose an illiquid fund's gross and net internal rate of return and gross and net multiple of invested capital for the illiquid fund. The proposed rule also would require an adviser to provide a statement of contributions and distributions for the illiquid fund reflecting the aggregate cash inflows from investors and the aggregate cash outflows from the fund to investors, along with the fund's net asset value.

We recognize that illiquid funds have unique characteristics, such as irregular cash flows, that make measuring performance difficult for both advisers and investors. We also recognize that internal rate of return and multiple of invested capital, each as discussed below, have their drawbacks as performance metrics.[85] We believe, however, that these metrics, combined with a statement of contributions and distributions reflecting cash flows, would help investors holistically understand the fund's performance, allow investors to diligence the fund's performance, and calculate other performance metrics they may find helpful. When presented in accordance with the conditions and other disclosures required under the proposed rule, such standardized reporting measures would provide meaningful performance information for investors, allowing them to compare returns among funds and also to make more-informed decisions.

We propose to define ''internal rate of return'' as the discount rate that causes the net present value of all cash flows throughout the life of the private fund to be equal to zero.[86] Cash flows would be represented by capital contributions (*i.e.,* cash inflows) and fund distributions (*i.e.,* cash outflows), and the unrealized value of the fund would be represented by a fund distribution (*i.e.,* a cash outflow). This definition would provide investors with a time-adjusted return that takes into account the size and timing of a fund's cash flows and its unrealized value at the time of calculation.[87]

We propose to define ''multiple of invested capital'' as (i) the sum of: (A) The unrealized value of the illiquid fund; and (B) the value of all distributions made by the illiquid fund; (ii) divided by the total capital contributed to the illiquid fund by its investors.[88] This definition is intended to provide investors with a measure of the fund's aggregate value (*i.e.,* the sum of clauses (i)(A) and (i)(B)) relative to the capital invested (*i.e.,* clause (ii)) as of the end of the applicable reporting period. Unlike the definition of internal rate of return, the multiple of invested capital definition would not take into account the amount of time it takes for a fund to generate a return (meaning that the multiple of invested capital measure would focus on ''how much'' rather than ''when'').

We believe that the proposed definitions of internal rate of return and multiple of invested capital are generally consistent with how the industry currently calculates such performance metrics. For example, most advisers use electronic spreadsheet programs to calculate a fund's internal rate of return. Such programs typically calculate the internal rate of return as the interest rate for an investment consisting of payments (cash outflows) and income (cash inflows) received over a period.[89] However, we have observed certain advisers deviate from standard formulas, or make various assumptions, when calculating a private fund's performance. Accordingly, we believe that prescribing definitions would decrease the risk of different advisers presenting internal rate of return and multiple of invested capital performance figures that are not comparable. Both definitions are designed to limit any deviations in calculating the standardized performance prescribed by the proposed rule. We believe that this approach is appropriate because it would provide a degree of standardization and provide investors with the relevant information to compare performance.

An adviser would be required to present each performance metric on a gross and net basis.[90] Under the proposed rule, an illiquid fund's gross

[82] Proposed rule 211(h)(1)–1. The proposed rule defines ''unfunded capital commitments'' as committed capital that has not yet been contributed to the private fund by investors, and ''committed capital'' as any commitment pursuant to which a person is obligated to acquire an interest in, or make capital contributions to, the private fund. *See id.*

[83] We recognize that a private fund may guarantee portfolio investment indebtedness. In such a situation, if the portfolio investment does not have sufficient cash flow to pay its debt obligations, the fund may be required to cover the shortfall to satisfy its guarantee. Even though investors' unfunded commitments may indirectly support the fund's guarantee, the proposed definition would not cover such fund guarantees. Unlike fund-level subscription facilities, such guarantees generally are not put in place to enable the fund to delay the calling of investor capital.

[84] The proposed rule nevertheless would require advisers to reflect the fees and expenses associated with the subscription facility in the quarterly statement's fee and expense table.

[85] For example, multiple of invested capital does not factor in the amount of the time it takes for a fund to generate a return, and internal rate of return assumes early distributions will be reinvested at the same rate of return generated at the initial exit.

[86] Proposed rule 211(h)(1)–1 (defining ''gross IRR'' and ''net IRR'').

[87] When calculating a fund's internal rate of return, an adviser would need to take into account the specific date a cash flow occurred (or is deemed to occur). Certain electronic spreadsheet programs have ''XIRR'' or other similar formulas that require the user to input the applicable dates. The proposed requirement that an illiquid fund present its performance using an internal rate of return aligns with the U.S. GAAP criteria used to determine when a private fund must present performance using an internal rate of return in its audited financial statements. *See* U.S. GAAP ASC 946–205–50–23/24.

[88] Proposed rule 211(h)(1)–1 (defining ''gross MOIC'' and ''net MOIC'').

[89] *See, e.g.,* IRR Function, *available at https://support.microsoft.com/en-us/office/irr-function-64925eaa-9988-495b-b290-3ad0c163c1bc* (noting that the internal rate of return is closely related to net present value and that the rate of return calculated by the internal rate of return is the interest rate corresponding to a zero net present value).

[90] Proposed rule 211(h)(1)–2(e)(2)(ii).

performance would not reflect the deduction of fees, expenses, and performance-based compensation borne by the private fund.[91] We believe that presenting both gross and net performance measures for the illiquid fund would prevent investors from being misled. We believe that gross performance would provide insight into the profitability of underlying investments selected by the adviser. Solely presenting gross performance, however, may imply that investors have received the full amount of such returns. The net performance would assist investors in understanding the actual returns received and, when presented alongside gross performance, the negative effect fees, expenses, and performance-based compensation have had on past performance.

The proposed rule also would require an adviser to provide a statement of contributions and distributions for the illiquid fund. We believe this would provide private fund investors with important information regarding the fund's performance because it would reflect the underlying data used by the adviser to generate the fund's returns, which, in many cases, is not currently provided to private fund investors. Such data would allow investors to diligence the various performance measures presented in the quarterly statement. In addition, this data would allow the investors to calculate additional performance measures based on their own preferences.

We propose to define statement of contributions and distributions as a document that presents:

(i) All capital inflows the private fund has received from investors and all capital outflows the private fund has distributed to investors since the private fund's inception, with the value and date of each inflow and outflow; and

(ii) The net asset value of the private fund as of the end of the reporting period covered by the quarterly statement.[92]

For similar reasons to those discussed above, the proposed rule would require an adviser to prepare the statement of contributions and distributions without the impact of any fund-level subscription facilities. This would require an adviser to assume the private fund called investor capital, rather than drawing down on fund-level subscription facilities. To avoid double counting capital inflows, the amount borrowed under the subscription facility generally should be reflected as a capital inflow from investors and an equal dollar amount of actual capital inflows from investors generally should not be reflected on the statement.

Realized and Unrealized Performance. The proposed rule also would require an adviser to disclose a gross internal rate of return and gross multiple of invested capital for the realized and unrealized portions of the illiquid fund's portfolio, with the realized and unrealized performance shown separately.

The value of the unrealized portion of an illiquid fund's portfolio typically is determined by the adviser and, given the lack of readily available market values, can be challenging. For example, an adviser's valuation policies and procedures for illiquid investments may rely on models and unobservable inputs. This creates a conflict of interest because the adviser is typically evaluated and, in certain cases, compensated based on the fund's unrealized performance. Further, investors often decide whether to invest in a successor fund based on the predecessor fund's performance. These factors create an incentive for the adviser to inflate the value of the unrealized portion of the illiquid fund's portfolio. We believe highlighting the performance of the fund's unrealized investments would assist investors in determining whether the aggregate, fund-level performance measures present an overly optimistic view of the fund's overall performance. For example, if the performance of the unrealized portion of the fund's portfolio is significantly higher than the performance of the realized portion, it may imply that the adviser's valuations are overly optimistic or otherwise do not reflect the values that can be realized in a transaction or sale with an independent third party.

The proposed rule would only require an adviser to disclose gross performance measures for the realized and unrealized portions of the illiquid fund's portfolio. We believe that calculating net figures could involve complex and potentially subjective assumptions regarding the allocation of fund-level fees, expenses, and adviser compensation between the realized and unrealized portions of the portfolio.[93] In our view, such assumptions would likely diminish the benefits net performance measures would provide.

We request comment on the following with respect to the proposed illiquid fund performance requirement:

- Are the proposed performance metrics appropriate? Why or why not? We recognize that advisers often utilize different performance metrics for different funds. Should we add any other metrics to the proposed rule? For example, should we require a public market equivalent or variations of internal rate of return, such as a modified internal rate of return that assumes cash flows are reinvested at modest rates of return or otherwise incorporates a cost of capital concept for funds that do not draw down all, or substantially all, of investor capital at the time of investment? If so, should we prescribe a benchmark for the cost of capital and reinvestment rates?
- The proposed rule would not distinguish among different types of illiquid funds. Is our approach in this respect appropriate or should we treat certain illiquid funds differently? If so, how should we reflect that treatment?
- Are there additional guardrails we should add to the proposed rule to achieve the policy goal of providing investors with comparable performance information? If so, please explain. Are there practices that advisers use or assumptions that advisers make, when calculating performance that we should require, curtail, or otherwise require advisers to disclose?
- Although some investors receive certain annual performance information about a private fund if that fund is audited and distributes financial statements prepared in accordance with U.S. GAAP, we believe that the proposed rule's performance information would be helpful for private fund investors because it would require performance information to be reported at more frequent intervals in a standardized manner. Do commenters agree? To the extent there are differences (*e.g.,* the requirement that performance be computed without the impact of any fund-level subscription facilities), would investors find this confusing? Would disclosure regarding these differences help to alleviate investor confusion?
- Would investor confusion or other concerns arise from requiring performance information in the quarterly statement as proposed?
- What, if any, burdens would be associated with this aspect of the proposed rule? How can we minimize any associated burdens while still achieving our goals?
- Are the proposed definitions appropriate and clear? If not, how should we clarify the definitions?

[91] *See* proposed rule 211(h)(1)–1 (defining ''gross IRR,'' ''net IRR,'' ''gross MOIC,'' and ''net MOIC'').

[92] Proposed rule 211(h)(1)–1.

[93] For example, an adviser would have to determine how to allocate fund organizational expenses between the realized and unrealized portions of the portfolio.

Should we modify or eliminate any? Would additional definitions be appropriate or useful? For example, should we define any of the terms used in the definition of internal rate of return, such as ''net present value'' or ''discount rate''? If so, what definitions should we use?

• Are the definitions of gross IRR, gross MOIC, net IRR, and net MOIC appropriate? Should we provide further guidance or specify requirements in the proposed rule on how to calculate gross performance or net performance? If so, what guidance or requirements? Should we require advisers to adopt policies and procedures prescribing specific methodologies for calculating gross performance and net performance? Why or why not? When calculating net performance, are there additional fees and expenses that advisers should include? Alternatively, should we expressly permit advisers to exclude certain fees and expenses when calculating net performance figures, such as taxes incurred to accommodate certain, but not all, investor preferences? Why or why not?

• Similarly, are the definitions of gross IRR and gross MOIC appropriate for purposes of calculating the performance metrics of the realized and unrealized portions of the illiquid fund's portfolio? Should we modify such definitions to reference specifically the realized and unrealized portions of the portfolio, rather than only referencing the illiquid fund? For example, should the definition of MOIC be revised to mean, as of the end of the applicable calendar quarter: (i) The sum of (A) the unrealized value of applicable portion of the illiquid fund's portfolio, and (b) the value of all distributions made by the illiquid fund attributable to the applicable portion of the illiquid fund's portfolio; (ii) divided by the total capital contributed to the illiquid fund by its investors attributable to the applicable portion of the illiquid fund's portfolio? Are there other variations we should impose? Why or why not?

• The Global Investment Performance Standards (''GIPS'') are a set of voluntary standards for calculating and presenting investment performance. For purposes of calculating an illiquid fund's performance under the proposed rule, are there any elements found in the GIPS standards that we should require? For example, should we require advisers to disclose composite cumulative committed capital,[94] or should we require advisers to disclose performance with and without the impact of subscription facilities? Are there any definitions we should revise or propose to be consistent with the definitions used in the GIPS standards? For example, the GIPS standards define ''internal rate of return'' as the return for a period that reflects the change in value and the timing and size of external cash flows and ''multiple of invested capital'' as the total value divided by since inception paid-in capital.[95] If we were to adopt such definitions, do commenters believe that such definitions would result in different performance numbers for illiquid funds, as compared to the performance numbers that advisers would disclose under the proposed definitions? Why or why not? Please provide examples.

• We recognize that advisers and their related persons typically invest in private funds on a ''fee-free, carry-free'' basis (*i.e.,* they are not required to pay management fees or performance-based compensation). When calculating a fund's performance, how should such interests be taken into account? Should we require advisers to exclude such interests from the calculations, especially the net performance figures?

• The proposed rule would require advisers to calculate the various performance measures without the impact of any fund-level subscription facilities. Do commenters agree with this approach? Should the proposed rule require advisers to provide the same performance measures *with* the impact of fund-level subscription facilities? Why or why not? The proposed rule does not prohibit advisers from providing the same performance measures with the impact of fund-level subscription facilities. Should we prohibit advisers from doing so?

• Should we define the term ''computed without the impact of any fund-level subscription facilities''? Should we provide additional guidance or requirements regarding how advisers generally should or must calculate such performance measures? If so, what guidance or requirements should we provide?

• We recognize that a fund-level subscription facility has the potential to have a greater impact on a fund's internal rate of return as compared to its multiple of invested capital. Should advisers only be required to provide ''unlevered'' internal rates of return and not ''unlevered'' multiples of invested capital? If the fund realizes an investment prior to calling any capital from investors in respect of such investment, how would an adviser calculate a multiple for such investment?

• The proposed rule would require advisers to prepare the statement of contributions and distributions without the impact of any fund-level subscription facilities. Would this information be helpful for investors? Would advisers be able to prepare such a statement without making arbitrary assumptions? Why or why not? For example, would advisers need to make assumptions in calculating the preferred return (if applicable)?

• The proposed rule would require only gross performance measures for the realized and unrealized portion of the illiquid fund's portfolio. Should the proposed rule require net performance information as well? Would net performance measures be beneficial for investors despite the drawbacks discussed above? What assumptions should we require in calculating net information? What limitations, if any, would advisers face in providing net performance measures?

• Should we define the phrases ''unrealized portion of the illiquid fund's portfolio'' and ''realized portion of the illiquid fund's portfolio''? For example, should we define the realized portion to include not only completely realized investments but also substantially realized investments to the extent the fund's remaining interest is *de minimis*? Why or why not?

• Should we require advisers to disclose the dollar amounts of the realized and unrealized portions of the portfolio? Should we also require advisers to disclose such amounts as percentages? For example, if the value of the realized portion of the portfolio is $250 million and the value of the unrealized portion is $750 million, should we require advisers to disclose those amounts, both as dollar values and percentages (*i.e.,* 25% ($250 million) of the illiquid fund's portfolio is realized, and 75% ($750 million) remains unrealized)?

• The proposed rule would require advisers to provide cumulative performance reporting since inception of the illiquid fund each quarter. Is this the right approach? Should the proposed rule require performance since inception for each quarter or on an

[94] The GIPS standards define ''committed capital'' as pledges of capital to an investment vehicle by investors (limited partners and the general partner) or the firm. The term ''composite'' is defined as an aggregation of one or more portfolios that are managed according to a similar investment mandate, objective, or strategy. The term cumulative is not defined in the GIPS standards. Global Investment Performance Standards (GIPS) For Firms: Glossary, CFA Institute (2020), *available at https://www.cfainstitute.org/-/media/documents/code/gips/2020-gips-standards-firms.pdf.*

[95] Internal rate of return is referred to as money-weighted return in the GIPS standards, and multiple of invested capital is referred to as investment multiple.

annual basis? Should the proposed rule remove the ''since inception'' requirement for quarterly reports and instead require performance for each quarter of the current year, and cumulative performance for the current year? If so, why or why not?

• Should we prescribe specific periods for illiquid fund performance reporting? For example, should we prescribe one-, five-, and/or ten-year time periods? Instead, should we require that advisers always present performance since inception as proposed? Are there other periods for which we should require the presentation of performance results? Are there any specific compliance issues that an adviser would face in generating and presenting performance results for the required period? For example, would advisers have the requisite information to generate or support performance figures for older funds from the proposed recordkeeping requirements and/or performance presentation requirements? If not, should we provide an exemption for advisers that lack such information?

• Liquid funds often have longer terms than illiquid funds. To the extent an illiquid fund has been in existence for an extended period of time, such as more than ten years, should the rule prescribe specific periods for performance reporting for such funds (*e.g.,* one-, five-, and/or ten-year time periods)?

• Should we require that advisers provide performance results current through the end of the quarter covered by the quarterly statement as proposed? In circumstances where quarter-end numbers are not available at the time of distribution of the quarterly statement, should we require an adviser to include performance measures through the most recent practicable date as proposed? Should we define, or provide additional guidance about, the term ''most recent practicable date''? If so, what definition or additional guidance should we provide?

• Should the proposed rule require advisers to make certain, standard disclosures tailored to each of the performance metrics mandated in the proposed rule? For example, should we require advisers to illiquid funds that are required to display internal rate of return to disclose prominently that the returns do not represent returns on the investor's capital commitment and instead only reflect returns on the investor's contributed capital? Should we require advisers to disclose that an investor's actual return on its capital commitment will depend on how the investor invests its uncalled commitments?

• As noted above, we would generally interpret the phrase computed without the impact of fund-level subscription facilities to require advisers to exclude fees and expenses associated with the subscription facility, such as the interest expense, when calculating net performance figures and preparing the statement of contributions and distributions. Do commenters agree with this approach? Should we require advisers to include such amounts instead? Are there other assumptions advisers would need to make in calculating performance information that the rule should address?

• The proposed rule would require the statement of contributions and distributions to reflect the private fund's net asset value as of the end of the applicable quarter. Should we require advisers to provide additional detail regarding the unrealized value of the private fund? For example, should we require advisers to reflect the portion of such net asset value that would be required to be paid to the adviser as performance-based compensation assuming a hypothetical liquidation of the fund?

• The statement of contributions and distributions generally reflects aggregate, fund-level numbers. Should we also require a statement of contributions and distributions for each underlying investment? Would a statement of each investment's cash flows be useful to investors? Why or why not? Would such a requirement be too burdensome for certain advisers, especially advisers to private funds that have a significant number of investments? Should this requirement only apply to certain types of funds, such as private equity, venture capital, or other similar funds that may invest in operating companies?

• Should we provide further guidance or specify requirements on how advisers generally should or must present performance? For example, should we require advisers to present the various performance metrics with equal prominence as proposed? Should we require advisers to present performance information in a format designed to facilitate comparison? Should we provide additional guidance or requirements regarding how an adviser should or must calculate the proposed performance metrics? Is there additional information that we should require advisers to disclose when presenting performance?

• Should we provide further guidance or specify requirements in the rule on how advisers generally should or must treat taxes for purposes of calculating performance? For example, should the rule state that advisers may exclude taxes paid or withheld with respect to a particular investor or by a blocker corporation (but not the illiquid fund as a whole)?

c. Prominent Disclosure of Performance Calculation Information

The proposed rule would require advisers to include prominent disclosure of the criteria used and assumptions made in calculating the performance. Information about the criteria used and assumptions made would enable the private fund investor to understand how the performance was calculated and help provide useful context for the presented performance metrics. Additionally, while the proposed rule includes detailed information about the type of performance an adviser must present for liquid and illiquid funds, it is still possible that advisers would make certain assumptions or rely on specific criteria that the proposed rule's requirements do not address specifically.

For example, the proposed rule would require an adviser to display, for a liquid fund, the annual returns for each calendar year since the fund's inception. If the adviser made any assumptions in performing that calculation, such as whether dividends were reinvested, the adviser should disclose those assumptions in the quarterly statement. As another example, for an illiquid fund, the proposed rule would require an adviser to display the net internal rate of return and net multiple of invested capital. In this case, the adviser should disclose the assumed fee rates, including whether the adviser is using fee rates set forth in the fund documents, whether it is using a blended rate or weighted average that would factor in any discounts, or whether it is using a different method for calculating net performance. The proposed rule requires the disclosure to be within the quarterly statement.[96] Thus, an adviser may not provide the information only in a separate document, website hyperlink or QR code, or other separate disclosure.[97] We believe that this information is integral to the quarterly statement because it would enable the investor to understand and analyze the performance information better and better compare the performance of funds and advisers

[96] Proposed rule 211(h)(1)–2(e)(2)(iii).

[97] *See also* Marketing Release, *supra* at footnote 61 (discussing clear and prominent disclosures in the context of advertisements).

without having to access other ancillary documents. As a result, investors should receive it as part of the quarterly statement itself.

We request comment on this aspect of the proposal:

- Should we require advisers to disclose the criteria used and assumptions made in calculating the performance as part of the quarterly statement as proposed? Is this approach too flexible? Should we instead prescribe required disclosures?
- Should we require advisers to provide these disclosures prominently as proposed? Is there another disclosure standard we should use for these purposes?
- Because we propose to require an adviser to provide these disclosures as part of each quarterly statement, investors would receive these disclosures quarterly. Would providing these disclosures every quarter reduce their salience? Should we require these disclosures only as part of the first quarterly statement that an adviser sends to an investor with amendments if the criteria used or assumptions made in calculating performance change? Should we permit hyperlinking to these disclosures after the initial quarterly statement?

3. Preparation and Distribution of Quarterly Statements

The proposed rule would require quarterly statements to be prepared and distributed to fund investors within 45 days after each calendar quarter end. We believe quarterly statements would provide fund investors with timely and regular statements that contain meaningful and comprehensive information. We understand that most private fund advisers currently provide investors with quarterly reporting.[98]

For a newly formed private fund, the proposed rule would require a quarterly statement to be prepared and distributed beginning after the fund's second full calendar quarter of generating operating results. Many private funds may not have performance information that is readily available within the first several months of operations. For example, a private equity fund might not begin investing until several months after the fund's formation because the adviser is still identifying investments that align with the fund's strategy. As another example, a hedge fund may hold initial investor capital in cash or cash equivalents, prior to commencing the fund's investment strategy. Accordingly, we believe that the proposed requirements for newly formed funds would help ensure that investors receive comprehensive information about the adviser during the early stage of the fund's life. The reporting period for the final quarterly statement would cover the calendar quarter in which the fund is wound up and dissolved.

We propose to require quarterly statements to be distributed within 45 days after the calendar quarter end. Based on our experience, we believe advisers generally would be in a position to prepare and deliver quarterly statements within this period.

An adviser generally would satisfy the proposed requirement to ''distribute'' the quarterly statements when the statements are sent to all investors in the private fund.[99] However, the proposed rule would preclude advisers from using layers of pooled investment vehicles in a control relationship with the adviser to avoid meaningful application of the distribution requirement. Advisers to private funds may from time to time establish special purpose vehicles (''SPVs'') or other pooled vehicles for a variety of reasons, including facilitating investments by one or more private funds that the advisers manage. In circumstances where an investor is itself a pooled vehicle that is controlling, controlled by, or under common control with the adviser or its related persons (a ''control relationship''), the adviser must look through that pool (and any pools in a control relationship with the adviser or its related persons, such as in a master-feeder fund structure), in order to send to investors in those pools. Without such a requirement, the adviser would be essentially delivering the quarterly statement to itself rather than to the parties the quarterly statement is designed to inform.[100] Outside of a control relationship, such as if the private fund investor is an unaffiliated fund of funds, this same concern is not present, and the adviser would not need to look through the structure to make meaningful delivery. The adviser would just distribute the quarterly statement to the adviser or other designated party of the unaffiliated fund of funds. We believe that this approach would lead to meaningful delivery of the quarterly statement to the private fund's investors.

We request comment on the quarterly statement preparation and distribution requirement of the proposed rule:

- Should we require advisers to prepare and distribute statements to clients at least quarterly, or should we prescribe a different frequency? For example, should we require monthly, semi-annual, or annual statements? Should we mandate the same delivery frequency for all proposed statements under the rule? How would each of these approaches affect comparability and effectiveness of the information in those statements? Would a quarterly reporting obligation require advisers to value the fund's investments more frequently than advisers currently do?
- We understand that advisers may use a fund administrator or another person to distribute the quarterly statement. Is the proposed definition of ''distribute'' broad enough to capture a fund administrator or another person acting under the direction and control of the adviser sending the quarterly statement on the adviser's behalf? If not, should we broaden the definition? Instead of changing the definition of ''distribute,'' should we require the adviser to distribute the quarterly statement, unless it has reason to believe that another person has distributed a required statement (and has a copy of each such statement distributed by such other person)?
- The proposed rule would require advisers to distribute the quarterly statement within 45 days of a calendar quarter end. Is this period too long or too short for an adviser to prepare the quarterly statement while also ensuring timely delivery to investors? Should we instead adopt a flexible delivery standard, such as a requirement that the adviser distribute the quarterly statement ''promptly''? Why or why not? If we were to adopt a prompt delivery standard, should we define ''promptly''? If so, how? If we should not define ''promptly,'' should we instead interpret that term to mean as soon as reasonably practicable?
- We understand that preparing quarterly statements may require coordination with, and reliance on, third parties. This may be the case, for example, when a private fund itself invests in other private funds or

[98] *See also* ILPA Fee Reporting Template Guidance, Version 1.1 (Oct. 2016), at 6 (stating that ''ILPA recommends that the Template is provided on a quarterly basis within a reasonable timeframe after the release of standard reports.'').

[99] *See* proposed rule 211(h)(1)–1 (defining ''distribute''). For purposes of the proposed rules, any ''in writing'' requirement could be satisfied either through paper or electronic means consistent with existing Commission guidance on electronic delivery of documents. *See* Marketing Release, *supra* footnote 61, at n.346. If any distribution is made electronically for purposes of these proposed rules, it should be done in accordance with the Commission's guidance regarding electronic delivery. *See Use of Electronic Media by Broker Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940,* Release No. 34–37182 (May 9, 1996) [61 FR 24644 (May 15, 1996)].

[100] *See* proposed rule 211(h)(1)–1 (defining ''control'').

portfolio companies. Should the rule allow different distribution timelines for different types of private funds (*e.g.,* fund of funds, master feeder funds)? If so, why (*e.g.,* do certain types of funds value assets more frequently than other types)? Should the proposed rule allow different distribution deadlines for underlying funds, depending on whether or not the underlying funds have the same adviser or an adviser that is a related person of the adviser distributing the quarterly statements?

• Should the proposed rule bifurcate the timing of when certain information in the quarterly statement is required? For example, should the proposed rule require fee and expense information starting at the fund's inception and then require performance information beginning later? If so, when should we require an adviser to start showing performance?

• Should the proposed rule treat liquid and illiquid funds differently with regard to fee and expense versus performance reporting? For example, should the proposed rule require liquid funds to start distributing quarterly statements with performance reporting sooner than illiquid funds? If so, why and how much sooner?

• As proposed, the rule would use ''operating results'' as the trigger for quarterly statement distribution. Should we instead rely on another trigger to indicate when an adviser must start distributing quarterly statements to investors? For example, should the proposed rule instead require an adviser to start distributing quarterly statements when the private fund has financial statements that report operating results? If so, why? Should we define ''operating results'' or clarify what it means?

• Should the proposed rule require an adviser to prepare and distribute an initial quarterly statement sooner than after the first two full calendar quarters of operating results? For example, should we require an adviser to prepare and distribute a quarterly statement after the first calendar quarter of the fund's operations? Why or why not? If we required an adviser to prepare and distribute a quarterly statement earlier in the fund's life, would this information be useful to investors?

• The proposed rule would require advisers to prepare and distribute a quarterly statement after the private fund has two full calendar quarters of operating results and continuously each calendar quarter thereafter. An adviser would be required to provide information for any stub periods that precede its first two full calendar quarters of operating results (*i.e.,* from the date of the fund's inception to the beginning of the first calendar quarter during which the fund begins to produce operating results). Should the proposed rule explicitly address how advisers should handle stub periods? If so, how?

• The proposed rule would require fee and expense reporting based on a fund's calendar quarter and performance reporting based on a liquid fund's calendar year. Should we instead use ''fiscal quarter'' and ''fiscal year''? Why or why not?

• Are there certain types of advisers or funds that should be exempt from distributing the quarterly statement to investors? If so, which ones and why? Are there certain types of advisers or funds that should be required to distribute quarterly statements to investors? If so, which ones and why?

• Instead of requiring advisers to distribute the quarterly statement to investors, should we require advisers to only distribute or make the quarterly statement available to investors upon request? Despite the limitations of private fund governance mechanisms, as discussed above, should we require advisers to distribute the quarterly statement to independent members of the fund's LPAC, board, or other similar governance body?

• Rule 206(4)–2 under the Advisers Act (the ''custody rule'') allows a client to designate an independent representative to receive on its behalf account statements and notices that are required by that rule.[101] Under the custody rule, an ''independent representative'' is defined as someone who does not control, is not controlled by, and is not under common control with the adviser, among other requirements.[102] Should we adopt a similar provision in the quarterly statement rule? Are there specific types of investors that need, or at present commonly designate, independent representatives to receive quarterly statements on their behalf?

• Should we revise the definition of ''distribute'' expressly to include distribution by granting investors access to a virtual data room containing the quarterly statement? Why or why not?

• We considered requiring the proposed quarterly statement disclosures to be submitted using a structured, machine-readable data language. Such format may facilitate comparisons of quarterly statement disclosures across advisers and periods. Should we require advisers to provide quarterly statements in a machine-readable data language, such as Inline eXtensible Business Reporting Language (''Inline XBRL'')? Why or why not? Would such a requirement make the quarterly statements, and the information included therein, easier for investors to analyze? For example, would it be useful for investors to download quarterly statement information directly into spreadsheets, particularly for institutional investors that may have a significant number of private fund investments? Would a machine-readable data language impose undue additional costs and burdens on advisers? Please provide support for your response, including, where available, cost data.

• If we adopt rules requiring a machine-readable data language, is the Inline XBRL standard the one that we should use? Are any other standards becoming more widely used or otherwise superior to Inline XBRL? What would the advantages of any such other standards be over Inline XBRL?

4. Consolidated Reporting for Certain Fund Structures

An adviser may form multiple funds to implement a single strategy. For example, an adviser may form a parallel fund for certain tax-sensitive investors, such as non-U.S. investors that prefer to invest through an entity taxed as a corporation—rather than a partnership—for U.S. Federal income tax purposes, that invests alongside the main fund in all, or substantially all, of its investments. An adviser may also form a feeder fund for tax-sensitive investors that invests all, or substantially all, of its capital into the main fund. Advisers often seek to structure the funds in a way that accommodates investor preferences.

In some of these circumstances, we believe that consolidated reporting of the cost and performance information by all private funds in the structure would provide a more complete and accurate picture of the fees and expenses borne and performance achieved than reporting by each private fund separately. Due to the complexity of private fund structures, however, we believe a principles-based approach to the funds that must provide consolidated reporting is necessary. Accordingly, the proposed rule would require advisers to consolidate reporting for substantially similar pools of assets to the extent doing so would provide more meaningful information to the

[101] *See* rule 206(4)–2(a)(7) under the Advisers Act.

[102] *See* rule 206(4)–2(d)(4) under the Advisers Act.

private fund's investors and would not be misleading.[103]

For example, certain private funds utilize master-feeder structures. Typically, investors invest in onshore and offshore feeder funds, which, in turn, invest all, or substantially all, of their investable capital in a single master fund. The same adviser typically advises and controls all three funds, and the master fund typically makes and holds the investments. Because the feeder funds are conduits for investors to gain exposure to the master fund and its investments, the proposed rule would require the adviser to provide feeder fund investors with a single quarterly statement covering the applicable feeder fund and the feeder fund's proportionate interest in the master fund on a consolidated basis, so long as the consolidated statement would provide more meaningful information to investors and would not be misleading.

We request comment on the proposed consolidated reporting provision of the proposed rule:

• Do commenters agree that the proposed rule should require advisers to consolidate reporting to cover related funds to the extent doing so would provide more meaningful information to investors and would not be misleading? Alternatively, should we prohibit advisers from consolidating information for multiple funds? Why or why not? Should the rule permit, rather than require, consolidated reporting?

• Should we require advisers to provide a consolidated quarterly statement for funds that are part of the same strategy, such as parallel funds, feeder funds, and master funds? Alternatively, should these types of funds have separate reporting? For example, should feeder fund investors receive a quarterly statement covering the feeder fund and a separate quarterly statement covering the main fund or master fund? How should the rule address the fact that certain funds may have different expenses (*e.g.,* an offshore fund may have director expenses while an onshore fund may not)? Should we require advisers to provide investors with a summary of any fund-specific expenses and the corresponding dollar amount(s)? Should such a requirement be triggered only if the fund-specific expense exceeds a certain threshold, such as a percentage of the fund size (*e.g.,* .01%, .05%, or .10% of the fund's size) or a specific dollar amount (*e.g.,* $15,000, $30,000, or $50,000)?

• As noted above, the proposal would require advisers to provide feeder fund investors with a consolidated quarterly statement covering the applicable feeder fund and the feeder fund's proportionate interest in the master fund, to the extent doing so would provide more meaningful information to investors and would not be misleading. Do commenters agree with this approach? Alternatively, should we require advisers to provide consolidated reporting covering all feeder funds (and not just the applicable feeder fund) and the master fund? Why or why not?

• We also recognize that certain private funds have multiple classes (or other groupings such as series or tranches) of interests or shares. The proposed rule would require the quarterly statement to present fund-wide information. Would advisers face challenges in calculating fee, expense, and performance information if there are differences in fees, allocations, and/or expenses between or among classes, series, or tranches? Should we require disclosure of class-specific fees and expenses, or of the differences among classes? Why or why not? Should we instead permit or require quarterly statements for multi-class private funds to present the proposed fee and expense and performance information on a class-by-class basis, particularly if each class (or series or tranche) is considered a distinct private fund or separate legal entity (with segregated assets and liabilities) under applicable law? Would such an approach provide more meaningful information for investors in each of those classes, given the potential for different fee, allocation, and expense structures? Should we require quarterly statements for multi-class (or multi-series or multi-tranche) private funds to present class-by-class (or series-by-series or tranche-by-tranche) information to the extent each class (or series or tranche) holds different investments?

• Should advisers only be required to distribute a class' quarterly statement to interest holders of such class, or should all fund investors be entitled to receive such statement regardless of whether they are interest holders of the relevant class if the rule permits or requires class-specific quarterly statements for multi-class private funds?

• Certain advisers provide combined financial statements covering multiple funds. Should we require or permit advisers to provide consolidated quarterly statements for funds that have combined financial statements? Why or why not?

5. Format and Content Requirements

The proposed rule would require the adviser to use clear, concise, plain English in the quarterly statement.[104] For example, an adviser would not satisfy the proposed requirement for ''clear'' disclosures unless those disclosures are made in a font size and type that is legible, and margins and paper size (if applicable) are reasonable. Likewise, to meet this standard, any information that an adviser chooses to include in a quarterly statement, but that is not required by the rule, would be required to be as short as practicable, not more prominent than the required information, and not obscure or impede an investor's understanding of the mandatory information.

In addition, the proposed rule would require an adviser to present information in the quarterly statement in a format that facilitates review from one quarterly statement to the next. As noted above, the quarterly statement is designed to allow an investor to monitor and assess the costs and performance of the fund over time. We anticipate that, quarter-over-quarter, an adviser would use a consistent format for a fund's quarterly statements, thus allowing an investor to easily compare fees, expenses, and performance over each quarterly period. We also encourage advisers to use a structured, machine-readable format if advisers believe this format would be useful to the investors in their fund.

The proposed format and content requirements would apply to all aspects of a quarterly statement, including the proposed requirements to disclose the manner in which expenses, payments, allocations, rebates, waivers, and offsets are calculated and to cross-reference sections of the private fund's organizational and offering documents.[105] We believe this approach would improve the utility of the quarterly statement by making it easier for investors to review and analyze. These requirements would support an investor's ability to understand needed context provided in the quarterly statement regarding fees, expenses, and performance that allows investors to monitor their investments. For example, providing investors with clear and easily accessible cross-references to the fund governing documents would make it easier for the investor to monitor whether the fees and expenses in the quarterly statement comply with the fund's governing documents.

We believe the proposal strikes an appropriate balance in prescribing the

[103] *See* proposed rule 211(h)(1)–2(f). *See also infra* Section II.E.

[104] Proposed rule 211(h)(1)–2(g).

[105] Proposed rule 211(h)(1)–2(d).

content of the tables and performance information to be included in quarterly statements while taking a fairly principles-based approach to format. This would help provide investors with standardized information about their private fund investments, while affording advisers some flexibility to present the required information without being overly prescriptive or sacrificing readability. We considered, but are not proposing, to further standardize format, because we recognize this might result in investor confusion if an adviser includes inapplicable line items to satisfy our form requirements, while omitting additional relevant information that might be unique to a particular fund. Moreover, we were concerned that advisers would be unable to report on a consolidated basis if we further prescribed the format of the statements.

We request comment on this aspect of the proposed rule:

- Should the proposed quarterly statement rule include a provision on formatting and content? Why or why not?
- Do commenters agree with the flexibility of the proposed format and content requirements, or should we prescribe wording? For example, should we require a cover page with prescribed wording? If so, what prescribed wording should we require?
- To meet the rule's formatting requirements, any information that an adviser chooses to include in a quarterly statement, but that is not required by the rule, would be required to be presented in a manner that is no more prominent than the required information. Should the rule, instead, require that advisers *more* prominently present information that is required by the proposed quarterly statement rule (as opposed to supplemental information that is merely permitted)? If an adviser chooses to include supplemental information, should we require that adviser to disclose what information in the quarterly statement is required versus that which is voluntary?

6. Recordkeeping for Quarterly Statements

We propose amending rule 204–2 (the ''books and records rule'') under the Advisers Act to require advisers to retain books and records related to the proposed quarterly statement rule.[106] These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities. First, we propose to require private fund advisers to retain a copy of any quarterly statement distributed to fund investors pursuant to the proposed quarterly statement rule, as well as a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s). Second, we propose to require advisers to retain all records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any quarterly statement delivered pursuant to the proposed quarterly statement rule. Third, advisers would be required to make and keep books and records substantiating the adviser's determination that the private fund it manages is a liquid fund or an illiquid fund pursuant to the proposed quarterly statement rule. We believe these proposed requirements would facilitate our staff's ability to assess an adviser's compliance with the proposed rule and would similarly enhance an adviser's compliance efforts.[107]

We request comment on the proposed recordkeeping rule amendments:

- Should we require advisers to maintain the proposed records or would these requirements be overly burdensome for advisers? Are there alternative or additional recordkeeping requirements we should impose?
- Should we require advisers to retain a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s) for each quarterly statement, as proposed? Should we instead eliminate this requirement because of the potential burdens?
- Should we provide more specific requirements regarding the records an adviser must maintain to substantiate its determination that a private fund is a liquid fund or an illiquid fund? Alternatively, should we leave the proposed rule as is and allow advisers flexibility in how they document this determination?

B. Mandatory Private Fund Adviser Audits

In addition to disclosure, we propose to require private fund advisers to obtain an annual audit of the financial statements of the private funds they manage.[108] In addition to providing protection for the fund and its investors against the misappropriation of fund assets, we believe an audit by an independent public accountant would provide an important check on the adviser's valuation of private fund assets, which often serve as the basis for the calculation of the adviser's fees.

The proposed audit rule would require a registered investment adviser providing investment advice, directly or indirectly, to a private fund, to cause that fund to undergo a financial statement audit that meets the terms of the rule at least annually and upon liquidation, unless the fund otherwise undergoes such an audit. Under the proposed rule:

(1) The audit must be performed by an independent public accountant that meets the standards of independence in 17 CFR 210.2–01(b) and (c) (rule 2–01(b) and (c) of Regulation S–X) that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board (''PCAOB'') in accordance with its rules;

(2) The audit must meet the definition of audit in 17 CFR 210.1–02(d) (rule 1–02(d) of Regulation S–X), the professional engagement period of which shall begin and end as indicated in Regulation S–X rule 2–01(f)(5);

(3) Audited financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') or, in the case of financial statements of private funds organized under non-U.S. law or that have a general partner or other manager with a principal place of business outside the United States (''foreign private funds''), must contain information substantially similar to statements prepared in accordance with U.S. GAAP and material differences with U.S. GAAP must be reconciled;

(4) Promptly after completion of the audit, the private fund's audited financial statements, which include any reconciliation to U.S. GAAP prepared for a foreign private fund, are distributed; and

(5) The auditor notifies the Commission upon certain events.[109]

Additionally, for a fund that the adviser does not control and that is neither controlled by nor under

[106] For all of the recordkeeping rule amendments in this proposed rulemaking package, advisers would be required to maintain and preserve the record in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser. *See* rule 204–2(e)(1) under the Advisers Act.

[107] Advisers already are required to retain performance calculation information under the existing books and records rule and therefore would be required to retain the performance calculation information required as part of the proposed quarterly statement rule. *See* rule 204–2(a)(16) under the Advisers Act (requiring advisers to retain performance calculation information).

[108] Proposed rule 206(4)–10. The proposed rule would apply to all investment advisers registered, or required to be registered, with the Commission.

[109] Proposed rule 206(4)–10; proposed rule 211(h)(1)–1 (defining ''control'' and ''distributed'').

common control with the adviser (*e.g.,* where an unaffiliated sub-adviser provides services to the fund), such adviser would only need to take all reasonable steps to cause the fund to undergo an audit that would meet these elements.

We have historically relied on financial statement audits to verify the existence of pooled investment vehicle investments.[110] Financial statement audits also provide additional meaningful protections to private fund investors by increasing the likelihood that fraudulent activity or problems with valuation are uncovered, thereby providing deterrence against fraudulent conduct by fund advisers. For example as noted above, a fund's adviser may use a high level of discretion and subjectivity in valuing a private fund's illiquid investments, which are difficult to value. This creates a conflict of interest if the adviser also calculates its fees as a percentage of the value of the fund's investments and/or an increase in that value (net profit), as is typically the case. Moreover, private fund advisers often rely heavily on existing fund performance when obtaining new investors (in the case of a private fund that makes continuous or periodic offerings) or fundraising for a new fund. These factors raise the possibility that funds are valued opportunistically and that the adviser's compensation may involve fraud or deception, resulting in an inappropriate compensation scheme.[111] A fund audit includes the evaluation of whether the fair value estimates and related disclosures are reasonable and consistent with the requirements of the financial reporting framework (*e.g.,* U.S. GAAP), which may include evaluating the selection and application of methods, significant assumptions, and data used by the adviser in making the estimate.[112] We believe that this would provide a critical set of additional protections by an independent third party.

The proposed audit rule is based on the custody rule and contains many similar or identical requirements, although compliance with either rule would not automatically satisfy the requirements of the other.[113] Although the financial statement audit performed under either rule would be the same, there are several differences between the two rules. The most notable difference between the two rules is the lack of choice about obtaining an audit under the proposed audit rule. Under the custody rule, an adviser is deemed to have satisfied that rule's annual surprise examination requirement for a pooled investment vehicle client if that pool is subject to an annual financial statement audit by an independent public accountant, and its audited financial statements (prepared in accordance with generally accepted accounting principles) are distributed to the pool's investors. Accordingly, an adviser may obtain a surprise examination under the custody rule instead of an audit. Private fund advisers complying with the proposed audit rule would not have a similar choice; they must obtain an audit. Based on our experience since introducing the custody rule's audit provision, we have come to believe that audits provide substantial benefits to private funds and their investors because audits test assertions associated with the investment portfolio (*e.g.,* completeness, existence, rights and obligations, valuation, presentation). Audits may also provide a check against adviser misrepresentations of performance, fees, and other information about the fund. Accordingly, the proposed audit rule would require registered private fund advisers, including those that currently opt to undergo a surprise examination for custody rule compliance purposes, to have their private fund clients undergo a financial statement audit.

Another main difference between the requirements of the two rules is the requirement of the proposed rule for there to be a written agreement between the adviser or the private fund and the auditor pursuant to which the auditor would be required to notify our Division of Examinations upon the auditor's termination or issuance of a modified opinion.[114] There is not a similar obligation under the custody rule for an adviser that relies on the audit provision to satisfy the surprise examination requirement. Our experience in receiving similar information from accountants who perform surprise examinations under the custody rule has led us to conclude that timely receipt of this information—from an independent third party—would more readily enable our staff to identify advisers potentially engaged in harmful misconduct and who have other compliance issues.[115] This also would aid the Commission in its oversight of private fund advisers.

The other main difference between the two rules, aside from timing requirements for the distribution of audited financial statements under the two rules discussed below, relates to their scope. While both rules pertain to advisers that are registered or required to be registered with us, the custody rule also contains exceptions from the surprise examination requirement, which in turn make it unnecessary for an adviser to rely on that rule's audit provision.[116] In light of the different policy goals of these two rules, we are not proposing a parallel exception to the proposed audit rule. Moreover, in our experience, private fund advisers generally do not often rely on these exceptions. The proposed audit rule does, however, contain an exception in certain contexts where the adviser takes all reasonable steps to cause an audit, as described and for reasons discussed below, which does not exist in the custody rule.

1. Requirements for Accountants Performing Private Fund Audits

The proposed audit rule would include certain requirements regarding the accountant performing a private fund audit. First, we propose to require an accountant performing a private fund audit to meet the standards of

[110] *See, e.g.,* rule 206(4)–2(b)(4) under the Advisers Act; *Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2176 (Sept. 25, 2003) [68 FR 56692 (Oct. 1, 2003)] (''Custody Release'') (providing advisers to certain pooled investment vehicles with an exception to the surprise examination requirement if the pooled investment vehicles undergo an audit). Not all advisers are subject to the custody rule and even those that are subject to the custody rule are not required to obtain an audit in order to comply with the rule.

[111] *See generally* Jenkinson, Sousa, Stucke, How Fair are the Valuations of Private Equity Funds? (2013), *available at https://www.psers.pa.gov/About/Investment/Documents/PPMAIRC%202018/27%20How%20Fair%20are%20the%20Valuations%20of%20Private%20Equity%20Funds.pdf. See also In the Matter of Swapnil Rege,* Investment Advisers Act Release No. 5303 (July 18, 2019) (settled action) (alleging that an employee of a private fund adviser mispriced the private fund's investments, which resulted in the adviser charging the fund excess management fees); *SEC* v. *Southridge Capital Mgmt., LLC,* Lit. Rel. No. 21709 (Oct. 25, 2010) (alleging that adviser overvalued the largest position held by the funds by fraudulently misstating the acquisition price of the assets); *see* docket for *SEC* v. *Southridge Capital Mgmt., LLC,* U.S. District Court, District of Connecticut (New Haven), case no. 3:10–CV–01685 (on September 12, 2016 the court granted the SEC's motion for summary judgment and entered a final judgment in favor of the SEC in 2018).

[112] *See* American Institute of Certified Public Accountants' (''AICPA'') auditing standards, AU–C Section 540 and PCAOB auditing standards, AS 2501.

[113] *See* rule 206(4)–2(b)(4) under the Advisers Act.

[114] *See* proposed rule 206(4)–10(e). *See* AICPA auditing standard, AU–C Section 705, which establishes three types of modified opinions: A qualified opinion, an adverse opinion, and a disclaimer of opinion.

[115] *See* rule 206(4)–2(a)(4)(iii) (requiring somewhat similar information in the context of a surprise examination).

[116] *See* rule 206(4)–2(b)(3) and (6) (providing exceptions from the surprise examination requirement for fee deduction and where the adviser has custody solely because a related person has custody of a client's funds or securities).

independence described in rule 2–01(b) and (c) of Regulation S–X in support of the Commission's long-standing recognition that an audit by an objective, impartial, and skilled professional contributes to both investor protection and investor confidence.[117] Second, the proposed rule would require the independent public accountant performing the audit to be registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the PCAOB in accordance with its rules. Based on our experience with the custody rule, we believe registration and the periodic inspection of an independent public accountant's system of quality control by the PCAOB provide investors with confidence in the quality of the audits produced under the proposed rule.

We understand that this requirement may limit the pool of accountants that are eligible to perform these services because only those accountants that currently conduct public company issuer audits are subject to regular inspection by the PCAOB. Most private funds, however, are already undergoing a financial statement audit; therefore, the increase in demand for these services may be limited.[118] Nonetheless, the resulting competition for these services might increase costs to investment advisers and investors.

We understand that, as part of a temporary inspection program, the PCAOB inspects accountants auditing brokers and dealers, and identifies and addresses with these firms any significant issues in those audits.[119] Similar to the inspection program for issuer audits, we believe that the temporary inspection program for broker-dealers provides valuable oversight of these accountants, resulting in better quality audits. Accordingly, we would consider an accountant's compliance with the PCAOB's temporary inspection program for auditors of brokers and dealers to satisfy the requirement for regular inspection by the PCAOB under the proposed independent public accountant engagements provision until the effective date of a permanent program for the inspection of broker and dealer auditors that is approved by the Commission.[120]

An independent public accounting firm would not be considered to be ''subject to regular inspection'' if it is included on the list of firms that is headquartered or has an office in a foreign jurisdiction that the PCAOB has determined it is unable to inspect or investigate completely because of a position taken by one or more authorities in that jurisdiction in accordance with PCAOB Rule 6100.[121] We recognize that there may be a limited number of PCAOB-registered and inspected independent public accountants in certain foreign jurisdictions. However, we do not believe that advisers would have significant difficulty in finding an accountant that is eligible under the proposed rule in most jurisdictions because many PCAOB-registered independent public accountants who are subject to regular inspection currently have practices in various jurisdictions, which may ameliorate concerns regarding offshore availability.

2. Auditing Standards for Financial Statements

Under the proposed audit rule, an audit must meet the definition in rule 1–02(d) of Regulation S–X. Pursuant to that definition, financial statement audits performed for purposes of the proposed audit rule would generally be performed in accordance with the generally accepted auditing standards of the United States (''U.S. GAAS'').[122] U.S. GAAS requires that an auditor evaluate and respond to the risk of material misstatements of the financial statements due to fraud or error.[123] Among other benefits of this standard, audits performed in accordance with U.S. GAAS would help detect valuation irregularities or errors, as well as an investment adviser's loss, misappropriation, or misuse of client investments. The proposed rule would require the professional engagement period of an audit performed under the rule to begin and end as indicated in Regulation S–X rule 2–01(f)(5).[124]

3. Preparation of Audited Financial Statements

The proposed rule also generally would require the audited financial statements to be prepared in accordance with U.S. GAAP. Financial statements of private funds organized under non-U.S. law or that have a general partner or other manager with a principal place of business outside the United States would be required to contain information substantially similar to statements prepared in accordance with U.S. GAAP and any material differences would be required to be reconciled to U.S. GAAP. Requiring that financial statements comply with U.S. GAAP is designed to help investors receive consistent and quality financial reporting on their investments from the fund's adviser.

Financial statements that are prepared in accordance with accounting standards other than U.S. GAAP, would meet the requirements of the proposed audit rule so long as they contain information substantially similar to financial statements prepared in accordance with U.S. GAAP, material differences with U.S. GAAP are reconciled, and the reconciliation,

[117] *See Revision of the Commission's Auditor Independence Requirements,* Release No. 33–7919 (Nov. 21, 2000) [65 FR 76008 (Dec. 5, 2000)]. The custody rule requires all accountants performing services to meet the standards of independence described in rule 2–01(b) and (c) of Regulation S–X. *See* rule 206(4)–2(d)(3) under the Advisers Act.

[118] For example, more than 90 percent of the total number of hedge funds and private equity funds currently undergo a financial statement audit. *See infra* Section V.B.4.

[119] *See* PCAOB Adopts Interim Inspection Program for Broker-Dealer Audits and Broker and Dealer Funding Rules (June 14, 2011) (''temporary inspection program''), *available at https://pcaobus.org/News/Releases/Pages/06142011_OpenBoardMeeting.aspx. See also* Dodd-Frank Act Section 982.

[120] Our staff took a similar position and has had several years to observe the impact on the availability of accountants to perform services and the quality of services produced by these accountants. *See* Robert Van Grover Esq., Seward & Kissel LLP, SEC Staff No-Action Letter (Dec. 11, 2019) (extending the no-action position taken in prior letters until the date that a PCAOB-adopted permanent program, having been approved by the Commission, takes effect).

[121] *See, e.g.,* HFCAA Determination Report Pursuant to 15 U.S.C. 7214(i)(2)(A) and PCAOB Rule 6100 (Dec. 16. 2021), PCAOB Release No. 104–HFCAA–2021–001, *available at 104-hfcaa-2021-001.pdf* (azureedge.net) (publishing such list of firms as of December 2021).

[122] Under the definition in rule 1–02(d) of Regulation S–X, an ''audit'' of an entity (such as a private fund) that is not an issuer as defined in section 2(a)(7) of the Sarbanes-Oxley Act of 2007 means an audit performed in accordance with either the generally accepted auditing standards of the United States (''U.S. GAAS'') or the standards of the PCAOB. When conducting an audit of financial statements in accordance with the standards of the PCAOB, however, the auditor would also be required to conduct the audit in accordance with U.S. GAAS because the audit would not be within the jurisdiction of the PCAOB as defined by the Sarbanes-Oxley Act of 2002, as amended, (*i.e.,* not an issuer, broker, or dealer). *See* AICPA auditing standards, AU–C Section 700.46. We believe most advisers would choose to perform the audit pursuant to U.S. GAAS only rather than both standards, though it would be permissible under the proposed audit rule to perform the audit pursuant to both standards.

[123] *See* AICPA auditing standards, AU–C Section 240. Audits performed under PCAOB standards provide similar benefits. *See* PCAOB auditing standards, AS 2401, which discusses consideration of fraud in a financial statement audit.

[124] Among other things, rule 2–01(f)(5) of Regulation S–X indicates that the professional engagement period begins at the earlier of when the accountant either signs an initial engagement letter (or other agreement to review or audit a client's financial statements) or begins audit, review, or attest procedures; and the period ends when the audit client or the accountant notifies the Commission that the client is no longer that accountant's audit client.

including supplementary U.S. GAAP disclosures, is distributed to investors as part of the audited financial statements.[125] We believe that this approach would allow advisers flexibility to provide investors with financial statements that are prepared in accordance with applicable accounting standards. We believe a reconciliation to U.S. GAAP is necessary for private fund audits because U.S. GAAP, has industry specific accounting principles for certain pooled vehicles, including private funds.[126] As a result, there could be material differences between other accounting standards and U.S. GAAP, for example in the presentation of a trade/settlement date, schedule of investments and financial highlights, that we would require to be reconciled.

4. Prompt Distribution of Audited Financial Statements

The proposed audit rule would require a fund's audited financial statements to be distributed to current investors ''promptly'' after the completion of the audit.[127] The audited financial statements would consist of the applicable financial statements (including any required reconciliation to U.S. GAAP, including supplementary U.S. GAAP disclosures), related schedules, accompanying footnotes, and the audit report. We considered but are not proposing to require the audited financials to be distributed within 120 days of a private fund's fiscal year end, similar to the approach under the custody rule. Based on our experience administering the custody rule, we believe that a 120-day time period is generally appropriate to allow the financial statements of an entity to be audited and to provide investors with timely information. We also understand, however, that preparing audited financial statements for some arrangements, such as fund of funds arrangements, may require reliance on third parties, which could cause an adviser to fail to meet the 120-day timing requirements for distributing audited financial statements regardless of actions it takes to meet the requirements. We also recognize there may be times when an adviser reasonably believes that a fund's audited financial statements would be distributed within the required timeframe but fails to have them distributed in time under certain unforeseeable circumstances. For example, during the COVID–19 pandemic, some advisers were unable to deliver audited financial statements in the timeframes required under the custody rule due to logistical disruptions. Accordingly, and in light of the fact that there is not an alternative method by which to satisfy the proposed rule as there is under the custody rule (*i.e.,* undergo a surprise examination), we would require the audited financial statements to be distributed ''promptly,'' rather than pursuant to a specific deadline. This would provide some flexibility without affecting investor protection.

Under the proposed audit rule, the audited financial statements (including any reconciliation to U.S. GAAP prepared for a foreign private fund, as applicable) must be sent to all of the private fund's investors. In circumstances where an investor is itself a pooled vehicle that is in a control relationship with the adviser or its related persons, it would be necessary to look through that pool (and any pools in a control relationship with the adviser or its related persons, such as in a master-feeder fund structure), in order to send to investors in those pools.[128] Without such a requirement, the audited financial statements would essentially be delivered to the adviser rather than to the parties the financial statements are designed to inform. Outside of a control relationship, such as if the private fund investor is an unaffiliated fund of funds, this same concern is not present, and it would not be necessary to look through the structure to make meaningful delivery. It would be sufficient to distribute the audited financial statements to the adviser to, or other designated party of, the unaffiliated fund of funds. We believe that this approach would lead to meaningful delivery of the audited financial statements to the private fund's investors.

5. Annual Audit, Liquidation Audit, and Audit Period Lengths

Key to the effectiveness of the audit in protecting investors is timely and regular administration and distribution. Under the proposed audit provision, an audit must be obtained at least annually and upon an entity's liquidation. The liquidation audit would serve as the annual audit for the fiscal year in which it occurs. Requiring the audit on an annual basis and at liquidation would help alert investors within months, rather than years, to any material misstatements identified in the audit and would raise the likelihood of mitigating losses or reducing exposure to other investor harms. Similarly, a liquidation audit would help ensure the appropriate and prompt accounting of the proceeds of a liquidation so that investors can take timely steps to protect their rights at a time when they may be vulnerable to misappropriation by the investment adviser. We believe that it becomes increasingly difficult to correct a material misstatement the longer it goes undetected. The proposed annual and liquidation audit requirements would address these concerns while also balancing the cost, burden, and utility of requiring frequent audits.

The proposed annual audit requirement is consistent with current practices of private fund advisers that obtain an audit in order to comply with the custody rule under the Advisers Act, or to satisfy investor demand for an audit, and would provide investors with uniformity in the information they are receiving.[129] When an investor receives audited financial statements each year from the same private fund, the investor can compare statements year-over-year. Additionally, the investor can analyze and compare audited financial statements across other private funds and similar investment vehicles each year. Further, we believe investors expect audited financial statements to include 12-month periods and rely on this uniform period to review and analyze financial statements year over year for the same private fund.

With respect to liquidation, we understand that the amount of time it takes to complete the liquidation of a private fund may vary. A number of years might elapse between the decision to liquidate an entity and the completion of the liquidation process. During this time, the fund may execute few transactions and the total amount of investments may represent a fraction of the investments that existed prior to the start of the liquidation process. We further understand that a lengthy liquidation period can lead to circumstances where the cost of an annual audit represents a sizeable portion of the fund's remaining assets.

[125] Proposed rule 206(4)–10(c) and (d). *See also* Custody Release, *supra* footnote 110, at n.41 (stating that an adviser may use such financial statements to qualify for the audit exception from the custody rule with respect to pools that have a place of organization outside the United States or a general partner or other manager with a principal place of business outside the United States, if such financial statements contain information that is substantially similar to financial statements prepared in accordance with U.S. GAAP and contain a footnote reconciling any material variations between such comprehensive body of accounting standards and U.S. GAAP).

[126] *See* U.S. GAAP ASC 946.

[127] Proposed rule 206(4)–10(d).

[128] *See* proposed rule 211(h)(1)–1 (defining ''control'' and ''distribute'').

[129] As discussed above, differences between the two rules are unrelated to the financial statement audit itself.

While we considered additional modifications to the audit requirement for a private fund during liquidation, we are concerned that allowing for less frequent auditing (*e.g.,* every 18 months or two years) during an entity's liquidation may expose investors to abuse that could then go unnoticed for prolonged periods. Furthermore, it is our understanding that allowing for less frequent auditing during liquidation—for example, requiring an audit every two years in such circumstances—may not necessarily result in a meaningful cost reduction to advisers or investors.

6. Commission Notification

The proposed rule would require an adviser to enter into, or cause the private fund to enter into, a written agreement with the independent public accountant performing the audit to notify the Commission (i) promptly upon issuing an audit report to the private fund that contains a modified opinion and (ii) within four business days of resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed.[130] The accountant making such a notification would be required to provide its contact information and indicate its reason for sending the notification. The written agreement must require the independent public accountant to notify the Commission by electronic means directed to the Division of Examinations. Timely receipt of this information would enable our staff to evaluate the need for an examination of the adviser. We expect the Division of Examinations would establish a dedicated email address to receive these confidential transmissions and would make the address available on the Commission's website in an easily retrievable location.

As we noted above, there is not a similar obligation under the custody rule for an accountant to notify the Commission as there is for a surprise examination, although there is a requirement on Form ADV for a private fund adviser *itself* to report to the Commission whether it received a qualified audit opinion and to provide, and update, its auditor's identifying information.[131] However, our experience in receiving notifications from accountants who perform surprise examinations under the custody rule has led us to conclude that timely receipt of this information—from an independent third party—would more readily enable our staff to identify advisers potentially engaged in harmful misconduct and who have other compliance issues. This would bolster the Commission's efforts at preventing fraudulent, deceptive, and manipulative activity and would aid oversight of private fund advisers.

7. Taking All Reasonable Steps To Cause an Audit

We recognize that some advisers may not have requisite control over a private fund client to cause its financial statements to undergo an audit in a manner that would satisfy all five elements (paragraphs (a) through (e)) of the proposed rule. This could be the case, for instance, where a sub-adviser is unaffiliated with the fund. Therefore, we are proposing to require that an adviser *take all reasonable steps* to cause its private fund client to undergo an audit that would satisfy the rule, so long as the adviser does not control the private fund and is neither controlled by nor under common control with the fund.[132] What would constitute ''all reasonable steps'' would depend on the facts and circumstances. For example, a sub-adviser that has no affiliation to the general partner of a private fund that did not obtain an audit could document the sub-adviser's efforts by including (or seeking to include) the requirement in its sub-advisory agreement. On the contrary, if the adviser is the primary adviser to the fund, even if it is not the general partner or a related person of the general partner, it would likely not be reasonable for the fund not to be audited in accordance with the rule.

8. Recordkeeping Provisions Related to the Proposed Audit Rule

Finally, the proposal would amend the Advisers Act books and records rule to require advisers to keep a copy of any audited financial statements, along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.[133] Additionally, the adviser would be required to keep a record documenting steps taken by the adviser to cause a private fund client with which it is not in a control relationship to undergo a financial statement audit that would comply with the rule. This aspect of the proposal is designed to facilitate our staff's ability to assess an adviser's compliance with the proposed audit rule and to detect risks the proposed audit rule is designed to address. We believe it would similarly enhance an adviser's compliance efforts as well.

We request comment on all aspects of the proposed audit rule and related proposed amendments to the books and records rule, including the following items:

- Would the proposed audit rule provide appropriate protection for investors? If not, please describe what, if any, modifications would improve investor protection.
- The proposed audit rule bears many similarities to provisions of the custody rule; however, one notable difference is that there would be no option to, instead, undergo a surprise examination and rely on a qualified custodian to deliver quarterly statements. What would be the impact on advisers to private funds that are not relying on the custody rule's audit provision? Are private funds undergoing similar audits of their financial statements for other reasons, or would this represent a new requirement for them? There also are no exceptions from the proposed rule, as there are in the custody rule, such as the exception from the surprise examination requirement for advisers whose sole basis for being subject to the rule is because they have authority to deduct their advisory fees. What would be the impact on advisers to private funds that are relying on this and other exceptions? Do many private fund advisers rely on the exception for fee-deduction?
- Do commenters agree that the similarities of the audit requirements for the custody rule and for the proposed rule would ease the compliance burdens of advisers that would be required to comply with both? Should the rule provide that compliance with one rule would satisfy the requirements of the other, given the similarities of the two rules? Why or why not?
- The application of the proposed rule to registered advisers to private funds seeks to balance our policy goal with the anticipated costs of the proposed measures. Do commenters agree with this approach? If not, what would be a more effective way of achieving our goals?
- Should the rule apply to *all* advisers to private funds, rather than to just advisers to private funds that are registered or are required to be registered? Should it apply to exempt reporting advisers? Why or why not?
- Similarly, should it apply in the context of all pooled investment vehicle clients (*e.g.,* funds that rely on section 3(c)(5) of the Investment Company Act), rather than just in the context of those that meet the Advisers Act definition of private fund? Should it apply more broadly to any advisory account with

[130] Proposed rule 206(4)–10(e).

[131] Form ADV Part 1A, Section 7.B.1, Q.23.

[132] Proposed rule 206(4)–10(f).

[133] Proposed rule 204–2(a)(21). *See also supra* footnote 106 (describing the record retention requirements under the books and records rule).

financial statements that can be audited? Why or why not?

• Should the rule provide any full or partial exceptions, such as when an adviser plays no role in valuing the fund's assets, receives little or no compensation for its services, or receives no compensation based on the value of the fund's assets? Should the rule provide exceptions for private funds below a certain asset threshold (*e.g.,* less than $5 million)? A higher or lower amount? Should the rule provide exemptions for private funds that have only related person investors, or that have a limited number of investors, such as 5 or fewer investors? If yes, please identify which advisers or funds we should except, from which aspects of the proposed audit rule, and why.

• Should the rule apply to a sub-adviser to a private fund? In situations where a fund has multiple advisers, is it clear that a single audit of the fund's financial statements may satisfy the proposed audit rule for all of the advisers subject to the rule?

• Should the alternative of ''taking all reasonable steps'' to cause a private fund client to be audited apply in *any* situation, rather than just in situations where the adviser is not in a control relationship with its fund client? Why or why not? Is it sufficiently clear how an investment adviser can establish that it has ''taken all reasonable steps'' to cause a private fund client to obtain an audit?

• Should the rule require accountants performing the independent public audits to be registered with the PCAOB, as proposed? Should the rule limit the pool of accountants to those who are subject to inspection by the PCAOB, as proposed? If the rule does not include these requirements, should the rule impose any alternative or additional requirements on such accountants? If so, describe these additional requirements and explain why they are necessary or appropriate.

• Do commenters agree that the availability of accountants to perform services for purposes of the proposed audit rule is sufficient and that even advisers in foreign jurisdictions (or with private fund clients in foreign jurisdictions) would not have significant difficulty in finding a local accountant that is eligible to perform an audit under the proposed rule? Do advisers have reasonable access to independent public accountants that are registered with, and subject to inspection by, the PCAOB in the foreign jurisdictions in which they operate? If not, how should the rule address this issue?

• Should the rule require advisers to obtain audits performed under rule 1–02(d) of Regulation S–X, as proposed? If not, what other auditing standards should the rule allow? Are there certain non-U.S. auditing standards that the proposed rule should explicitly include?

• Should the rule require private funds to prepare audited financial statements in accordance with generally accepted accounting principles, as proposed? Should the rule include any additional requirements regarding the preparation of financial statements? If so, what requirements, and why?

• As proposed, should financial statements prepared in accordance with accounting standards other than U.S. GAAP for foreign private funds meet the requirements of the rule provided they contain information substantially similar to statements prepared in accordance with U.S. GAAP, material differences with U.S. GAAP are reconciled, and the reconciliation is distributed to investors along with the financial statements? If so, should we specify what ''substantially similar'' means?

• Would there be unique challenges to complying with the rule for auditors and advisers to private funds in foreign jurisdictions? For example, might certain advisers or auditors face challenges in complying with the proposed rule's Commission notification requirement, including because of applicable privacy and other local laws? If so, what would alleviate these challenges and still achieve the policy goals of the proposed audit rule?

• Do commenters agree that the proposed rule's requirement to distribute the audited financial statements promptly would provide appropriate flexibility regarding the timing of the distribution of audited financial statements? Should there nevertheless be an outer limit on the number of days an investment adviser has from its fiscal year end for the distribution of audited financial statements? If so, what should that limit be? Would it be more appropriate for distribution to be required within 120 days of the end of the fund's fiscal year, as under the custody rule? Alternatively, would a longer or shorter period be appropriate in most circumstances? Should the timeline for distributing audited financial statements align with the timeline for distributing quarterly statements under the proposed quarterly statement rule? Why or why not? We understand that funds of funds or certain funds in master-feeder structures (including those advised by related persons) have difficulty satisfying the 120-day requirement and that our staff has indicated they would not recommend enforcement if certain of these funds satisfy the distribution requirement within 180 or 260 days of the fund's fiscal year end, depending on a variety of circumstances.[134] If the rule contained a specific distribution deadline, would these types of funds need a separate deadline or other special treatment?

• Instead of requiring prompt distribution of the audited financial statement to investors, should we require the statement to be distributed or made available to investors upon request?

• Should the rule provide additional flexibility, such as for situations in which the adviser can demonstrate that it reasonably believed that it would be able to comply with the rule but failed due to certain unforeseeable circumstances?

• Should the rule require annual audits, as proposed? Should the rule require an audit upon a private fund's liquidation, as proposed? Should we modify either or both of these requirements? If so, how should we modify these requirements, and why?

• Advisers would be required to comply with the proposed audit rule beginning with their first fiscal year after the compliance date and any liquidation that occurs after the compliance date. Advisers would also be required to obtain an audit annually. We understand that newly formed and liquidating funds may face unique challenges. For instance, the value provided by an audit of a very short period of time, such as a period of less than three-months (a ''stub period''), may be diminished because there is a lack of comparability in the information provided. In addition, we understand that the cost of obtaining an audit covering a few months can be similar to the cost of an audit covering an entire fiscal year. We further understand that when newly formed entities have few financial transactions and/or investments, obtaining an audit, relative to the investor protections ultimately offered by obtaining the audit, may be burdensome. Should the rule allow newly formed or liquidating entities to obtain an audit less frequently than annually to avoid stub period audits? Should the rule permit advisers to satisfy the audit requirement by relying on an audit on an interval other than annually when a fund is liquidating? For example, should we allow advisers

[134] *See generally* Staff Responses to Questions About the Custody Rule, *available at https://www.sec.gov/divisions/investment/custody_faq_030510.htm.*

to rely on an audit of a fund every two years during the liquidation process?

• If the rule were to permit audits less frequently than on an annual basis, should it also include additional restrictions or requirements? If so, what restrictions or requirements, and why? For instance, should it require investment advisers to create and distribute alternative financial reporting for the fund to investors (*e.g.,* cash-flow audit or asset verification)? Alternatively, or in addition to alternative financial reporting, should the rule require advisers to obtain a third-party examination? If so, what should the examination consist of, and why? For example, would allowing advisers to obtain an audit less frequently than annually during a liquidation raise investor protection concerns that additional requirements could address given the potential for a liquidation to last for an extended period? If so, what additional requirements, and why? For example, should advisers be required to provide notice to investors of their intent to liquidate an entity in these circumstances? Should advisers be required to obtain investor consent prior to satisfying the audit requirement by relying on audits on a less than annual basis? Should we set an outer limit for the period such an audit could cover (*e.g.,* 15 months)?

• Should the rule define ''liquidation'' for purposes of the liquidation audit requirement? If so, how? For example, should we base such a definition on a certain percentage of assets under management of the entity from or over previous fiscal period(s) or a stated threshold based on an absolute dollar amount of the entity's assets under management? Should we base the definition on a calculation of the ratio of the management fees assessed on assets under management of the entity or some other basis, for example, to detect whether an adviser is charging management fees on a very small amount of assets?

• Are there risks posed to investors when an entity is liquidating that the proposed rule does not address? If so, please describe those risks. How should we modify the rule to address such risks?

• Are there some types of investments that pose a greater risk of misappropriation or loss to investors during a liquidation that the rule should specifically address to provide greater investor protection? If so, please describe the investment type; the particular risk the investment type poses to investors during liquidation; and how to modify the proposed rule to address such investor risk.

• We are not proposing the filing of a copy of the audit report or a copy of the audited financial statements with the Commission; should the rule contain such a requirement? Why or why not?

• Would the requirement for an accountant to comply with the notification requirement change the approach that an accountant would take with respect to audits that normally are performed for purposes of satisfying the custody rule? If so, how?

• Should we, as proposed, require advisers to enter into, or cause a private fund to enter into, a written agreement with the independent public accountant completing the audit to notify the Commission in connection with a modified opinion or termination?

• Do commenters agree that the professional engagement period of an audit performed under the rule should begin and end as indicated in Regulation S–X rule 2–01(f)(5), as proposed? If not, why not?

• As noted above, the proposed Commission notification provision bears some similarities to, and is drawn from our experience with, a similar custody rule requirement in the surprise examination context with which we believe advisers may likely already have some familiarity. The regulations in 17 CFR 240.17a–5 (rule 17a–5) require a broker or dealer's self-report to the Commission within one business day and to provide a copy to the accountant. The accountant must report to the Commission about any aspects of the broker or dealer's report with which the accountant does not agree. If the broker or dealer fails to self-report, the accountant must report to the Commission to describe any material weaknesses or any instances of non-compliance that triggered the notification requirement. Should the audit rule contain similar requirements? Why or why not? Are private fund advisers and the accountants that perform private fund financial statement audits more familiar with Rule 17a–5's notification requirement than the custody rule's notification requirement?

• Do commenters agree that the related proposed amendments to the books and records rule would facilitate compliance with the proposed audit rule? What additional or alternative amendments should the rule include, if any?

C. Adviser-Led Secondaries

We propose to require an adviser to obtain a fairness opinion in connection with certain adviser-led secondary transactions where an adviser offers fund investors the option to sell their interests in the private fund, or to exchange them for new interests in another vehicle advised by the adviser. This would provide an important check against an adviser's conflicts of interest in structuring and leading a transaction from which it may stand to profit at the expense of private fund investors. The proposed adviser-led secondaries rule would prohibit an adviser from completing an adviser-led secondary transaction with respect to any private fund, unless the adviser distributes to investors in the private fund, prior to the closing of the transaction, a fairness opinion from an independent opinion provider and a summary of any material business relationships the adviser or any of its related persons has, or has had within the past two years, with the independent opinion provider.[135]

Investments in closed-end private funds are typically illiquid and require a long-term investor commitment of capital. Such funds generally do not permit investors to withdraw or redeem their fund interests prior to the end of the term. Open-end private funds may also limit or restrict an investor's ability to withdraw or redeem its interest, for example, with side pockets or illiquid sleeves. Without the ability to cash out all or a portion of their interest from the fund, investors have historically sought liquidity by selling their interests on the secondary market to third parties. Advisers typically have a relatively minor role in such ''investor-led'' transactions, as investors engage in the transaction directly with the prospective purchaser.

In recent years, advisers have become increasingly active in the secondary market. The number of ''adviser-led'' transactions has increased, with the deal value of such transactions representing a meaningful portion of the secondary market, particularly for closed-end private funds.[136] Adviser-led transactions are similar to investor-led transactions in that they typically provide a mechanism for investors to obtain liquidity; however, they also

[135] Proposed rule 211(h)(2)–2. The proposed rule would not apply to advisers that are not required to register as investment advisers with the Commission, such as state-registered advisers and exempt reporting advisers.

[136] *See, e.g.,* Private Equity International, GP-Led Secondaries Report (Feb. 28, 2021), *available at https://www.privateequityinternational.com/gp-led-secondaries-report-2021/* (noting one industry participant estimated that adviser-led secondary transactions accounted for $26 billion (or 44% of the secondary market) in 2020, while another estimated that they accounted for more than $30 billion (or more than 50% of the secondary market)).

have the potential to provide additional benefits to advisers and investors. For example, an adviser-led transaction may seek to secure additional capital and/or time to maximize the value of fund assets. An adviser may accomplish this by permitting investors to ''roll'' their interests into a new vehicle that has a longer term and/or additional capital to invest.[137]

Adviser-led secondaries often are highly bespoke transactions that can take many forms. For purposes of the rule, we propose to define them as transactions initiated by the investment adviser or any of its related persons that offer the private fund's investors the choice to: (i) Sell all or a portion of their interests in the private fund; or (ii) convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its related persons.[138] We generally would consider a transaction to be initiated by the adviser if the adviser commences a process, or causes one or more other persons to commence a process, that is designed to offer private fund investors the option to obtain liquidity for their private fund interests. However, whether the adviser or its related person initiates a secondary transaction requires a facts and circumstances analysis. We would generally not view a transaction as initiated by the adviser if the adviser, at the unsolicited request of the investor, assists in the secondary sale of such investor's fund interest.

This definition generally would include secondary transactions where a fund is selling one or more assets to another vehicle managed by the adviser, if investors have the option either to obtain liquidity or to roll all or a portion of their interests into the other vehicle. Examples of such transactions may include single asset transactions (such as the fund selling a single asset to a new vehicle managed by the adviser), strip sale transactions (such as the fund selling a portion of multiple assets to a new vehicle managed by the adviser), and full fund restructurings (such as the fund selling all of its assets to a new vehicle managed by the adviser). The proposed definition also would capture secondary transactions that may not involve a cross sale between two vehicles managed by the same adviser.[139] For example, an adviser may arrange for one or more new investors to purchase fund interests directly from the existing investors as part of a ''tender offer'' or similar transaction.

While adviser-led transactions can provide liquidity for investors and secure additional time and capital to maximize the value of fund assets, they also raise certain conflicts of interest. The adviser and its related persons typically are involved on both sides of the transaction and have interests in the transaction that are different than, or in addition to, the interests of the private fund investors. For example, because the adviser may have the opportunity to earn economic and other benefits conditioned upon the closing of the secondary transaction, such as additional management fees or carried interest, the adviser generally has a conflict of interest in setting and negotiating the transaction terms.

Ensuring that the private fund and the investors that participate in the secondary transaction are offered a fair price is a critical component of preventing the type of harm that might result from the adviser's conflict of interest in leading the transaction.[140] Accordingly, prior to the closing of the transaction, the proposed rule would require advisers to obtain a written opinion stating that the price being offered to the private fund for any assets being sold as part of an adviser-led secondary transaction is fair.[141] This process would provide an important market check for private fund investors by providing some assurance that the price being offered is based on an underlying valuation that falls within a range of reasonableness. We understand that certain advisers obtain fairness opinions as a matter of best practice because investors often lack access to sufficient information, or may not have the capabilities or resources, to conduct their own analysis of the price. However, to the extent that this practice is not universal, the proposed rule would mandate it in connection with all adviser-led secondary transactions.

To mitigate the potential influence of the adviser's conflict of interest further, the rule would require these opinions to be issued only by an ''independent opinion provider,'' which is one that (i) provides fairness opinions in the ordinary course of its business and (ii) is not a related person of the adviser.[142] The ordinary course of business requirement would largely correspond to persons with the expertise to value illiquid and esoteric assets based on relevant criteria. The requirement that the opinion provider not be a related person of the adviser would reduce the risk that certain affiliations could result in a biased opinion.[143]

We recognize, however, that other business relationships may have the potential to result, or appear to result, in a biased opinion, particularly if such relationships are not disclosed to private fund investors. For example, an opinion provider that receives an income stream from an adviser for performing services unrelated to the issuance of the opinion might not want to jeopardize its business relationship with the adviser by alerting the private fund investors that the price being offered is unfair (or by otherwise refusing to issue the fairness opinion). By requiring disclosure of such material relationships, the proposed rule would put private fund investors in a position to evaluate whether any conflicts associated with such relationships may cause the opinion provider to deliver a biased opinion. Thus, the proposed rule would require the adviser to prepare and distribute to private fund investors a summary of any material business relationships the adviser or any of its related persons has, or has had within the past two years, with the independent opinion provider. Whether a business relationship would be material under the proposed rule would require a facts and circumstances analysis; however, for purposes of the proposed rule, we believe that audit, consulting, capital raising, investment banking, and other similar services would typically meet this standard.

The proposed rule would require an adviser to distribute the opinion and the material business relationship summary to investors.[144] We believe that this proposed requirement would ensure that investors receive the benefit of an independent price assessment, which we believe will improve their decision-making ability and their overall confidence in the transaction.

We request comment on all aspects of the proposed rule, including the following items:

[137] An investor would typically obtain liquidity in the event it elects to sell—rather than roll—its fund interest.

[138] Proposed rule 211(h)(1)–1.

[139] We would not consider the proposed rule to apply to cross sales where the adviser does not offer the private fund's investors the choice to sell, convert, or exchange their fund interest.

[140] As a fiduciary, the adviser is obligated to act in the fund's best interest and to make full and fair disclosure to the fund of all conflicts and material facts associated with the adviser-led transaction. *See, e.g., Commission Interpretation Regarding Standard of Conduct for Investment Advisers,* Investment Advisers Act Release No. 5248 (June 5, 2019) [84 FR 33669 (July 12, 2019)], at 24–25 (''2019 IA Fiduciary Duty Interpretation''). *See also* EXAMS Private Funds Risk Alert 2020, *supra* footnote 9.

[141] Proposed rule 211(h)(1)–1 (defining ''fairness opinion'').

[142] Proposed rule 211(h)(1)–1.

[143] *See supra* section II.A for a discussion of the definition of ''related person.''

[144] Proposed rule 211(h)(2)–2.

• Do commenters agree that adviser-led secondary transactions can be of some benefit to a private fund and its investors?

• Do commenters agree with the scope of the proposed rule? Should the rule apply to all investment advisers? Why or why not? What are the factors that weigh in favor of expanding the scope of the proposed rule to apply to a broader scope of advisers than proposed? Are there particular types of advisers that should or should not be subject to the rule? Should the rule only apply when the adviser or its related person is general partner (or equivalent) of a fund that is party to the transaction?

• Should certain adviser-led transactions be exempt from the proposed rule? For example, if the adviser conducts a competitive sale process for the assets being sold, which ultimately leads to the price, should advisers still be required to obtain a fairness opinion? Do competitive bids typically represent net asset value? Do prospective purchasers typically bid at a discount to net asset value? Does net asset value always correspond to the current value of the assets being sold? Why or why not? Are there other price discovery processes that we should require to protect investors?

• Should certain adviser-led transactions be exempt from the rule, such as adviser-led transactions involving liquid funds? For example, if the underlying assets being sold in the transaction are predominantly publicly traded securities, should advisers still be required to obtain a fairness opinion? Do such transactions present the same concerns as adviser-led secondary transactions involving illiquid funds where the underlying assets are typically illiquid and not listed or quoted on a securities exchange? Are there other hedge fund transactions that we should exempt from the rule, such as hedge fund restructurings where an adviser may be merging the portfolios of two different hedge funds and gives all affected investors the option to redeem or convert/exchange their interests into the new fund? Should the exemption depend on whether the price of the transaction is based on net asset value? Why or why not?

• Are there other transactions for which we should require private fund advisers to obtain a fairness opinion? For example, should we require advisers to obtain a fairness opinion before certain cross transactions between private funds it manages? If so, which transactions? Should we provide certain cross transaction exemptions, such as exemptions for bridge financings or syndications where the selling fund transfers the investments within a short period at a price equal to cost plus interest?

• Should the scope of the fairness opinion be limited to the price, as proposed? Alternatively, should we require the fairness opinion to cover all, or certain other, terms of the transaction? For example, should we revise the definition of ''fairness opinion'' to a written opinion stating that the terms of the adviser-led secondary transaction are fair to the private fund? Why or why not?

• Should the rule give investment advisers the option to obtain either a fairness opinion or a third-party valuation? Why or why not? What are the advantages and disadvantages of a third-party valuation as compared to a fairness opinion, and *vice versa*?

• We request comment on the proposed use of ''related person.'' Do commenters agree that the fairness opinion should be issued by a person that is not a related person of the adviser? Should we adopt a different definition of ''related person'' than the one proposed?

• The proposed rule would require an ''independent opinion provider'' to provide fairness opinions ''in the ordinary course of its business.'' Do commenters agree with this approach?

• Instead of requiring disclosure of any material business relationships between the adviser (or its related persons) and the independent opinion provider, should the rule prohibit firms with certain business relationships with the adviser, its related persons, or the private fund from providing the fairness opinion? For example, if a firm has provided consulting, prime broker, audit, capital raising, or investment banking services to the private fund or the adviser or its related persons within a certain time period—such as two or three years—should the rule prohibit the firm from providing the opinion? If so, should the rule include a threshold of materiality, regularity, or frequency for some or all of such services to trigger such a prohibition?

• Should we require the independent opinion provider to have any specific qualifications, licenses, or registrations?

• Should we define the term ''transaction'' in the definition of ''adviser-led secondary transaction''? If so, how should the rule define ''transaction''? Should we reference the various types of adviser-led secondary transactions in the definition? For example, should ''transaction'' include only single asset transactions, strip sale transactions, and other similar secondary transactions? Should we include in the definition of ''adviser-led secondary transaction'' transactions initiated by the adviser's related persons?

• Should we define, or provide additional guidance regarding, the phrase ''initiated by the investment adviser or any of its related persons''? Should we define, or provide additional guidance regarding, the role the adviser would have to play in a secondary transaction for it to be considered an adviser-led transaction subject to the proposed rule?

• Should the rule require the fairness opinion to state that the private fund and/or its investors may rely on the opinion? Why or why not?

• Should we require the fairness opinion to be obtained on behalf of the private fund as proposed? Alternatively, should we require the fairness opinion to be obtained on behalf of the private fund investors? Are there characteristics of certain types of adviser-led transactions, such as tender offers, that would require the fairness opinion to be obtained on behalf of the private fund investors rather than the private fund?

• Should the adviser be required to distribute a summary of any material business relationships the adviser or its related persons has, or has had within the past two years, with the independent opinion provider as proposed? Should we provide guidance or impose requirements regarding the level of detail advisers should include in the summary? For example, should we require advisers to disclose the total amount paid to the independent opinion provider by the adviser or its related persons, if applicable? Why or why not? Is two years the appropriate look-back period? Are there any other conflict disclosures we should require in the fairness opinion or otherwise require to be made available to investors?

• Should we define ''material business relationship'' for purposes of the proposed rule? Should the rule include a threshold of regularity or frequency (in addition to or in lieu of the materiality threshold) for some or all of such relationships or services to trigger a disclosure requirement?

• Should we require advisers to distribute the fairness opinion to investors as proposed? Alternatively, should we require advisers to only distribute or make the fairness opinion available to investors upon request?

• We recognize that certain adviser-led transactions may not involve investors rolling their interests into a new vehicle managed by the adviser. For example, an adviser may arrange for a new investor to offer to purchase fund interests directly from existing

investors, such as a tender offer. Do commenters agree that the first prong of the definition would cover such transactions? Should the rule treat such transactions differently?

• Should the rule apply to adviser-led transactions initiated by the adviser or its related persons as proposed? Is the definition of ''related person'' too broad in this context such that it would capture secondary transactions initiated by third parties unrelated to the adviser? Should we revise the definition of ''related person'' to include an investment discretion requirement? Similarly, is the definition of ''control'' too broad in this context?

• We recognize that, for certain adviser-led transactions, the closing of the underlying deal may not occur simultaneously with the closing of the new vehicle managed by the adviser. How should the rule take this into account, if at all? For example, should we clarify that, for purposes of the rule, an adviser would not be deemed to have completed an adviser-led secondary transaction until the underlying deal has closed (if applicable)? Alternatively, should we prohibit an adviser from calling investor capital prior to obtaining and distributing the fairness opinion?

1. Recordkeeping for Adviser-Led Secondaries

We propose amending rule 204–2 under the Advisers Act to require advisers to retain books and records to support their compliance with the proposed adviser-led secondaries rule, which would help facilitate the Commission's inspection and enforcement capabilities. We propose to require advisers to retain a copy of the fairness opinion and material business relationship summary distributed to investors, as well as a record of each addressee, the date(s) the opinion was sent, address(es), and delivery method(s).[145] These proposed requirements would facilitate our staff's ability to assess an adviser's compliance with the proposed rule and would similarly enhance an adviser's compliance efforts.

We request comment on this aspect of the proposed rule:

• Should we require advisers to maintain the proposed records or would these requirements be overly burdensome for advisers? Are there alternative or additional recordkeeping requirements we should impose?

• Should we require advisers to retain a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s) as proposed? Why or why not?

D. Prohibited Activities

We are also proposing to prohibit a private fund adviser from engaging in certain sales practices, conflicts of interest, and compensation schemes that are contrary to the public interest and the protection of investors. We have observed certain industry practices over the past decade that have persisted despite our enforcement actions and that disclosure alone will not adequately address.[146] As discussed below, we believe that these sales practices, conflicts of interest, and compensation schemes must be prohibited in order to prevent certain activities that could result in fraud and investor harm.[147] We believe these activities incentivize advisers to place their interests ahead of their clients' (and, by extension, their investors'), and can result in private funds and their investors, particularly smaller investors that are not able to negotiate preferential deals with the adviser and its related persons, bearing an unfair proportion of fees and expenses. The proposed rule would prohibit these activities regardless of whether the private fund's governing documents permit such activities or the adviser otherwise discloses the practices and regardless of whether the private fund investors (or governance mechanisms acting on their behalf, such as limited partner advisory committees) have consented to the activities either expressly or implicitly. Also, the proposed rule would prohibit these activities even if they are performed indirectly, for example by an adviser's related persons, because the activities have an equal potential to harm the fund and its investors regardless of whether the adviser engages in the activity directly or indirectly.[148] As noted above, we believe these prohibitions are necessary given the lack of governance mechanisms that would help check overreaching by private fund advisers.

Proposed rule 211(h)(2)–1 would prohibit an investment adviser to a private fund, directly or indirectly, from engaging in certain activities with respect to the private fund or any investor in that private fund, including:

(i) Charging certain fees and expenses to a private fund or portfolio investment, including accelerated monitoring fees; fees or expenses associated with an examination or investigation of the adviser or its related persons by governmental or regulatory authorities; regulatory or compliance expenses or fees of the adviser or its related persons; or fees and expenses related to a portfolio investment on a non-pro rata basis when multiple private funds and other clients advised by the adviser or its related persons have invested (or propose to invest) in the same portfolio investment;

(ii) Reducing the amount of any adviser clawback by the amount of certain taxes;

(iii) Seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund; and

(iv) Borrowing money, securities, or other fund assets, or receiving an extension of credit, from a private fund client.

This proposed rule would apply to all advisers to private funds, regardless of whether they are registered with the Commission or one or more states, exempt reporting advisers, or prohibited from registration. We believe that this scope is appropriate since we believe these activities are contrary to the public interest and the protection of investors and have the potential to lead to fraud. We are proposing this rule under sections 206 and 211 of the Advisers Act, which sections apply to all investment advisers, regardless of SEC-registration status.

We request comment on the scope of the proposed rule, including the following items:

• Should the rule apply to all advisers as proposed? Alternatively, should the rule apply only to SEC-registered advisers? If so, why?

• Should the rule only prohibit these activities with respect to an adviser's private fund clients and the investors in those private funds? Should the rule apply more broadly or more narrowly? For example, should the rule apply to such activities with respect to *all* clients of an adviser? Should the rule apply to such activities with respect to persons to which the adviser offers co-

[145] *See supra* footnote 106 (describing the record retention requirements under the books and records rule).

[146] *See* High-End Bargaining Problems, Vanderbilt Law Review (forthcoming), Professor William Clayton (Jan. 8, 2022) at 9 (challenging ''the idea that sophisticated parties will demand appropriate levels of disclosure and appropriate processes without any intervention by policymakers . . .'').

[147] *See* sections 206 and 211(h)(2) of the Act.

[148] Any attempt to avoid any of the proposed rules' restrictions, depending on the facts and circumstances, would violate section 208(d) of the Act's general prohibitions against doing anything indirectly which would be prohibited if done directly. Section 208(d) of the Advisers Act.

investment opportunities even if the adviser does not classify them as its clients?

• We have historically taken the position that most of the substantive provisions of the Advisers Act do not apply with respect to the non-U.S. clients (including funds) of a registered offshore adviser.[149] In taking this approach, the Commission noted that U.S. investors in an offshore fund generally would not expect the full protection of the U.S. securities laws and that U.S. investors may be precluded from an opportunity to invest in an offshore fund if their participation would result in full application of the Advisers Act and rules thereunder.[150] Similarly, the proposed prohibited activities rule would not apply to a registered offshore adviser's private funds organized outside of the United States, regardless of whether the private funds have U.S. investors. Do commenters agree that registered offshore advisers should not be subject to this rule with respect to their offshore private fund clients or offshore investors? Should other rules in this rulemaking package take the same approach, or a different approach, with respect to a registered offshore adviser's offshore private fund clients? Please explain.

• Instead of prohibiting these activities, should the rule prohibit these activities unless the adviser satisfies certain governance and other conditions (*e.g.,* disclosure to investors in all relevant funds/vehicles, approval by the limited partner advisory committee (or other similar body) or directors)? Should the rule prohibit these activities unless the adviser obtains approval for them by a majority (by number and/or in interest) of investors? Should the rule permit non pro-rata fee and expense allocations if such practice is disclosed to, and consented by, co-investors?

• Should we amend the books and records rule to require advisers to retain specific documentation evidencing compliance with the prohibited activities rule? For example, records showing how fees and expenses associated with an examination or investigation of the adviser or its related persons by governmental or regulatory authorities were paid or showing the allocations of fees and expenses related to a portfolio investment on an investment by investment basis? Would advisers be able to obtain or generate sufficient records to demonstrate compliance with all aspects of the proposed rule? Should we amend the books and records rule to require advisers to prepare a memorandum on an annual basis attesting to their compliance with each aspect of the proposed rule?

1. Fees for Unperformed Services

First, the prohibited activities rule would prohibit an investment adviser from charging a portfolio investment for monitoring, servicing, consulting, or other fees in respect of any services the investment adviser does not, or does not reasonably expect to, provide to the portfolio investment.[151] These payments sometimes are referred to as ''accelerated payments.''

An adviser typically receives management fees and performance-based compensation for providing advisory services to a fund. A fund's portfolio investments may also make payments to the adviser and its related persons. For example, some private fund advisers enter into arrangements with a fund's portfolio investments to provide management, consulting, financial, servicing, advisory, or other services. The adviser and the applicable portfolio investment would enter into a monitoring agreement or a management services agreement documenting the payment terms and the services the adviser will provide.[152] Such agreements often include acceleration clauses, which permit the adviser to accelerate the unpaid portion of the fee upon the occurrence of certain triggering events, even though the adviser will never provide the contracted for services.[153] The accelerated payments reduce the value of the portfolio investment upon the private fund's exit and thus reduce returns to investors.

Because the private fund (and, by extension, its investors) typically bears the costs of such payments indirectly and the adviser typically receives the benefit, the receipt of such fees gives rise to conflicts of interest between the fund (and, by extension, its investors), on the one hand, and the adviser, on the other hand. For example, the adviser receives the benefit of the accelerated fees without incurring any costs associated with having to provide any services. The private fund, however, may have a lower return on its investment because the accelerated monitoring fees may reduce the portfolio investment's available cash, in turn reducing the investment's value in advance of a public offering or sale transaction. An adviser also may have an incentive to cause the fund to exit a portfolio investment earlier than anticipated, which may result in the fund receiving a lesser return on its investment.[154] Further, the potential for the adviser to receive these economic benefits creates an incentive for the adviser to seek portfolio investments for its own benefit rather than for the fund's. We believe prohibiting this practice, which distorts the economic relationship between the private fund and the adviser, would help prevent the adviser from placing its own interests ahead of the private fund.

In addition to these conflicts, we believe that charging a portfolio investment for unperformed services creates a compensation scheme that is contrary to the public interest and the protection of investors because such practice unjustly enriches the adviser at the expense of the private fund and its underlying investors who are not receiving the benefit of any services. Accordingly, the proposed rule would prohibit an adviser from charging these types of accelerated payments.

The prohibited activities rule would not prohibit an adviser from receiving payment for services actually provided. The proposed rule also would not prohibit an adviser from receiving payments in advance for services that it reasonably expects to provide to the portfolio investment in the future. For example, if an adviser expects to provide monitoring services to a portfolio investment, the proposed rule would not prohibit the adviser from charging for those services.[155] Rather, the proposed rule would prohibit compensation schemes where an

[149] *See, e.g., Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39645 (July 6, 2011)]; Marketing Release, *supra* footnote 61, at n.199.

[150] *See Registration Under the Advisers Act of Certain Hedge Fund Advisers,* Investment Advisers Act Release No. 2333 (Dec. 2, 2004) [69 FR 72054, 72072 (Dec. 10, 2004)].

[151] Proposed rule 211(h)(2)–1(a)(1).

[152] Monitoring fees frequently are based on a percentage of EBITDA (earnings before income, taxes, depreciation, and amortization). The agreements often renew automatically and typically include periodic fee increases.

[153] Common triggering events include initial public offerings, dispositions, and change of control events.

[154] Such incentive may be mitigated, in certain circumstances, to the extent the adviser's performance-based compensation would also be reduced in whole or part by the receipt of these payments.

[155] To the extent the adviser ultimately does not provide the services, however, the proposed rule would require the adviser to refund any prepaid amounts attributable to the unperformed services. *See* proposed rule 211(h)(2)–1(a)(1) (prohibiting an adviser from charging a portfolio investment for fees in respect of any services that the investment adviser does not provide to the portfolio investment).

adviser charges for services that it does not reasonably expect to provide.

We also do not intend to prohibit an arrangement where the adviser shifts 100% of the economic benefit of any portfolio investment fee to the private fund investors, whether through an offset, rebate, or otherwise. We recognize that certain advisers offset management fees or other amounts payable to the adviser at the fund level by the amount of portfolio investment fees paid to the adviser. However, private funds with a 100% management fee offset would not comply with the proposed rule if there are excess fees retained by the adviser where no further management fee offset can be applied and the private fund investors are not offered a rebate or another economic benefit equal to their pro rata share of any such excess fees.

We request comment on this aspect of the prohibited activities rule, including the following items:

- Are there any scenarios in which we should permit an adviser to charge a fund's portfolio investment for unperformed services? If so, please explain.
- Should we prohibit an adviser from being paid in advance for services it reasonably expects to provide in the future? Why or why not?
- As noted above, if an adviser is paid in advance, and reasonably expects to perform services, but ultimately does not provide the contracted for services, the proposed rule would require the adviser to refund the prepaid amount attributable to the unperformed services. Do commenters agree with this approach? Why or why not?
- The proposed rule specifically references ''monitoring, servicing, consulting, or other fees.'' Do commenters agree with this list? Should we eliminate any? Are there additional or alternative types of remuneration that the rule should reference?
- Do commenters agree that if an adviser shifts 100% of the economic benefit of any portfolio investment fee to the private fund investors, whether through an offset, rebate, or otherwise, the adviser would not violate the proposed rule? Why or why not? We recognize that certain tax-sensitive investors often waive the right to receive their share of any rebates of portfolio investment fees. How should the rule take into account such waivers, if it all? For example, to the extent one investor does not accept its share, should the rule require the adviser to distribute such amount to the other investors in the fund? Why or why not?
- Should the rule instead permit an adviser to engage in this activity if the adviser satisfies certain disclosure, governance, and/or other conditions (*e.g.,* disclosure to investors in all relevant funds/vehicles, approval by the LPAC (or other similar body) or directors)?
- The proposed rule would prohibit compensation schemes where an adviser charges for services that it does not *reasonably expect* to provide. Is ''reasonably expect'' the appropriate standard? Should we provide examples or guidance to assist advisers in complying with this standard? Does this standard have the potential to reduce the effectiveness of the rule? Are there other standards we should adopt?

2. Certain Fees and Expenses

The second and third elements of the prohibited activities rule would prevent an adviser from charging a private fund for fees or expenses associated with an examination or investigation of the adviser or its related persons by any governmental or regulatory authority, as well as regulatory and compliance fees and expenses of the adviser or its related persons.[156]

Advisers incur various fees and expenses in connection with the establishment and ongoing operations of their advisory business. Establishment fees and expenses often relate to the structuring and organization of the adviser's business, including the adviser's registration with financial regulators, such as the Commission. Ongoing fees and expenses often relate to the adviser's overhead and administrative expenses, such as salary, rent, and office supplies. Ongoing expenses also may include those associated with an examination or investigation of the adviser or its related persons.

The proposed rule would prohibit an adviser from charging a private fund for (i) fees and expenses associated with an examination or investigation of the adviser or its related persons by any governmental or regulatory authority, and (ii) regulatory or compliance fees and expenses of the adviser or its related persons, even where such fees and expenses are otherwise disclosed. We have seen an increase in private fund advisers charging these expenses to private fund clients. These types of expenses, which are a cost of being an investment adviser, should not be passed on to private fund investors, whether as a separate expense (in addition to a management fee) or as part of a pass-through expense model.[157] For example, we believe advisers should bear the compliance expenses related to their registration with the Commission, including fees and expenses related to preparing and filing all items and corresponding schedules in Form ADV. Similarly, we believe that an adviser should bear any expenses related to state licensing and registration requirements applicable to the adviser and its related persons, including expenses related to registration and licensure of advisory personnel who contact or solicit investments from state pension or similar plans.

We believe allocating these types of expenses to a private fund client is contrary to the public interest and is harmful to investors because they create an incentive for an adviser to place its own interests ahead of the private fund's interests and unfairly allocate expenses to the fund, even where fully disclosed. For example, in some circumstances, an adviser may charge a fund significant fees and expenses in connection with an investigation that may not be in the fund's best interest. Further, as discussed above, we believe the prohibited fees and expenses are related to forming and operating an advisory business and thus should be borne by the adviser and its owners rather than the private fund and its investors.

We do not anticipate this aspect of the proposed prohibited activities rule would cause a dramatic change in practice for most private fund advisers, other than for certain advisers that utilize a pass-through expense model as noted above. We recognize, however, that advisers often charge private funds for regulatory, compliance, and other similar fees and expenses directly related to the activities of the private fund. The proposed rule would not change this practice. For example, the proposed rule would not prohibit an adviser from charging a private fund for all the costs associated with a regulatory filing of the fund, such as Form D.[158] In addition, we acknowledge that it may not be clear whether certain fees and

[156] Proposed rules 211(h)(2)–1(a)(2) and (3). This prohibition would include fees and expenses related to an examination or investigation of the adviser by the Commission, including the amount of any settlements or fines paid in connection therewith.

[157] Certain private fund advisers utilize a pass-through expense model where the private fund pays for most, if not all, expenses, including the adviser's expenses, but the adviser does not charge a management, advisory, or similar fee. We recognize that this aspect of the proposed rule would likely require advisers that pass on the types of fees and expenses we propose to prohibit to re-structure their fee and expense model.

[158] Advisers may be liable under the antifraud provisions of the Federal securities laws if the private fund's offering and organizational documents do not authorize such costs to be charged to the private fund.

expenses relate to the fund or the adviser, or it may not be clear until after a significant amount of time has passed in certain cases. In these circumstances, an adviser generally should allocate such fees and expenses in a manner that it believes in good faith is fair and equitable and is consistent with its fiduciary duty.

We request comment on this aspect of the prohibited activities rule, including the following items:

• Are there circumstances in which it would be appropriate in the public interest or for the protection of investors for a private fund to bear (i) regulatory or compliance expenses of the adviser or its related persons or (ii) expenses related to an examination or investigation of the adviser or its related persons? If so, please explain. Should we permit private funds to bear these fees and expenses if fully disclosed and consented to by the private fund investors and/or an LPAC (despite the limitations of private fund governance mechanisms, as discussed above)? Should we place any conditions on charging these fees and expenses, such as caps, management fee offsets, or detailed reporting requirements in the proposed quarterly statement?

• The proposed rule would likely increase operating costs for advisers that have historically charged private funds for the types of fees and expenses covered by the proposed rules.

Do commenters believe that advisers would increase management fees to offset such increase in operating costs?

• Are there any additional types of fees or expenses that we should prohibit an adviser from charging to a private fund? Alternatively, are there fees and expenses that the rule should not prohibit?

• Should we provide exceptions to the proposed rules for certain types of private funds and/or certain types of advisers? For example, should we permit a first-time fund adviser to charge regulatory and compliance expenses to the fund? If so, why?

• Do commenters agree that many advisers do not currently charge private funds for the types of fees and expenses covered by the proposed rules and, as a result, the proposed rules would not cause a dramatic change in industry practice? Why or why not? To the extent commenters disagree, please provide supporting data.

• Will advisers have difficulty in determining whether fees and expenses relate to the adviser's activities versus the fund's activities? Should we provide guidance to assist advisers in making such a determination? If so, what guidance should we provide? Should the rule list certain types of fees and expenses that relate to the adviser's activities versus the fund's activities?

• As discussed above, we recognize that certain private fund advisers utilize a pass-through expense model. Should the rule provide any full or partial exceptions for advisers utilizing such models, particularly where the adviser does not charge any management, advisory, or similar fees to the private fund?

3. Reducing Adviser Clawbacks for Taxes

The fourth element of the prohibited activities rule would prohibit an adviser from reducing the amount of any adviser clawback by actual, potential, or hypothetical taxes applicable to the adviser, its related persons, or their respective owners or interest holders. We propose to define ''adviser clawback'' as any obligation of the adviser, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the private fund pursuant to the private fund's governing agreements.[159] We propose to define ''performance-based compensation'' as allocations, payments, or distributions of capital based on the private fund's (or its portfolio investments') capital gains and/or capital appreciation.[160]

Investors typically seek to align their interests with the adviser's interest by tying the adviser's compensation to the success of the private fund. To accomplish this, many private funds provide the adviser with a disproportionate share of profits generated by the fund, often referred to as performance-based compensation.[161] The adviser's performance-based share of fund profits is often greater than the adviser's ownership percentage in the fund.[162] Although the percentage can vary, a common performance-based compensation percentage is 20%, meaning that, for each dollar of profit generated by the fund, the adviser is generally entitled to 20 cents and the fund investors are generally entitled to the remaining 80 cents.

Because the profitability of a private fund will fluctuate over time, the amount of performance-based compensation to which the adviser is entitled will also fluctuate. For example, a fund may initially generate significant profits due to early realizations of successful investments, resulting in distributions to the adviser. However, the fund may subsequently dispose of unsuccessful investments, resulting in losses to the fund. Certain private funds include ''clawback'' mechanisms in their governing agreements, which require the adviser (or a related person of the adviser)[163] to restore distributions or allocations to the fund to the extent the adviser receives performance-based compensation in excess of the amount to which it is otherwise entitled under the fund's governing agreement. Typically, this means that the adviser is required to return to the fund distributions or allocations representing more than a specified percentage (*e.g.,* 20%) of the fund's aggregate profits. The clawback mechanism is intended to ensure that the adviser and the investors ultimately receive the appropriate split of cumulative profits generated over the life of the fund or the applicable measurement period.

Advisers and investors often negotiate whether the clawback amount should be reduced by taxes paid, or deemed paid, by the adviser or its owners.[164] For example, if an adviser received $10 of ''excess'' performance-based compensation, but the adviser or its owners paid $3 in taxes on such amount, investors often argue that the adviser should be required to return the ''pre-tax'' amount ($10), while advisers argue that they should only be required to return the ''post-tax'' amount ($7). To support the post-tax position, advisers often argue that they should only be required to return the portion of excess

[159] Proposed rule 211(h)(2)–1(a)(4). Because performance-based compensation may be allocated or granted to individuals and entities otherwise unaffiliated with the adviser, the proposed definition is drafted broadly to capture any owner or interest holder of the adviser or its related persons.

[160] Proposed rule 211(h)(1)–1. The proposed rule would not apply to any clawbacks by an adviser of incentive compensation under an arrangement subject to Section 956 of the Dodd-Frank Act and regulations thereunder.

[161] Certain private funds refer to performance-based compensation as carried interest, incentive fees, incentive allocations, or profit allocations.

[162] For alignment of interest purposes, advisers often invest their own capital in the fund alongside the third party capital.

[163] For tax and other reasons, a related person of the adviser, rather than the adviser, often receives the performance-based compensation from the fund.

[164] Fund agreements may require advisers to restore performance-based compensation under other fact patterns as well. For example, if an adviser has received performance-based compensation, but the investors have not received the requisite preferred return amount, the adviser may be subject to a clawback. Any such requirement to restore or otherwise return performance-based compensation under a private fund's governing agreement would be covered by the proposed rule. *See* proposed rule 211(h)(1)–1 (defining ''adviser clawback'' as any obligation of the adviser, its related persons, or their respective owners or interest holders to restore or otherwise return performance-based compensation to the private fund pursuant to the private fund's governing agreements).

distributions they ultimately retain (and not the portion paid to any taxing authority). Advisers also argue that, to the extent the clawback occurs in any year subsequent to the year in which the performance-based compensation was paid, it may be burdensome or impractical for the adviser or its owners to amend tax returns from prior years or otherwise take advantage of loss carryforwards for future tax years.[165]

We believe that reducing the amount of any adviser clawback by taxes applicable to the adviser puts the adviser's interests ahead of the investors' interests and creates a compensation scheme that is contrary to the public interest and the protection of investors, even where such practice is disclosed. The interests of investors to receive their share of fund profits—without any adviser tax reductions—justifies the burdens on advisers, including the obligation to amend tax returns. Advisers typically have control over the methodology used to determine the timing of performance-based compensation distributions or allocations, such as any waterfall arrangement.[166] Advisers also typically have control over whether the fund will make a distribution or allocation of performance-based compensation. Advisers thus have discretion to defer or otherwise delay payments, particularly if the adviser is concerned about the possibility of a clawback.[167] Even if an adviser cannot defer or delay a payment, the adviser can escrow performance-based compensation rather than making a payment to its owners, which would allow the adviser to cover all or a portion of a clawback obligation that may arise in the future. Accordingly, the proposed rule would foster greater alignment of interest between advisers and investors by prohibiting advisers from unfairly causing investors to bear these tax costs associated with the payment, distribution, or allocation of ''excess'' performance-based compensation.

We request comment on this aspect of the proposed rule, including the following items:

- Would this aspect of the proposed prohibited activities rule have our intended effect of ensuring that investors receive their full share of profits generated by the fund? Is there an alternative approach that would better produce this intended effect? For example, should we require advisers to return the entire amount of any adviser clawback, rather than only prohibiting advisers from reducing the clawback amount by actual, potential, or hypothetical taxes? Would this approach ensure that investors receive their full share of fund profits?
- Would the proposed clawback provision result in more whole-fund waterfalls (commonly referred to as European waterfalls in the private funds industry), which generally delay payments of performance-based compensation until investors receive a return of all capital contributions? What other effects would this aspect of the proposed rule have on the industry, including with respect to adviser's ability to attract, retain, and develop investment professionals?
- Instead of the proposed clawback provision, should we prohibit deal-by-deal waterfall arrangements (commonly referred to as American waterfalls)?
- We recognize that clawback mechanisms are more common for closed-end funds and less common for open-end funds. Should the rule separately address performance-based compensation for open-end private funds? If so, how should we address those funds?
- Is the proposed definition of ''adviser clawback'' clear? Are there ways in which the proposed definition is over- or under-inclusive? For example, should the definition include ''all-partner'' givebacks or clawbacks (*i.e.,* should advisers be prohibited from reducing the portion of an all-partner giveback attributable to their performance-based compensation by taxes paid or deemed paid)?[168]
- Is the proposed definition of ''performance-based compensation'' clear? Is it too narrow or too broad?
- What issues may advisers face in complying with this aspect of the proposed prohibited activities rule? In particular, what issues may result with respect to amending tax returns from prior years?
- We recognize that this aspect of the proposed rule might result in delayed payments of performance-based compensation. For example, during the early stages of the fund, the adviser may be less inclined to distribute performance-based compensation to investment professionals that source or manage successful investments. How would this aspect of the proposed prohibited activities rule affect the intended incentive effects of performance-based compensation?
- We recognize that many fund agreements clawback performance-based compensation on a post-tax basis. We considered, but are not proposing, a rule that would generally allow this practice to continue, but would prohibit advisers from using a hypothetical marginal tax rate to determine the tax reduction amount.[169] We considered requiring advisers to use the actual marginal tax rates applicable to the adviser or its owners, rather than a hypothetical marginal tax rate. Our view is that this approach could be too burdensome for advisers. Do commenters agree? If we were to adopt this approach, how should we factor tax benefits realized by the adviser or its owners into the tax reduction amount? What operational challenges would advisers face under this alternative approach? For example, would the amount of time it may take to determine

[165] When the clawback occurs in a subsequent tax year, the ''excess'' performance-based compensation will likely have already been subject to tax in the year it was paid, even if the amount subject to the clawback is determined on a pre-tax basis.

[166] Private fund investors often seek to negotiate the waterfall arrangement, and the timing of performance-based compensation distributions, with the adviser. The issues relating to clawbacks often arise in the context of a waterfall arrangement that provides performance-based compensation to the adviser on a deal-by-deal basis (or modified versions thereof), versus a waterfall arrangement that is applied across the whole-fund with distributions going to investors until the investors recoup 100% of their capital contributions and receive a preferred return thereon. Both models should generally result in the adviser and the investors receiving the same split of fund profits over the life of the fund assuming the fund documents have a clawback mechanism. The main distinction between the two models is the timing of distributions or allocations of performance-based compensation to the adviser. Whole-fund waterfalls are often referred to in the private funds industry as European waterfalls; deal-by-deal waterfalls are often referred to as American waterfalls.

[167] We recognize that an adviser (and its personnel) may be subject to a tax obligation whether or not the fund makes a distribution, payment, or allocation of performance-based compensation (*e.g.,* tax allocations of income may precede or follow cash payments of performance-based compensation), including if the adviser places the performance-based compensation into escrow.

[168] An ''all-partner'' giveback is typically a requirement for all investors to return or otherwise restore distributions to the fund. An adviser may use this mechanism for the purpose of satisfying fund obligations, liabilities, or expenses.

[169] Because many entities that receive performance-based compensation are fiscally transparent for U.S. Federal income tax purposes and thus not subject to entity-level taxes, determining the actual taxes paid on ''excess'' performance-based compensation can be challenging, particularly for larger advisers that have not only a significant number of participants that receive such compensation but also have participants subject to non-U.S. tax regimes. To address this problem, advisers typically use a ''hypothetical marginal tax rate'' to determine the tax reduction amount, which is usually based on the highest marginal U.S. Federal, state, and local tax rates. Advisers argue that this approach is a reasonable and cost-effective method for determining the tax reduction amount; investors argue that the hypothetical rate is too high and therefore reduces the clawback amount to their detriment.

the actual tax amount, which may not be determined until a significant amount of time has passed not justify the benefits? Do commenters believe that the use of a hypothetical marginal tax rate is a reasonable and cost-effective method for determining the tax reduction amount, or do commenters believe that the hypothetical marginal tax rate is too high? Why or why not? Please provide data.

4. Limiting or Eliminating Liability for Adviser Misconduct

The fifth element of the proposed prohibited activities rule would prohibit an adviser to a private fund, directly or indirectly, from seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund.

Currently, many private funds and/or their investors enter into documents containing such contractual terms. Our staff has observed private fund agreements with waiver and indemnification provisions that have become more aggressive over time. For example, our staff recently encountered many limited partnership agreements that state that the adviser to the private fund or its related person, which is the general partner to the fund, to the maximum extent permitted by applicable law, will not be subject to any duties or standards (including fiduciary or similar duties or standards) existing under the Advisers Act, Delaware law, or Cayman Islands law or will not be liable to the fund or investors for breaching its duties (including fiduciary duties) or liabilities (that exist at law or in equity).[170]

While these contractual terms may be permissible under certain state laws, a waiver of an adviser's compliance with its Federal antifraud liability for breach of fiduciary duty to the private fund or with any other provision of the Advisers Act or rules thereunder is invalid under the Act.[171] The prohibited activities rule would specify the types of contractual provisions that would be invalid.[172] For instance, it would prohibit an adviser from seeking indemnification for breaching its fiduciary duty, regardless of whether state or other law would permit an adviser to waive its fiduciary duty. The proposed rule would also prohibit an adviser from seeking reimbursement for its willful malfeasance. This scope of prohibitions is appropriate because these activities harm investors by placing the adviser's interests above those of its private fund clients (and investors in such clients). By limiting an adviser's responsibility for breaching the standard of conduct, the incentive to comply with the required standard of conduct is eroded. We believe such contractual provisions are neither in the public interest nor consistent with the protection of investors, particularly where investors are led to believe the adviser is contractually not obligated to comply with certain provisions of the Act or rules thereunder, or where investors with less bargaining power are forced to bear the brunt of such arrangements.[173]

We request comment on this aspect of the proposed rule, including the following items:

- We have observed these types of contractual provisions among private fund advisers and their related persons; do advisers to clients other than private funds typically include these types of contractual provisions?
- Are there other types of contractual provisions we should prohibit as contrary to the public interest and the protection of investors?
- Should this aspect of the final prohibited activities rule prohibit limiting liability for ''gross negligence,'' or would prohibiting limitations of liability for ordinary negligence, as proposed, be more appropriate? Why?
- Should the proposed rule prohibit contractual provisions that limit or purport to waive fiduciary duties and other liabilities in situations where state law permits such waivers?
- Do commenters believe that the proposed rule would increase operating expenses for advisers? For example, would the proposed prohibition on receiving indemnification/exculpation for negligence cause an adviser's insurance premium to increase?

5. Certain Non-Pro Rata Fee and Expense Allocations

The sixth element of the prohibited activities rule would prohibit an adviser from directly or indirectly charging or allocating fees and expenses related to a portfolio investment (or potential portfolio investment) on a non-pro rata basis when multiple private funds and other clients advised by the adviser or its related persons have invested (or propose to invest) in the same portfolio investment.[174]

An adviser may cause a private fund and one or more other vehicles to invest in an issuer or entity in which other related funds or vehicles have, or are concurrently making, an investment. For example, an adviser may form a parallel fund in a non-U.S. jurisdiction, such as Luxembourg, to accommodate certain European or other non-U.S. investors that invests alongside the adviser's main fund in all, or substantially all, of its investments. An adviser also may form more bespoke structures for large or strategic investors, such as separate accounts, funds of one, and co-investment vehicles, that invest alongside other funds managed by the adviser that have similar or overlapping investment strategies.

An adviser can face conflicts of interest where multiple clients (and/or other persons advised by the adviser) invest, or propose to invest, in the same portfolio investment, especially with respect to allocating fees and expenses among those clients (or such other

[170] *See, e.g.,* EXAMS Private Funds Risk Alert 2022, *supra* footnote 16 (discussing hedge clauses). *See also* Comment Letter of the Institutional Limited Partners Association on the Proposed Commission Interpretation Regarding Standard of Conduct for Investment Advisers; Request for Comment on Enhancing Investment Adviser Regulation (Aug. 6, 2018), File No. S7–09–18, at 6, *available athttps://ilpa.org/wp-content/uploads/2018/08/ILPA-Comment-Letter-on-SEC-Proposed-Fiduciary-Duty-Interpretation-August-6-2018.pdf. See also* Protecting LLC Owners While Preserving LLC Flexibility, University of California, Davis Law Review, 51 U.C. Davis L. Rev. 2129, 2133, Professor Peter Molk (2018) (discussing scenarios in which an investor is induced to ''sign away fundamental protections'' without understanding the importance of those protections, without understanding the meaning of certain legal terms, and sometimes without reading the documents the investor signs).

[171] *See* section 215(a) of the Advisers Act; 2019 IA Fiduciary Duty Interpretation, *supra* footnote 140 (stating that an adviser's Federal fiduciary obligations are enforceable through section 206 of the Advisers Act and that the SEC would view a waiver of enforcement of section 206 as implicating section 215(a) of the Advisers Act. Section 215(a) of the Advisers Act provides that any condition, stipulation or provision binding any person to waive compliance with any provision of the title shall be void.).

[172] *See* section 215(b) of the Advisers Act (stating that any contract made in violation of the Act or rules thereunder is void).

[173] *See* Professor Clayton Article, *supra* footnote 7, at 309 (noting that ''LPAs have been criticized for waiving and otherwise limiting managers' fiduciary duties to their investors under state limited partnership law; for seeking to satisfy managers' fiduciary duties under Federal law by providing generic and all-encompassing disclosures . . . for requiring investors to indemnify managers for liabilities resulting from an extremely broad array of conduct, including criminal acts committed by managers''). *See also* The Private Equity Negotiation Myth, Yale Journal on Regulation Vol. 37:67, Professor William Clayton (2020), at p. 70 (noting that ''large investors in private equity funds commonly use their bargaining power to negotiate for individualized benefits outside of fund agreements, where the benefit of the bargain is not shared with other investors in the fund . . . an investor can use its bargaining power to negotiate for individualized benefits before it negotiates for things that will benefit all investors in the fund.''); ILPA Model Limited Partnership Agreement (July 2020) (suggesting standard of care, exculpation, and indemnification language in order to reduce the cost, time and complexity of negotiating the terms of investment).

[174] Proposed rule 211(h)(2)–1(a)(6).

persons).[175] We believe that any non-pro rata allocation of fees and expenses under these circumstances is contrary to the protection of investors because it would result in the adviser placing its own interest ahead of another's, including in circumstances where the adviser indirectly benefits by placing the interests of one or more clients or investors ahead of another's.[176] For example, a fund may not have the resources to bear its pro rata share of expenses related to a portfolio investment (whether due to insufficient reserves, the inability to call capital to cover such expenses, or otherwise). If the adviser causes another fund to bear expenses attributable to such fund, the fund bearing more than a pro rata share would be supporting the value of the other fund's investment.[177] Because compensation structures in the funds may differ, an adviser may have an incentive to allocate fees and expenses in a way that maximizes its compensation. Further, an adviser's ownership may vary fund by fund and thus may create an incentive to allocate fees and expenses away from the fund in which the adviser holds a greater interest.[178]

Moreover, we do not believe that fees and expenses attributable to unconsummated—or potential—portfolio investments should be treated differently than consummated investments, given that non-pro rata allocations in respect of unconsummated investments generally present the same concerns as discussed above with respect to consummated investments. If more than one fund would have participated in an investment that generated ''broken deal'' or other fees and expenses, our view is that all such funds should bear their pro rata share of such amount.

We recognize that many advisers do not charge all their clients or potential co-investors for fees and expenses relating to unconsummated investments. For example, certain advisers offer existing investors, related persons, or third parties the opportunity to co-invest alongside the fund through one or more co-investment vehicles advised by the adviser.[179] Many advisers do not charge co-investment vehicles or other co-investors for fees and expenses relating to unconsummated investments. Instead, such fees and expenses are generally borne by the adviser's main fund that would have participated in the transaction, in which case the main fund would bear a disproportionate share of such amount. Such practice, however, places the interests of the other client and its underlying investors or of the other co-investors ahead of the interests of the main fund and its underlying investors. Because the other client would receive the benefit of any upside in the event the transaction goes through, we believe that such client should also generally bear the burden of any downside in the event the transaction does not go through. Accordingly, the proposed rule does not include an exception for these types of circumstances.[180]

We request comment on this aspect of the proposed prohibited activities rule, including the following items:

- Should we prohibit non-pro rata fee and expense allocations as proposed? If not, under what circumstances would non-pro rata allocations be appropriate? For example, we recognize that advisers often have policies and procedures in place that permit the adviser to allocate fees and expenses in a fair and equitable manner (or similar standard), rather than on a pro rata basis; would this better achieve our policy goals? Why or why not? What specific protections are included in such policies and procedures? Should such protections be included in the rule? Why or why not? Should there be an exception to the prohibition where an adviser determines that it is in a private fund's best interest to bear more expenses than another managed vehicle and the private fund's investors agree?
- Should the proposed rule apply to unconsummated—or potential—portfolio investments, as proposed? Do commenters agree that non-pro rata allocations of fees and expenses attributable to such investments present the same concerns as the ones discussed above with respect to consummated investments? Why or why not?
- We recognize that many co-investors do not agree to bear their pro rata share of broken or dead deal expenses. Would the proposed rule make it difficult for funds to consummate larger investments where co-investment capital is needed? Would the proposed rule cause funds to syndicate more deals post-closing once the adviser is confident that the deal will not fall through?
- Should we include an exception for co-investment vehicles (or certain other vehicles) that invest alongside another fund managed by the adviser? If so, how should we define ''co-investment vehicle''? Should the rule treat single-deal co-investment vehicles differently than multi-deal co-investment vehicles? Why or why not?
- Should we define ''pro rata''? Should ''pro rata'' be determined based on each client's ownership (or anticipated ownership) of the portfolio investment? Will advisers interpret ''pro rata'' differently?
- Where multiple funds invest in the same portfolio investment at different times, the first fund to invest may initially bear a higher level of fees and expenses than later funds. Should the proposed rule address fees and expense allocations among funds that invest at different times, and if so, how? If a significant amount of time has passed between the first fund's investment and the later fund's investment, should the later fund pay interest on its portion of fees and expenses? Should interest payments always apply when portfolio investments are made at different times?

[175] *See* EXAMS Private Funds Risk Alert 2020, *supra* footnote 9. *See also, e.g., In the Matter of Rialto Capital Management, LLC,* Investment Advisers Act Release No. 5558 (Aug. 7, 2020) (settled action) (alleging that adviser represented to the advisory committee, which included private fund investors as committee members, that it had data to support the adviser performing third-party services in house and charging the funds certain rates; and that the adviser misallocated fees for third-party services to the private funds when such fees also should have been allocated to the co-investment vehicles managed by the adviser).

[176] Because the proposed rule prohibits charging or allocating fees and expenses *related to* a portfolio investment (or potential portfolio investment) on a non-pro rata basis, advisers would not be prohibited from charging vehicles that invest alongside each other different advisory fees or other fund-level compensation. For example, a co-investment vehicle may pay lower management fees than the main fund.

[177] The proposed rule would not prohibit an adviser from paying a fund's pro rata portion of any fee or expense with its own capital. In addition, to the extent a fund does not have resources to pay for its share, the proposed rule would not prohibit an adviser from diluting such fund's interest in the portfolio investment in a manner that is economically equal to its pro rata portion of such fee or expense.

[178] On a more granular level, to the extent the adviser's personnel have varying ownership percentages in the funds, such personnel may be subject to similar conflicts of interest in determining how to allocate fees and expenses.

[179] In some cases, advisers use co-investment opportunities to attract new investors and retain existing investors. Advisers may offer these existing or prospective investors the opportunity to invest in co-investment vehicles with materially different fee and expense terms than the main fund (*e.g.,* no fees or no obligation to bear broken deal expenses). These co-investment opportunities may raise conflicts of interest, particularly when the opportunity to invest arises because of an existing investment and the fund itself would otherwise be the sole investor.

[180] To the extent a potential co-investor has not executed a binding agreement to participate in the transaction through a co-investment vehicle (or another fund) managed by the adviser, the proposed rule would not prohibit the adviser from allocating ''broken-deal'' or other fees and expenses attributable to such potential co-investor to a fund that would have participated in the transaction. Advisers may be liable under the antifraud provisions of the Federal securities laws if the private fund's offering and organizational documents do not authorize such costs to be charged to the private fund.

If not, how much time should lapse before interest applies?

• The proposed rule would prohibit advisers from charging or allocating fees and expenses related to a portfolio investment (or potential portfolio investment) on a non-pro rata basis when multiple private funds *and other clients advised by the adviser or its related persons* have invested (or propose to invest) in the same portfolio investment. Is the scope of the phrase ''other clients advised by the adviser or its related persons'' broad enough? Should we revise the proposed rule to cover *any other clients, vehicles, or other persons advised by the adviser or its related persons*? Alternatively, should we revise the rule to cover all co-investment structures and arrangements?

• We recognize that a transaction counterparty may request to only contract with one fund entity, which can result in one fund being liable for its own share as well as another fund's share of any transaction obligations, including fees and expenses. If one fund would be responsible for the liability of another fund, those funds, in certain cases, contractually agree to bear their pro rata share, often times through a contribution or reimbursement agreement. Should we prohibit this practice and thus require each fund entity to contract directly with the counterparty? Alternatively, should we require certain governance and other protections, such as contribution or reimbursement agreements, if only one fund contracts directly with the counterparty? Why or why not?

• As noted above, the proposed rule would not prohibit an adviser from charging different fund-level compensation, such as advisory fees, to vehicles that invest alongside each other in the same underlying portfolio investment. For example, a co-investment vehicle may pay lower management fees than the main fund. Is it sufficiently clear that such arrangements would not be prohibited under the proposed rule?

6. Borrowing

The final element of the proposed prohibited activities rule would prohibit an adviser directly or indirectly from borrowing money, securities, or other fund assets, or receiving a loan or an extension of credit, from a private fund client (collectively, a ''borrowing'').[181] We have observed many forms of borrowing among private fund advisers and their related persons, such as using fund assets as collateral in order to obtain a loan from a party other than the fund (*i.e.,* borrowing against fund assets), accepting a loan offered by a private fund client, and taking advantage of a continuous line of credit extended by a private fund client. For example, the Commission has brought enforcement actions alleging that private fund advisers and their related persons have used fund assets to address personal financial issues of one of the adviser's principals, to pay for the advisory firm's expenses,[182] or to bribe foreign government officials.[183] In these circumstances, the adviser's related person that is the general partner of the fund sometimes, for example, causes the fund to enter into the relationship with the adviser without the knowledge or consent of the private fund investors.

When an adviser borrows from a private fund client, that adviser has a conflict of interest because it is on both sides of the transaction (*i.e.,* the adviser benefits from the loan and manages the client lender). A private fund rarely has employees of its own. Its officers, if any, are usually employed by the private fund's adviser. The fund typically relies on the investment adviser (and, in certain cases, affiliated entities) to provide management, investment, and other services and such persons usually have authority to take actions on behalf of the private fund without the consent or approval of any other person. This structure causes a conflict of interest between the private fund (and, by extension, its investors) and the investment adviser because the interests of the fund are not necessarily aligned with the interests of the adviser. For example, when determining the interest rate for the borrowing, an investment adviser's interest in maximizing its own profit by negotiating (or setting) a low rate may conflict with its duty to act in the best interests of the fund.

Moreover, this practice may prevent the fund client from using those assets to further the fund's investment strategy. Even where disclosed (and potentially consented to by an advisory board, such as an LPAC), this practice presents a conflict of interest that is harmful to investors because, as a result of the unique structure of private funds, only certain investors with specific information or governance rights (such as representation on the LPAC) would potentially be in a position to negotiate or discuss the terms of the borrowing with the adviser, rather than all of the private fund's investors.

The proposed rule would not prevent the adviser from borrowing from a third party on the fund's behalf or from lending to the fund. Private funds sometimes use subscription lines of credit, also known as credit facilities, to address financing needs. For example, some private funds use these facilities to address short-term financing needs when the fund makes investments or participates in a co-investment. Other private funds use such facilities for long-term financing purposes, for example, when an infrastructure fund decides to use a long-term facility during the development stage of a project before a capital call. In these circumstances, the adviser is not borrowing from the fund. Similarly, advisers sometimes lend money to a fund in order to address start-up costs or to manage other expenses (for example, an adviser may pay legal or operating expenses of several fund clients and then seek reimbursement once the expenses have been allocated among the advised private funds). Allowing advisers to continue this practice would provide private funds access to capital, especially when they are in the early stages of attracting investors. Advisers lending to private funds they manage on terms that do not include excessive interest rates or other abusive practices do not raise the same concerns that advisers borrowing from private funds they manage raises because there are fewer opportunities for abusive practices when the adviser is providing money to, rather than taking money from, the private fund.

We request comment on this aspect of the proposed prohibitions rule, including the following:

• Should we broaden the scope of the prohibition on borrowings to prevent a private fund adviser from borrowing from co-investment vehicles or other accounts that are not private funds?

[181] Proposed rule 211(h)(2)–1(a)(7).

[182] *See In the Matter of Monsoon Capital, LLC,* Investment Advisers Act Release No. 5490 (Apr. 30, 2020) (settled action) (alleging that the owner of a private fund adviser borrowed $1 million from a private fund client in order to settle a personal trade); *Resilience Management, LLC,* Investment Advisers Act Release No. 4721 (June 29, 2017) (settled action) (alleging that a private fund adviser borrowed money from funds in order to pay adviser's expenses; and that the CEO of the adviser borrowed money to pay for personal expenses); *SEC* v. *Philip A. Falcone,* [U.S. District Court Southern District of New York, Consent] (Aug. 16, 2013) (hedge fund adviser borrowed from hedge fund at low interest rate in order to repay adviser's personal taxes. Adviser failed to disclose the loan to investors for five months).

[183] *See In the Matter of Och-Ziff Capital Management Group, LLC,* Investment Advisers Act Release No. 4540 (Sept. 29, 2016), at para. 3 (settled action) (alleging that a private fund adviser authorized the use of investor funds to pay bribes to foreign government officials in order to obtain or retain business for its parent company and its business partners).

• Should we broaden the proposed prohibition to apply when an adviser lends to the fund? [184]

• Should the proposed rule exclude certain activity from the prohibition (*e.g.,* scenarios where a private fund makes tax advances or tax distributions to its general partner (or similar control person) to ensure that the general partner and its investment professionals are able to pay their personal taxes derived from the general partner's interest in the fund)? If so, what activity should we exclude and why?

• Are there situations in which a fund would agree to lend a start-up adviser money for initial costs and employee salaries? Are there situations in which a private fund client should be able to make a loan to a private fund adviser because the economic terms would be favorable to the private fund? How would we determine that the terms are favorable to the private fund?

• Should the proposed rule be expanded to prohibit an adviser from borrowing against a private fund client's bank account or other assets, where the lender may be a third party (rather than the private fund)? Why or why not?

• Should we amend Form ADV and/or Form PF to require advisers to report information about an adviser or its related person lending to, or borrowing from, private funds or other clients? Why or why not? For example, should we require advisers to report whether they engage in this practice and to provide an aggregate amount or range of such loans or borrowings?

• Recognizing the limitations of private fund governance mechanisms, as discussed above, should we permit borrowing if it is subject to specific governance and other protections (*e.g.,* advance disclosure to all investors, advance disclosure to an LPAC or similar body, consent of a governing body such as an LPAC, and/or consent of a majority or supermajority of investors)? Should we require private fund advisers to make ongoing disclosures to investors and/or governing bodies of the status of such borrowings? Why or why not?

• Should the rule include any full or partial exclusions for certain transactions that may not involve conflicts of interest or that may involve certain third parties that ameliorate the conflicts of interest? For example, should we provide an exclusion if the terms of the borrowing are set by an independent third party and such third party has the authority to act on behalf of the fund in the event of a default by the adviser? Why or why not?

• Do commenters envision unintended consequences of this proposed prohibition, such as in circumstances where an adviser's related person has its own commercial relationship with the fund?

• Should the rule prohibit (or otherwise restrict) advisers from lending to private funds they manage on terms that include excessive interest rates or other abusive practices? To what extent and under what circumstances does this practice occur? Does it raise similar concerns to borrowing?

E. Preferential Treatment

In order to address specific types of preferential treatment that have a material negative effect on other investors in the private fund or in a substantially similar pool of assets, we also propose to prohibit all private fund advisers, regardless of whether they are registered with the Commission, from providing preferential terms to certain investors regarding redemption or information about portfolio holdings or exposures.[185] We also propose to prohibit these advisers from providing any other preferential treatment to any investor in the private fund unless the adviser provides written disclosures to prospective and current investors in a private fund regarding all preferential treatment the adviser or its related persons are providing to other investors in the same fund.[186] Whether any terms are ''preferential'' would depend on the facts and circumstances.

Side letters or side arrangements are generally agreements among the investor, general partner, adviser, and/or the private fund that provide the investor with different or preferential terms than those set forth in the fund's governing documents.[187] Side letters generally grant more favorable rights and privileges to certain preferred investors (*e.g.,* seed investors, strategic investors, those with large commitments, and employees, friends, and family) or to investors subject to government regulation (*e.g.,* the Employee Retirement Income Security Act (''ERISA''), the Bank Holding Company Act, or public records laws). Advisers often provide these terms for strategic reasons that benefit the adviser. In some cases, these terms can also benefit the fund, for example, if the adviser signs a side letter with a large, early stage investor, then the fund will increase its assets. Increased fund assets may enable the fund to make certain investments, for example of a larger size, which ultimately benefits all investors. However, preferential terms do not necessarily benefit the fund or other investors that are not party to the side letter agreement and, at times, we believe these terms can have a material, negative effect on other investors.

We recognize that advisers provide a range of preferential treatment, some of which does not necessarily disadvantage other fund investors. In this case, we believe that disclosure is appropriate because it would allow investors to make their own assessment. Other types of preferential treatment, however, have a material, negative effect on other fund investors or investors in a substantially similar pool of assets. We propose to prohibit these types of preferential treatment because they are sales practices that present a conflict of interest between the adviser and the private fund client that are contrary to the public interest and protection of investors. We have tailored the proposed rule to address these different ends of the spectrum.

Prohibited Preferential Redemptions

We propose to prohibit a private fund adviser, including indirectly through its related persons, from granting an investor in the private fund or in a substantially similar pool of assets the ability to redeem its interest on terms that the adviser reasonably expects to have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets.[188]

Different types of private funds and other pooled vehicles offer different redemption opportunities, and an investor's ability to exit or withdraw differs significantly depending on the fund's or pool's liquidity profile. While open-end private funds typically allow

[184] *See, e.g., In the Matter of Clean Energy Capital LLC,* Investment Advisers Act Release No. 3955 (Oct. 17, 2014) (settled action) (alleging that a private equity fund adviser caused the funds to borrow money from the adviser without providing notice to investors and by pledging the private equity funds' assets as collateral).

[185] Proposed rule 211(h)(2)–3(a)(1) and (2).

[186] Proposed rule 211(h)(2)–3(b).

[187] The proposed rule would prohibit certain types of preferential treatment and would require an adviser to disclose other types of preferential treatment that the adviser or its related persons (acting on their own behalf and/or on behalf of the fund) provide to investors. Therefore, the proposed rule typically would apply when the adviser's related person is the general partner (or similar control person) and is a party (and/or caused the private fund to be a party, directly or indirectly) to a side letter or other arrangement with an investor, even if the adviser itself (or any related person of the adviser) is not a party to the side letter or other arrangement.

[188] Proposed rule 211(h)(2)–3(a)(1). For purposes of the prohibitions in proposed rule 211(h)(2)–3(a)(1) or (2), whether an adviser could have a reasonable expectation that the preferential term would have a material, negative effect on other investors in the same private fund or in a substantially similar pool of assets would depend on the facts and circumstances.

for periodic redemptions, closed-end private funds typically do not permit investors to withdraw their investments without consent. We understand that some private fund advisers grant one or more investors more favorable redemption rights. For example, a large investor may negotiate, through a side letter or other side arrangement, to be able to redeem its interest in the fund before, or more frequently than, other investors. Advisers enter into such arrangements in exchange for, for example, a large investor agreeing to invest in the fund or a large investor agreeing to participate in a future fundraising of an investment vehicle that the adviser manages.[189] Our staff also has observed scenarios where an adviser establishes investment vehicles that invest side-by-side along with the private fund that have better liquidity terms than the terms provided to investors in the private fund.[190]

We believe that granting preferential liquidity terms on terms that the adviser reasonably expects to have a material, negative effect on other investors in the private fund or in a substantially similar pool of assets is a sales practice that is harmful to the fund and its investors. In granting preferential liquidity rights to a large investor, the adviser stands to benefit because its fees increase as fund assets under management increase. As noted above, the adviser attracts preferred investors to invest in the fund by offering preferential terms, such as more favorable liquidity rights. While the fund also may experience some benefits, including the ability to attract additional investors and to spread expenses over a broader investor and asset base, there are scenarios where the preferential liquidity terms harm the fund and other investors. For example, if an adviser allows a preferred investor to exit the fund early and sells liquid assets to accommodate the preferred investor's redemption, the fund may be left with a less liquid pool of assets, which can inhibit the fund's ability to carry out its investment strategy or promptly satisfy other investors' redemption requests. This can dilute remaining investors' interests in the fund and make it difficult for those investors to mitigate their investment losses in a down market cycle. These concerns can also apply when an adviser provides favorable redemption rights to an investor in a substantially similar pool of assets, such as another feeder fund investing in the same master fund. The Commission believes that the potential harms to other investors justify this restriction.

Prohibited Preferential Transparency

We propose to prohibit an adviser and its related persons from providing information regarding the portfolio holdings or exposures of the private fund or of a substantially similar pool of assets to any investor if the adviser reasonably expects that providing the information would have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets.[191]

Private fund advisers, in some cases, disclose information about portfolio holdings or exposures to certain, but not all, investors in the private fund or in a substantially similar pool of assets. For example, an investor may request certain information about characteristics of the fund's holdings to satisfy the investor's internal reporting obligations. An investor can negotiate to receive certain types of information that is not widely available to all investors; however, an investor's success in obtaining such terms may depend on factors including the size of its capital commitment.[192]

Selective disclosure of portfolio holdings or exposures can result in profits or avoidance of losses among those who were privy to the information beforehand at the expense of investors who did not benefit from such transparency. In addition, such information could enable an investor to trade in portfolio holdings in a way that ''front-runs'' or otherwise disadvantages the fund or other clients of the adviser. Granting preferential transparency, for example through side letters, presents a sales practice that is contrary to the public interest and protection of investors because it preferences one investor at the expense of another. An adviser may agree to provide preferential information rights to a certain investor in exchange for something of benefit to the adviser. The proposed rule is designed to neutralize the potential for private fund advisers to treat portfolio holdings information as a commodity to be used to gain or maintain favor with particular investors.[193] We believe that this proposed prohibition would curtail activity that harms investors.

Substantially Similar Pool of Assets

The proposed rule would define the term ''substantially similar pool of assets'' as a pooled investment vehicle (other than an investment company registered under the Investment Company Act of 1940 or a company that elects to be regulated as such) with substantially similar investment policies, objectives, or strategies to those of the private fund managed by the adviser or its related persons.[194] Whether a pool of assets managed by the adviser is ''substantially similar'' to the private fund requires a facts and circumstances analysis. A pool of assets with a materially different target return or sector focus, for example, would likely not have substantially similar investment policies, objectives, or strategies as the subject private fund, depending on the facts and circumstances.

The types of asset pools that would be included in this term would include a variety of pools, regardless of whether they are private funds. For example, this term would include limited liability companies, partnerships, and other organizational structures, regardless of the number of investors; feeders to the same master fund; and parallel fund structures and alternative investment vehicles. It would also include pooled vehicles with different base currencies and pooled vehicles with embedded leverage to the extent such pooled vehicles have substantially similar investment policies, objectives, or strategies as those of the subject private fund. In addition, an adviser would be required to consider whether its proprietary accounts meet the definition of ''substantially similar pool of assets.''

This proposed definition is designed to capture most commonly used fund structures and prevent advisers from structuring around the prohibitions on preferential treatment. For example, in a master-feeder structure, some advisers create custom feeder funds for favored investors. Without a comprehensive definition of substantially similar pool of assets, the proposed rule would not preclude such advisers from providing preferential treatment to investors in these custom feeder funds to the detriment of investors in standard commingled feeder funds within the master-feeder structure. While similar concerns may exist for separately managed accounts, this proposed rule is designed to address the specific concerns that arise out of the lack of

[189] *See supra* section II.E. (Preferential Treatment) (discussing side letters as a sales practice).

[190] *See* EXAMS Private Funds Risk Alert 2020, *supra* footnote 9.

[191] Proposed rule 211(h)(2)–3(a)(2).

[192] *See* Professor Clayton Article, *supra* footnote 7, at 316 (noting that large investors can often negotiate fee discounts or other side letter benefits that smaller investors would not receive).

[193] *See Selective Disclosure and Insider Trading,* Securities Act of 1933 Release No. 33–7881 (Aug. 15, 2000) [65 FR 51715 (Aug. 24, 2000)].

[194] Proposed rule 211(h)(1)–1.

transparency and governance mechanisms prevalent in the private fund structure.

Other Preferential Treatment

The proposed rule also would prohibit other preferential terms unless the adviser provides certain written disclosures to prospective and current investors.[195] We believe that certain types of preferential terms raise relatively minor concerns, if fully disclosed. However, we are concerned that an adviser's current sales practices do not provide all investors with sufficient detail regarding preferential terms granted to other investors.[196] For example, an adviser to a private equity fund may provide ''excuse rights'' (*i.e.,* the right to refrain from participating in a specific investment the private fund plans to make) to certain private fund investors. Advisers sometimes grant excuse rights to accommodate an investor's unique investment restrictions, such as a mandate to avoid investment in portfolio companies that do not meet certain environmental, social, or governance standards. This lack of transparency prevents investors from understanding the scope of preferential terms granted. The proposed rule would prohibit these terms unless the adviser provides information about them in a written notice.

Increased transparency would better inform investors regarding the breadth of preferential treatment, the potential for those terms to affect their investment in the private fund, and the potential costs (including compliance costs) associated with these preferential terms.[197] This disclosure would help investors shape the terms of their relationship with the adviser of the private fund. For example, they might also learn of similarly situated investors who are receiving a better deal with respect to fees or other terms. An investor also may learn that the adviser provided fee discounts to a large, early stage investor. Or, an investor may learn that the adviser granted a strategic investor the right to increase its investment in the fund even though the fund is closed to new investors or to additional investments by other existing investors. This may lead the investor to request additional information on other benefits that the adviser's related persons or large investors receive, such as co-investment rights. An investor may then be able to understand better certain potential conflicts of interest and the risk of potential harms or other disadvantages.

Under the proposed rule, an adviser would need to describe specifically the preferential treatment to convey its relevance. For example, if an adviser provides an investor with lower fee terms in exchange for a significantly higher capital contribution than paid by others, we do not believe that mere disclosure that some investors pay a lower fee is specific enough. Instead, we believe an adviser must describe the lower fee terms, including the applicable rate (or range of rates if multiple investors pay such lower fees), in order to provide specific information as required by the proposed rule. An adviser could comply with the proposed disclosure requirements by providing copies of side letters (with identifying information regarding the other investors redacted).[198] Alternatively, an adviser could provide a written summary of the preferential terms provided to other investors in the same private fund, provided the summary specifically describes the preferential treatment.

The timing of the proposed rule's delivery requirements would differ depending on whether the recipient is a prospective or existing investor in the private fund. For a prospective investor the notice needs to be provided, in writing, prior to the investor's investment. For an existing investor, the adviser would have to ''distribute'' the notice annually if any preferential treatment is provided to an investor since the last notice.[199] An adviser would satisfy its distribution requirement to current investors by sending the written notice to all of the private fund's investors. If an investor is a pooled investment vehicle that is in a control relationship with the adviser, the adviser must look through that pool in order to send the notice to investors in those pools.[200] We believe this aspect of the proposed rule would require advisers to reassess periodically the preferential terms they provide to investors in the same fund, and investors would benefit from receiving periodic updates on preferential terms provided to other investors in the same fund. We also believe that providing this information annually would not overwhelm investors with disclosure.

We request comment on this aspect of the proposed rule, including the following:

- Should the proposed rule apply only to SEC-registered advisers and advisers that are required to be registered with the SEC instead of all advisers, as proposed?
- Should we prohibit *all* preferential treatment instead of the proposed approach, which is to prohibit certain types of preferential treatment (*i.e.,* liquidity and transparency terms that an adviser reasonably expects to have a material, negative effect) and prohibit all other types of preferential treatment unless disclosed? Why or why not?
- Should the proposed prohibitions apply only to terms that the adviser reasonably expects *to have* a material, negative effect, as proposed? Alternatively, should the proposed prohibitions apply more broadly to terms that the adviser reasonably expects *could have* a material, negative effect? Why or why not?
- Should we prohibit *all* preferential liquidity terms, rather than just those that the adviser reasonably expects to have a material, negative effect on other investors in that fund or in a substantially similar pool of assets? Why or why not?
- Are there certain investors who require different liquidity terms (*e.g.,* ERISA plans, government plans)? If so, which types of investors and what liquidity terms do they require? How do advisers currently accommodate such investors without disadvantaging other investors in the private fund? Should the proposed rule permit different liquidity terms for these investor types? If so, should the proposed rule impose restrictions in order to protect other private fund investors? If so, which types of restrictions?
- Are there practices related to liquidity and redemption rights that the proposed rule should explicitly address (*e.g.,* in-kind distribution of securities in connection with a redemption, side-pocketing of illiquid investments, discounting or eliminating the management fee while a fund suspends

[195] Proposed rule 211(h)(2)–3(b).

[196] *See* Juliane Begenau and Emil Siriwardane, How Do Private Equity Fees Vary Across Public Pensions?, Harvard Business School (2020), *available at https://www.hbs.edu/faculty/Pages/item.aspx?num=57534.*

[197] The Alternative Investment Fund Managers Directive (AIFMD) includes transparency obligations requiring disclosure to all investors of any preferential treatment received by a particular investor, including by way of a side letter. *See* AIFMD Art. 23.

[198] We are not proposing to require the adviser to disclose the names or even types of investors provided preferential terms as part of this proposed disclosure requirement.

[199] As a practical matter, a private fund that does not admit new investors or provide new terms to existing investors would not need to deliver an annual notice. However, an adviser that enters into a side letter after the closing date of the fund would need to disclose any covered preferential terms in the side letter to investors that are locked into the fund.

[200] *See supra* section II.A.3 (Preparation and Distribution of Quarterly Statements).

liquidity)? For example, should the proposed rule prohibit in-kind distribution of securities in connection with a redemption, side-pocketing illiquid investments, or discounting or eliminating the management fee while a fund suspends liquidity? Alternatively, should the proposed rule include an exception for these activities?

• Should we prohibit *all* preferential transparency regarding holdings or exposures of the fund or pool, rather than just prohibiting preferential transparency regarding holdings or exposures that the adviser reasonably expects to have a material, negative effect on other investors in that fund or in a substantially similar pool of assets? Why or why not?

• Should we define, or provide guidance on, when preferential redemption terms or preferential information rights would have a material, negative effect on other investors? If so, what should be some determining factors? Would it be relevant that the redemption terms would cause another investor to reconsider its investment decision? Please explain your answer. Should we clarify whether an adviser could disclose information about holdings or exposures of the fund or a substantially similar pool of assets on a delayed basis without violating the proposed prohibition? Should the proposed rule expressly require disclosure to investors after a specified period? If so, what period?

• Are transparency concerns, especially with regard to information that could have an impact on an investor's decision to redeem, more prominent with certain fund types (*e.g.,* hedge funds, private equity funds)? If so, which types and why?

• Should we exempt certain types of private funds from the written notice requirements of the proposed preferential treatment rule? [201] If so, which types of funds and why?

• Should we restrict the use of side letters and side arrangements so that they can only be used to address certain matters such as, for example, legal, regulatory, or tax issues that are specific to an investor?

• Should the rule's prohibitions on preferential terms extend to a substantially similar pool of assets or apply only to each private fund separately?

• The proposed definition of ''substantially similar pool of assets'' would not include co-investments by a separately managed account managed by the adviser or its related persons. Is this definition too narrow? Why or why not? Would the proposed definition appropriately capture similar funds? Should it, for example, include circumstances where a private fund invests alongside a separately managed account? Why or why not? Should the definition include a co-investment vehicle that is structured as a pool of assets that invests in a single entity and where the private fund invests in the same entity?

• Should we limit ''substantially similar pool of assets'' to pools the adviser or its related persons manage, as proposed? Is the proposed definition too broad or too narrow? The proposed definition would require the pool of assets to have substantially similar (i) investment policies, (ii) objectives, or (iii) strategies to those of the private fund. Should we change ''or'' to ''and'' and instead require that the pool satisfy all three requirements (*i.e.,* have substantially similar investment policies, objectives, *and* strategies)? Should we instead require that the pool satisfy only two of the three criteria? For example, should the definition only require the pool of assets to have substantially similar objectives and strategies (and not policies) to those of the private fund? Are there other unique characteristics or factors, such as the target rate of return, the proposed definition should address? Should the definition exclude multi-share class private funds? If so, why?

• Should we narrow the scope of the term ''substantially similar pool of assets'' to only include pooled vehicles that invest or generally invest *pari passu* with the private fund? Why or why not?

• Do commenters agree that we should prohibit other preferential terms unless the adviser provides specific information regarding those terms to prospective and current private fund investors? Would these disclosures benefit these investors? Should we require advisers to provide additional information in the written notices? If so, what information? Should the rule specify what information is required to be included in the notice?

• Instead of requiring advisers to provide or distribute the written notice, should we require advisers to only provide or distribute the written notice upon request?

• With regard to current investors, the proposed rule would require advisers to disclose preferential treatment *provided* by the adviser or its related persons. Instead or in addition, should we require advisers to disclose preferential treatment that it has offered to other investors in the same fund?

• Should we require advisers to provide advance written notice to prospective investors, as proposed? Should we define ''prospective investor'' in the proposed rule? If so, how should we define this term and why? For example, should we define ''prospective investor'' as any person or entity that has expressed an interest in a private fund advised by the adviser? [202] If not, should we provide guidance regarding how advisers can identify prospective investors? Should we clarify how advisers that use intermediaries, investment consultants, or other third parties to introduce prospective investors would comply with the proposed rule? For example, should we state that advisers must treat the intermediaries, investment consultants, or other third parties as the prospective investor in these circumstances? Should the definition include prospective transferees? Why or why not?

• The proposed rule would require the adviser to provide the written notice ''prior to the investor's investment in the private fund.'' Should we prescribe how far in advance of the investment an adviser must provide such notice? For example, should we require an adviser to provide the written notice at least two business days prior to the date of investment? Should such period be longer or shorter? If so, why? Should the proposed rule require advisers to provide notice to prospective investors within a certain number of days before the investor submits its complete subscription agreement (or equivalent)? Alternatively, should the proposed rule require the adviser to provide the notice at the time an investor receives the private fund's offering and organizational documents (*e.g.,* limited partnership agreement, private placement memorandum)? Should we instead require that notice be sent prior to some other action or event? If so, what action or event and why? Should the proposed rule require advisers to update disclosure they previously provided, for example, to include preferential treatment that an adviser granted after some investors decided to invest, but before closing?

• What impact would the advance written notice requirement have on ''most favored nation'' clauses (''MFN clauses'') granted to other fund investors? [203]

[201] *See* proposed rule 211(h)(2)–3(b).

[202] *See* CFA Institute Global Investment Performance Standards for Firms: Glossary, CFA Institute (2020) (defining ''prospective investor'').

[203] In an MFN clause, an adviser or its related person generally agrees to provide an investor with contractual rights or benefits that are equal to or

Continued

• Should the rule require disclosure of all preferential treatment, as proposed, or should the rule have a narrower or broader scope?

• Should the proposed rule require the adviser to disclose how it memorialized the preferential treatment (*e.g.,* formal written side letter, email)?

• The proposed rule would require the adviser to provide *written* notice. Should the proposed rule instead allow advisers to disclose this information orally and keep a record evidencing such oral disclosure? Why or why not?

• The proposed rule would require the adviser to provide notice on an annual basis to current investors, if the adviser or its related persons provided any preferential treatment to other investors in the same private fund since the last written notice. The proposed rule does not specify whether the adviser must provide this on a calendar year basis, the adviser's fiscal year, or on a rolling annual basis. Should the rule specify precisely when the annual period begins and ends? Why or why not? If so, what should the beginning and ending dates be? Instead of an annual notice, should we require an adviser to provide the notice within 30 days of providing any new preferential treatment to an investor in the fund?

• Should we require an adviser to document the years during which it has not provided any preferential treatment and therefore need not distribute or provide a written notice to current investors or prospects, respectively? Why or why not? If an adviser has not provided preferential treatment to any investors, or has not done so during the applicable time period, should we require an adviser to send current investors and prospects a written notice confirming that it does not have any preferential treatment to disclose? Why or why not?

• The proposed rule would require advisers to provide or distribute a written notice that provides ''specific'' information about preferential treatment. Should the proposed rule define ''specific'' or use another term to describe the required level of detail?

1. Recordkeeping for Preferential Treatment

We propose amending rule 204–2 under the Advisers Act to require advisers registered with the Commission to retain books and records to support their compliance with the proposed preferential treatment rule.[204] In connection with the written notices required by proposed rule 211(h)(2)–3, advisers would be required to retain copies of all written notices sent to current and prospective investors in a private fund pursuant to that rule.[205] In addition, advisers would be required to retain copies of a record of each addressee and the corresponding dates sent, addresses, and delivery method for each addressee. These proposed requirements would facilitate our staff's ability to assess an adviser's compliance with the proposed rule and would similarly enhance an adviser's compliance efforts.

We request comment on this aspect of the proposed rule:

• Would the proposed recordkeeping requirement be overly burdensome for advisers? Why or why not?

• Would advisers face more difficulty retaining records regarding prospective investors as compared to retaining records for current investors? Would it be more difficult for advisers to keep track of prospective investors? For example, prospective investors may express interest in a private fund, but may not actually invest. Should we only require advisers to retain records regarding prospective investors that invest in the private fund?

• The books and records rule under the Advisers Act applies to SEC-registered advisers. Should we adopt a recordkeeping obligation that would require other advisers (such as exempt reporting advisers) to retain the written notices that proposed rule 211(h)(2)–3 would require? Why or why not?

III. Discussion of Proposed Written Documentation of all Advisers' Annual Reviews of Compliance Programs

We are proposing to amend the Advisers Act compliance rule to require all SEC-registered advisers to document the annual review of their compliance policies and procedures in writing.[206] We believe that such a requirement would focus renewed attention on the importance of the annual compliance review process. In addition, we believe that the proposed amendment would result in records of annual compliance reviews that would allow our staff to determine whether an adviser has complied with the review requirement of the compliance rule.[207]

The compliance rule currently requires advisers to review, no less frequently than annually, the adequacy of their compliance policies and procedures and the effectiveness of their implementation. The annual review requirement was intended to require advisers to evaluate periodically whether their compliance policies and procedures continue to work as designed and whether changes are needed to assure their continued effectiveness.[208] As we stated in the Compliance Rule Adopting Release, ''the annual review should consider any compliance matters that arose during the previous year, any changes in the business activities of the adviser or its affiliates, and any changes in the Advisers Act or applicable regulations that might suggest a need to revise the policies and procedures.''

Based on staff experience, some investment advisers do not make and preserve written documentation of the annual review of their compliance policies and procedures. The compliance rule does not expressly require written documentation.[209] Our examination staff relies on documentation of the annual review to help the staff understand an adviser's compliance program, determine whether the adviser is complying with the rule, and identify potential weaknesses in the compliance program. Without documentation that the adviser

better than the rights or benefits provided to certain other investors.

[204] Proposed rule 211(h)(2)–3(b).

[205] *See supra* footnote 106 (describing the record retention requirements under the books and records rule). *See also* proposed amendments to rule 204–2(a)(7)(v).

[206] Proposed rule 206(4)–7(b).

[207] *See Compliance Programs of Investment Companies and Investment Advisers,* Investment Advisers Act Release No. 2204 (Dec. 17, 2003) [38 FR 74714 (Dec. 24, 2003)] (''Compliance Rule Adopting Release''). When adopting the compliance rule, the Commission adopted amendments to the books and records rule requiring advisers to make and keep true a copy of the adviser's compliance policies and procedures and any records documenting an adviser's annual review of its compliance policies and procedures. The Commission noted that this recordkeeping requirement was designed to allow our examination staff to determine whether the adviser has complied with the compliance rule. *See also* rule 204–2(a)(17)(i)–(ii).

[208] *See Compliance Programs of Investment Companies and Investment Advisers,* Investment Advisers Act Release No. 2107 (Feb. 5, 2003) [68 FR 7038 (Feb. 11, 2003)] (''Compliance Rule Proposing Release'').

[209] The Commission has identified instances where it alleged no annual review of the compliance program was conducted. *See, e.g., In re du Pasquier & Co., Inc.,* Investment Advisers Act Release No. 4004 (Jan. 21, 2015) (settled action) (alleging that the adviser failed to annually review the adequacy of its compliance policies and procedures and the effectiveness of their implementation); *In re Pekin Singer Strauss Asset Management Inc., et al.,* Investment Advisers Act Release No. 4126 (June 23, 2015) (settled action) (alleging that the adviser failed to complete timely annual compliance program reviews); *In the Matter of Hudson Hous. Capital, LLC,* Investment Advisers Act Release No. 5047 (Sept. 25, 2018) (settled action) (alleging that the adviser failed to review its policies and procedures at least annually); *In the Matter of ED Capital Management, LLC,* Investment Advisers Act Release No. 5344 (Sept. 13, 2019) (settled action) (alleging that the adviser failed to conduct the required annual reviews of its written policies and procedures).

conducted the review, including information about the substance of the review, our staff has limited visibility into the adviser's compliance practices. The proposed amendment to rule 206(4)–7 would establish a written documentation requirement applicable to all advisers.[210]

Proposed rule 206(4)–7(b) does not enumerate specific elements that advisers must include in the written documentation of their annual review. The written documentation requirement is intended to be flexible to allow advisers to continue to use the review procedures they have developed and found most effective. For example, some advisers may review the adequacy of their compliance policies and procedures (or a subset of those compliance policies and procedures) and the effectiveness of their implementation on a quarterly basis. In such a case, we believe that the written documentation of the annual review could comprise written quarterly reports.

The regulations in 17 CFR 270.38a–1 (rule 38a–1 under the Investment Company Act), the compliance rule applicable to registered investment companies and business development companies (collectively ''registered funds''), do not require written documentation of a registered fund's annual review of its compliance policies and procedures.[211] However, rule 38a–1 requires a registered fund's CCO to provide a written report to the registered fund's board of directors, at least annually, that addresses: (i) The operation of the compliance policies and procedures of the registered fund and each investment adviser, principal underwriter, administrator, and transfer agent of the registered fund; (ii) any material changes made to those policies and procedures since the date of the last report; (iii) any material changes to the policies and procedures recommended as a result of the registered fund's annual review of its policies and procedures; and (iv) each material compliance matter that occurred since the date of the last report.[212] With registered funds, written accountability has been helpful to ensure compliance with the Federal securities laws, and the proposed requirements for investment advisers are intended to provide similar benefits.[213] The proposed required written documentation of the annual review under the compliance rule is meant to be made available to the Commission and the Commission staff and, therefore, should promptly be produced upon request.[214] Commission staff has observed claims of the attorney-client privilege, the work-product doctrine, or other similar protections over required records, including any records documenting the annual review under the compliance rule, based on reliance on attorneys working for the adviser in-house or the engagement of law firms and other service providers (*e.g.,* compliance consultants) through law firms.[215] Attempts to shield from, or unnecessarily delay production of any non-privileged record is inconsistent with prompt production obligations and undermines Commission staff's ability to conduct examinations. Prompt access to all records is critical for protecting investors and to an effective and efficient examination program.

We request comment on the proposed amendments to the compliance rule:

- Should we expressly require advisers to document the annual review of their compliance policies and procedures in writing, as proposed? If not, why?
- Should we specify certain elements that must be included in the written documentation of the annual review? For example, should we require the written documentation to address matters similar to those that are required in the chief compliance officer's written report to a registered fund's board of directors pursuant to rule 38a–1 under the Investment Company Act? Despite the limitations of private fund governance mechanisms, as discussed above, should we require the new documentation to be provided to LPACs, directors, or other governing bodies of private funds? Why or why not?
- Are there alternate means to document an adviser's annual review of its compliance program?
- Are there exceptions to the written documentation requirement that we should adopt?

IV. Transition Period and Compliance Date

We are proposing a one-year transition period to provide time for advisers to come into compliance with these new and amended rules if they are adopted. Accordingly, we propose that the compliance date of any adoption of this proposal would be one year following the rules' effective dates, which would be sixty days after the date of publication of the rules in the **Federal Register**.

Staff in the Division of Investment Management is reviewing staff statements, including staff no-action letters and staff interpretative letters, to determine whether any statements, or portions thereof, should be withdrawn or modified in connection with any adoption of this proposal. Upon the adoption of any rule, some letters and other staff statements, or portions thereof, may be moot, superseded, or otherwise inconsistent with the rule and, therefore, would be withdrawn or modified. If interested parties believe that certain letters or other staff statements, or portions thereof, should be withdrawn or modified, they should identify the letter or statement, state why it is relevant to the proposed rule, how it or any specific portion thereof should be treated, and the reason therefor. Interested parties also should explain any concerns with the withdrawal or modification of any staff statements and letters on this topic.

We request comments on the proposed transition period:

- Do commenters agree that a one-year transition period following each

[210] The adviser would be required to maintain the written documentation of its annual review in an easily accessible place for at least five years after the end of the fiscal year in which the review was conducted, the first two years in an appropriate office of the investment adviser. *See* rule 204–2(a)(17)(ii) and (e)(1).

[211] While business development companies (as defined in the Investment Company Act) are exempt from the registration provisions of that Act, we include them within the term ''registered funds'' for ease of reference. *See* 15 U.S.C. 80a–2(a)(48); 15 U.S.C. 80a–6(f). Rule 38a–1(a)(3) under the Investment Company Act requires a registered fund to review, no less frequently than annually, the adequacy of the policies and procedures of the registered fund and of each investment adviser, principal underwriter, administrator, and transfer agent and the effectiveness of their implementation. Rule 38a–1(d) under the Investment Company Act requires a registered fund to maintain any records documenting the fund's annual review.

[212] Rule 38a–1(a)(4)(iii) under the Investment Company Act. For purposes of rule 38a–1, a ''material compliance matter'' is defined as any compliance matter about which the registered fund's board of directors would reasonably need to know to oversee fund compliance, including violations of the Federal securities laws by the registered fund. *See* rule 38a–1(e)(2) under the Investment Company Act.

[213] Our staff has observed that registered funds also generally retain these reports with their board meeting minutes, which aids our staff's ability to assess compliance with rule 38a–1. *See* rule 31a–1(b)(4) under the Investment Company Act (requiring registered investment companies to maintain and keep current certain books, accounts, and other documents, including minute books of directors' or trustees' meetings; and minute books of directors' or trustees' committee and advisory board or advisory committee meetings).

[214] In connection with the written report required under rule 38a–1, the Compliance Rule Adopting Release stated that ''[a]ll reports required by our rules are meant to be made available to the Commission and the Commission staff and, thus, they are not subject to the attorney-client privilege, the work-product doctrine, or other similar protections.'' *See* Compliance Rule Adopting Release, *supra* footnote 207, at n.94.

[215] Staff also has observed delays in production of other non-privileged records. Delays undermine the staff's ability to conduct examinations, and may be inconsistent with production obligations.

rule's effective date if adopted is appropriate? Should the period be shorter or longer? For example, would six months be an appropriate amount of time? Alternatively, would eighteen months be necessary?

- Should the transition period be the same for all of the proposed new and amended rules if adopted? Should we have different compliances dates for each proposed rule? Why or why not, and for which rules?
- Should the transition period be the same for all advisers subject to the proposed rules, if adopted? Alternatively, should we adopt a tiered transition period for smaller or larger entities? For example, should we provide an additional six months in the transition period for smaller entities (or some other shorter or longer period)? How should we define smaller entities for this purpose?
- Should advisers to certain fund types have a longer (or shorter) transition period? Would compliance with some or all of the proposed rules be more complex for advisers to certain fund types, such as private equity, venture capital, real estate or other similar closed-end private funds, than for advisers to other fund types, such as hedge funds or other similar open-end private funds?
- The proposed quarterly statement rule would require advisers to report performance since the fund's inception. Should we allow funds that existed before the compliance date of the proposed rule to include performance information only for periods beginning on or after the proposed rule's compliance date? Should the proposed rule include a maximum period of time that funds that are in existence as of the compliance date must look back in order to report performance, fees, and expenses? Is it common practice for older funds (*e.g.,* hedge fund incepted 30 years ago) to retain records to support that performance? Would it be burdensome for advisers to provide since-inception performance information?

V. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Whenever we engage in rulemaking and are required to consider or determine whether an action is necessary or appropriate in the public interest, section 202(c) of the Advisers Act requires the Commission to consider, in addition to the protection of investors, whether the action would promote efficiency, competition, and capital formation. The following analysis considers, in detail, the potential economic effects that may result from this rulemaking, including the benefits and costs to market participants as well as the broader implications of the proposed rules for efficiency, competition, and capital formation.

Where possible, the Commission quantifies the likely economic effects of its proposed amendments and rules. However, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges of costs. Further, in some cases, quantification would require numerous assumptions to forecast how investment advisers and other affected parties would respond to the proposed amendments and rules, and how those responses would in turn affect the broader markets in which they operate. In addition, many factors determining the economic effects of the proposed amendments and rules would be firm-specific and thus inherently difficult to quantify, such that, even if it were possible to calculate a range of potential quantitative estimates, that range would be so wide as to not be informative about the magnitude of the benefits or costs associated with the proposed rules. Many parts of the discussion below are, therefore, qualitative in nature. As described more fully below, the Commission is providing a qualitative assessment and, where feasible, a quantified estimate of the economic effects.

B. Economic Baseline

The economic baseline against which we evaluate and measure the economic effects of the proposed rules, including its potential effects on efficiency, competition, and capital formation, is the state of the world in the absence of the proposed rules. We consider the current business practices and disclosure practices of private fund advisers, as well as the current regulation and the forms of external monitoring and investor protections that are currently in place. In addition, in considering the current business and disclosure practices, we consider the usefulness of the information that investment advisers provide to investors about the private funds in which those investors invest, including information that may be helpful for deciding whether to invest (or remain invested) in the fund, monitoring an investment in the fund (in relation to fund documents and in relation to other funds), and other purposes. We further consider the effectiveness of the disclosures in providing useful information to the investor. For example, fund disclosures can have direct effects on investors by affecting their ability to assess costs and returns and to identify the funds that align with their investment preferences and objectives. Disclosures can also help investors monitor their private fund advisers' conduct, depending in part on the extent to which private funds lack governance mechanisms that would otherwise help check adviser conduct. Disclosures can therefore influence the matches between investor choices of private funds and preferences over private fund terms, investment strategies, and investment outcomes, with more effective disclosures resulting in improved matches.

1. Industry Statistics and Affected Parties

The proposed quarterly statement, audit, and adviser-led secondary rules would apply to all SEC registered investment advisers (''RIAs'') with private fund clients.[216] Proposed amendments to the books and records rule would also impose corresponding recordkeeping obligations on these advisers.[217] The proposed performance requirements of the quarterly statement rule would vary according to whether the RIA determines the fund is a liquid fund, such as a hedge fund, or an illiquid fund, such as a private equity fund.[218] According to Form ADV data, there are 5,139 such RIAs with private fund clients.

The proposed prohibited activity and preferential treatment rules would apply to all advisers to private funds, regardless of whether the advisers are registered with or reporting as exempt reporting advisers (''ERAs'') to the Commission or one or more state securities commissioners or are otherwise not required to register. Proposed amendments to the books and records rule would also impose corresponding recordkeeping obligations on private fund advisers if they are registered with the Commission.[219] Based on Form ADV data, this would include approximately

[216] *See* proposed rules 206(4)–10, 211(h)(1)–2, 211(h)(2)–2. As discussed above, the proposed rules that pertain to registered investment advisers apply to all investment advisers registered, or required to be registered, with the Commission. *See supra* section II.

[217] *See* proposed rules 204–2(a)(20), (21), (22), and (23).

[218] *See* proposed rules 211(h)(1)–2(d).

[219] *See* proposed rule 204–2(a)(7)(v) (imposing recordkeeping requirements for notices required under the proposed preferential treatment rule).

12,500 advisers to private funds, across RIAs and ERAs.[220]

The proposed amendments to the compliance rule would affect all RIAs, regardless of whether they have private fund clients. According to Form ADV data, there are 15,283 RIAs, across both those who do and do not have private fund clients.

The parties affected by these various proposed rules would include the private fund advisers, advisers to other client types (with respect to the proposed amendments to the compliance rule), private funds, private fund investors, certain other pooled investment vehicles and clients advised by private fund advisers and their related persons, and others to whom those affected parties would turn for assistance in responding to the proposed rules. Private fund investors are generally institutional investors (including, for example, retirement plans, trusts, endowments, sovereign wealth funds, and insurance companies), as well as high net worth individuals. In addition, the parties affected by these various proposed rules could include private fund portfolio investments, such as portfolio companies. For example, certain types of fees, such as accelerated payment fees, would no longer be able to be charged to those portfolio companies.

The relationships between the affected parties are governed in part by current rules under the Advisers Act, as discussed in Section V.B.3. In addition, relationships between funds and investors generally depend on fund governance.[221] Private funds typically lack fully independent governance mechanisms, such as an independent board of directors or LPAC with direct access to fund information, that would help monitor and govern private fund adviser conduct and check possible overreaching. Although some private funds may have LPACs or boards of directors, these types of bodies may not have the necessary independence, authority, or accountability to oversee and consent to these conflicts or other harmful practices as they may not have sufficient access, information, or authority to perform a broad oversight role. Moreover, the interests of one or more private fund investors may not represent the interests of, or may otherwise conflict with the interests of, other investors in the private fund due to business or personal relationships or other private fund investments, among other factors. To the extent investors are afforded governance or similar rights, such as LPAC representation, certain fund agreements permit such investors to exercise their rights in a manner that places their interests ahead of the private fund or the investors as a whole. For example, certain fund agreements state that, subject to applicable law, LPAC members owe no duties to the private fund or to any of the other investors in the private fund and are not obligated to act in the interests of the private fund or the other investors as a whole.[222]

Based on Form ADV filing data between October 1, 2020, and September 30, 2021, 5,139 RIAs and 4,900 ERAs reported that they are advisers to private funds.[223] Based on Form ADV data, hedge funds and private equity funds are the most frequently reported private funds among RIAs, followed by real estate and venture capital funds, as shown. In comparison to RIAs, ERAs have fewer assets under management and are more frequently venture capital (VC) funds, followed by private equity funds and hedge funds, with real estate funds more uncommon.

PRIVATE FUNDS REPORTED

	Registered investment advisers			Exempt reporting advisers		
	Private funds	Feeder funds	Gross assets (billions)	Private funds	Feeder funds	Gross assets (billions)
Any private funds	44,378	12,789	17,470.7	23,940	2,606	5,014.2
Hedge funds	11,508	6,731	8,409.1	2,007	1,318	1,980.9
Private equity funds	18,820	3,803	5,086.0	6,104	645	1,457.3
Real estate funds	4,174	963	804.2	876	187	119.3
Venture capital funds	2,065	163	290.4	13,860	285	996.3
Securitized asset funds	2,273	81	864.0	96	.....	48.4
Liquidity funds	86	7	328.8	11	.....	133.4
Other private funds	5,452	1,048	1,688.1	986	171	278.6

* Source: Form ADV submissions filed between October 1st, 2020 and Sep 30th, 2021. Funds that are listed by both registered investment advisers and SEC-exempt reporting advisers are counted under both categories separately. Gross assets include uncalled capital commitments on Form ADV.

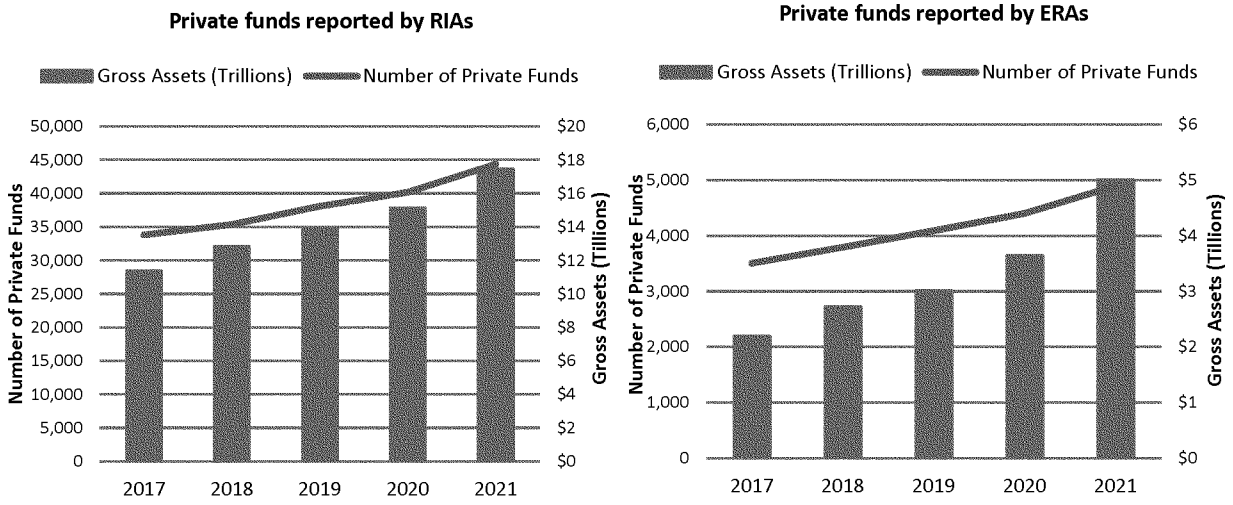
[220] *See infra* footnote 416 (with accompanying text).

[221] *See e.g.,* Lucian Bebchuk, Alma Cohen, and Scott Hirst, The Agency Problems of Institutional Investors, *Journal of Economic Perspectives* (2017). *See also* John Morley, The Separation of Funds and Managers: A Theory of Investment Fund Structure and Regulation, 123 *Yale Law Journal* 1231–1287 (2014); Paul G. Mahoney, Manager-Investor Conflicts in Mutual Funds, 18 *Journal of Economic Perspectives* 161–182 (2004).

[222] We observe that LPACs tend to be limited in their ability to receive disclosures about, oversee, or provide approval or consent for addition, private funds also do not have comprehensive mechanisms for such governance by fund investors.

[223] Form ADV Item 5.F.2 and Item 12.A.

Also based on Form ADV data, the market for private fund investing has grown dramatically over the past five years. For example, the assets under management of private equity funds reported by RIAs on Form ADV during this period grew from $2.6 trillion to $5.1 trillion, or by 96 percent. The assets under management of hedge funds reported by RIAs grew from $6.1 trillion to $8.4 trillion, or by 38 percent.[224] The assets under management of all private funds reported by RIAs grew by fifty-five percent over the past five years from $11 trillion to over $17 trillion,[225] while the number of private funds reported by RIAs grew by thirty-one percent from 33.8 thousand to 44.4 thousand. The assets under management of all private funds reported by ERAs grew by one hundred fifty percent over the past five years from $2 trillion to over $5 trillion, while the number of private funds reported by ERAs grew by forty percent from 3.5 thousand to 4.9 thousand, as shown in the figure below.[226]



2. Sales Practices, Compensation Arrangements, and Other Business Practices of Private Fund Advisers

Advisers have a fiduciary duty to clients, including private fund clients, that is comprised of a duty of care and a duty of loyalty enforceable under the antifraud provision of Section 206.[227] The duty of care includes, among other things: (i) The duty to provide advice that is in the best interest of the client, (ii) the duty to seek best execution of a client's transactions where the adviser has the responsibility to select broker-dealers to execute client trades, and (iii) the duty to provide advice and monitoring over the course of the relationship.[228] The duty of loyalty requires that an adviser not subordinate its client's interests to its own.[229] Private fund advisers are also prohibited from engaging in fraud under the general antifraud and anti-manipulation provisions of the Federal securities laws, including Section 10(b) of the Exchange Act (and rule 10b-5 thereunder) and Section 17(a) of the Securities Act.

Private fund advisers are also subject to rule 206(4)–8 under the Advisers Act, which prohibits investment advisers to pooled investment vehicles, which include private funds, from (1) making any untrue statement of a material fact or omitting to state a material fact necessary to make the statements made, in the light of the circumstances under which they were made, not misleading, to any investor or prospective investor in the pooled investment vehicle; or (2) otherwise engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative with respect to any investor or prospective investor in the pooled investment vehicle. There are no particularized requirements, however, that deal with many of the revised requirements in this proposal. For example, there is no regulation requiring an adviser to disclose multiple different measures of performance to its investors, to refrain from borrowing from a private fund client, to obtain a fairness opinion from an independent opinion provider when leading secondary transactions, or to disclose preferential treatment of certain investors to other investors.

In the absence of more particularized requirements, we have observed business practices of private fund advisers that enrich advisers without providing any benefit of services to the private fund and its underlying investors or create incentives for an adviser to place its own interests ahead of the private fund's interests. For example, as discussed above, some private fund advisers have entered into arrangements with a fund's portfolio investments to provide services which permit the adviser to accelerate the unpaid portion of fees upon the occurrence of certain triggering events, even though the adviser will never provide the contracted-for services.[230] These fees enrich advisers without providing the benefit of any services to

[224] The number of private equity funds reported by RIAs on Form ADV during this period grew from 12,819 to 18,820, or by 47 percent. The number of hedge funds reported by RIAs grew from 11,114 to 11,508, or by 3.5 percent.

[225] As of September 30, 2021. As noted above, the assets under management of registered private fund advisers has since continued to grow, exceeding $18 trillion as of November 31, 2021. *See supra* footnote 6.

[226] *See* Form ADV data.

[227] *See* 2019 IA Fiduciary Duty Interpretation, see also supra footnote 140. Investment advisers also have antifraud liability with respect to prospective clients under section 206 of the Advisers Act, which, among other aspects, applies to transactions, practices, or courses of business which operate as a fraud or deceit upon prospective clients.

[228] *Id.*

[229] *Id.*

[230] *See supra* section II.D.1.

the private fund and its underlying investors.

We have also seen a trend in the industry where certain advisers charge a private fund for fees and expenses incurred by the adviser in connection with the establishment and ongoing operations of its advisory business.[231] We recognize, for example, that certain private fund advisers, most notably for hedge funds that utilize a ''pass-through'' expense model, employ an arrangement where the private fund pays for most, if not all, of the adviser's expenses, and that in exchange, the adviser does not charge a management, advisory, or similar fee (but does charge an incentive or performance fee on net returns of the private fund).[232] Under these or other similar circumstances in which advisers charge private funds fees associated with the adviser's cost of being an investment adviser, investor returns are reduced by the amount of the adviser's overhead and operating costs.

Some investors may not anticipate the performance implications of these disclosed costs, or may avoid investments out of concern that such costs may be present. For those investors, this could lead to a mismatch between investor choices of private funds and their preferences over private fund terms, investment strategies, and investment outcomes, relative to what would occur in the absence of such unexpected or uncertain costs.

In addition, our staff has observed instances in which advisers have entered into agreements that reduce the amount of clawbacks by taxes paid, or deemed to be paid, by the adviser or its owners,[233] and instances in which limited partnership agreements limit or eliminate liability for adviser misconduct.[234] While these agreements are negotiated between fund advisers and investors, as discussed above advisers often have discretion over the timing of fund payments, and so may have greater control over risks of clawbacks than anticipated by investors.[235] As such, reducing the amount of clawbacks by actual, potential, or hypothetical taxes therefore passes an unnecessary and avoidable cost to investors. This cost denies investors the restoration of distributions or allocations to the fund that they would have been entitled to receive in the absence of an excess of performance-based compensation paid to the adviser or a related person. These clawback terms can therefore reduce the alignment between the fund adviser's and investors' interests. Lastly, the elimination of liability for adviser misconduct could reduce or eliminate investor recoveries of losses in connection with misconduct, which could make such misconduct more likely to occur.

We have also observed some cases where private fund advisers have directly or indirectly (including through a related person) borrowed from private fund clients.[236] This practice carries a risk of investor harm because the fund client may be prevented from using borrowed assets to further the fund's investment strategy, and so the fund may fail to maximize the investor's returns. This risk is relatively higher for those investors that are not able to negotiate or directly discuss the terms of the borrowing with the adviser, and for those funds that do not have an independent board of directors or LPAC to review and consider such transactions.[237]

The staff also has observed harm to investors from disparate treatment of investors in a fund. For example, our staff has observed scenarios where an adviser grants certain private fund investors and/or investments in substantially similar pools of assets with better liquidity terms than other investors.[238] These preferential liquidity terms can disadvantage other fund investors or investors in a substantially similar pool of assets if, for instance, the preferred investor is able to exit the private fund or pool of assets at a more favorable time.[239] Similarly, private fund advisers, in some cases, disclose information about a private fund's investments to certain, but not all, investors in a private fund, which can result in profits or avoidance of losses among those who were privy to the information beforehand at the expense of those kept in the dark.[240] Currently, many investors need to engage in their own research regarding what terms may be obtained from advisers, as well as whether other investors are likely to be obtaining better terms than those they are initially offered.

The staff also has observed harm to investors when advisers lead multiple private funds and other clients advised by the adviser or its related persons to invest in a portfolio investment.[241] In those instances, the staff observed advisers allocating fees and expenses among those clients on a non pro rata basis, resulting in some fund clients (and investors in those funds) being charged relatively higher fees and expenses than other clients.[242] Advisers may make these decisions in order to avoid charging some portion of fees and expenses to funds with insufficient resources to bear its pro rata share of expenses related to a portfolio investment (whether due to insufficient reserves, the inability to call capital to cover such expenses, or otherwise) or funds in which the adviser has greater interests.

We understand that it can be difficult for investors to have full transparency into the scenarios described above relating to conflicts of interest. For example, the Commission has pursued enforcement actions against private fund advisers where the adviser failed to inform investors about benefits that the advisers obtained from accelerated monitoring fees.[243] Further, the Commission also has pursued enforcement actions against private fund advisers in other circumstances in which investors were not informed of relevant conflicts of interest.[244]

While our staff has observed that some advisers have begun to more fully disclose sales practices, conflicts of interests, and compensation schemes to investors and the practices that are associated with them, we believe that it may be hard even for sophisticated investors with full and fair disclosure, to understand the future implications of terms and practices related to these practices at the time of investment and during the investment. Further, some investors may find it relatively difficult to negotiate agreements that would fully protect them from bearing unexpected portions of fees and expenses or from other decreases in the value of investments associated with the above-described practices. For example, some forms of negotiation may occur through repeat-dealing that may not be available to some smaller private fund investors.[245] For any investors affected

[231] *See supra* section II.D.2.

[232] *See, e.g.,* Eli Hoffmann, Welcome To Hedge Funds' Stunning Pass-Through Fees, *Seeking Alpha* (Jan. 24, 2017), *available at https://seekingalpha.com/article/4038915-welcome-to-hedge-funds-stunning-pass-through-fees.*

[233] *See supra* section II.D.3.

[234] *See supra* section II.D.4.

[235] *See supra* section II.D.3.

[236] *See supra* section II.D.6.

[237] *Id.*

[238] *See supra* section II.E.

[239] *Id.*

[240] *Id.*

[241] *See supra* section II.D.5.

[242] *Id.*

[243] *See supra* footnote 10 (with accompanying text).

[244] *Id.*

[245] A study of leveraged buyout transactions from 1990–2012 found that accelerated monitoring fees had been charged in 28 percent of leveraged buyout transactions, representing 15 percent of total fees charged in those transactions. *See* Ludovic Phalippou, Christian Rauch, and Marc Umber,

Continued

by these issues, including potentially sophisticated investors, there may be mismatches between investor choices of private funds and preferences over private fund terms, investment strategies, and investment outcomes, relative to what would occur in the absence of such unexpected or uncertain costs.

Our staff has also observed that investors are generally not provided with detailed information about these preferential terms.[246] This lack of transparency prevents investors from understanding the scope or magnitude of preferential terms granted, and as a result, may prevent such investors from requesting additional information on these terms or other benefits that certain investors, including the adviser's related persons or large investors, receive. In this case, these investors may simply be unaware of the types of contractual terms that could be negotiated. To the extent this lack of transparency affects investor choices of where to allocate their capital, it can result in mismatches between investor choices of private funds and their preferences over private fund terms, investment strategies, and investment outcomes.

3. Private Fund Adviser Fee, Expense, and Performance Disclosure Practices

Current rules under the Advisers Act do not require advisers to provide quarterly statements detailing fees and expenses (including fees and expenses paid to the adviser and its related persons by portfolio investments) to private fund clients or to fund investors. The custody rule does, however, generally require advisers whose private fund clients are not undergoing a financial statement audit to have a reasonable basis for believing that the qualified custodians that maintain private fund client assets provide quarterly account statements to the fund's limited partners. Those account statements may contain some of this information, though in our experience adviser fees and expenses typically are not presented with the level of specificity the proposed quarterly statement rule would require. In addition, Form ADV Part 2A (the ''brochure'') requires certain information about an adviser's fees and compensation. For example, Part 2A, Item 6 of Form ADV requires an adviser to disclose in its brochure whether the adviser accepts performance-based fees, whether the adviser manages both accounts that are charged a performance-based fee and accounts that are charged another type of fee, and any potential conflicts. Although the brochure is not required to be delivered to investors in a private fund, the information on Form ADV is available to the public, including private fund investors, through the Commission's Investment Adviser Public Disclosure (''IAPD'') website.[247] We understand that many prospective fund investors obtain the brochure and other Form ADV data through the IAPD public website.

Similarly, there currently are no requirements under current Advisers Act rules for advisers to provide investors with a quarterly statement detailing private fund performance. Although our recently adopted marketing rule contains requirements that pertain to displaying performance information and providing information about specific investments in adviser advertisements, these requirements do not *compel* the adviser to provide performance information to all private fund clients or investors. Rather, the requirements apply when an adviser *chooses* to include performance or address specific investments within an advertisement.[248]

Within this framework, advisers have exercised discretion in responding to the needs of private fund investors for periodic statements regarding fees, expenses, and performance or similar information on their current investments.[249] Broadly, current investors in a fund rely on this information in determining whether to invest in subsequent funds and investment opportunities with the same adviser, or to pursue alternative investment opportunities. When fund advisers raise multiple funds sequentially, they often consider current investors to also be prospective investors in their subsequent funds, and so may make disclosures to motivate future capital commitments. This has led to the development of diverse approaches to the disclosure of fees, expenses, and performance.[250] A private fund adviser may agree, contractually or otherwise, to provide disclosures to a fund investor, and on the details of these disclosures, at the time of the investment or subsequently. A private fund adviser also may provide such information in the absence of an agreement. The format, scope and reporting intervals of these disclosures vary across advisers and private funds.[251] Some disclosures provide limited information while others are more detailed and complex. Investors may, as a result, find it difficult to assess and compare alternative fund investments, which can make it harder to allocate capital among competing fund investments or among private funds and other potential investments. Limitations in required disclosures by advisers may therefore result in mismatches between investor choices of private funds and their preferences over private fund terms, investment strategies, and investment outcomes.

While a variety of practices are used, as the market for private fund investing has grown, some patterns have emerged. We understand that most private fund advisers currently provide current investors with quarterly reporting, and many private fund advisers contractually agree to provide fee, expense, and performance reporting to current investors.[252] Further, advisers typically provide information to existing investors about private fund fees and expenses in periodic financial statements, schedules, and other reports under the terms of the fund documents.[253]

However, reports that are provided to investors may report only aggregated expenses, or may not provide detailed information about the calculation and implementation of any negotiated rebates, credits, or offsets.[254] Investors may use the information that they receive about their fund investments to monitor the expenses and performance

Private Equity Portfolio Company Fees, 129 *Journal of Financial Economics,* 559–585 (2018).

[246] *See supra* section II.E.

[247] Advisers generally are required to update disclosures on Form ADV on both an annual basis, or when information in the brochure becomes materially inaccurate. Additionally, although advisers are not required to deliver the Form ADV Part 2A brochure to private fund investors, many private fund advisers choose to provide the brochure to investors as a best practice.

[248] While the marketing rule became effective as of May 4, 2021, the Commission has set a compliance date of November 4, 2022 (eighteen months following the effective date) to give advisers sufficient time to comply with the provisions of the amended rules. As a result, while some advisers may have begun to comply with the marketing rule, some advisers may not currently be in compliance with the marketing rule. As discussed above, the marketing rule and its specific protections would generally not apply in the context of a quarterly statement. *See supra* footnote 62.

[249] *See supra* section II.B.1 (regarding the role of governance mechanisms in the relationship between the fund and the investors).

[250] *See, e.g.,* William W Clayton, Public Investors, Private Funds, and State Law, 72 *Baylor Law Review* 294 (BYU Law Research Paper No. 20–13) (July 2020), *available at: https://ssrn.com/abstract=3573773.*

[251] One observer of the variation in reporting practices across funds has suggested the use of a standardized template for this purpose. *See, e.g.,* Reporting Template, The Institutional Limited Partners Association, *available at https://ilpa.org/reporting-template/.* ILPA is a trade group for investors in private funds.

[252] *See supra* section II.A.1, II.A.2.

[253] *Id.*

[254] *See supra* section II.A.

from those investments. Their ability to measure and assess the impact of fees and expenses on their investment returns depends on whether, and to what extent, they are able to receive detailed disclosures regarding those fees and expense and regarding fund performance. Some investors currently do not receive such detailed disclosures, and this reduces their ability to monitor the performance of their existing fund investment or to compare it with other prospective investments.

In other cases, adviser reliance on exemptions from specific regulatory burdens for other regulators can lead advisers to make certain quarterly disclosures. For example, while we believe that many advisers to hedge funds subject to the jurisdiction of the U.S. Commodity Futures Trading Commission (''CFTC'') rely on an exemption provided in CFTC Regulation § 4.13 from the requirement to register with CFTC as a ''commodity pool operator,'' some may rely on other CFTC exemptions, exclusions or relief. Specifically, we believe that some advisers registered with the CFTC may operate with respect to a fund in reliance on CFTC Regulation § 4.7, which provides certain disclosure, recordkeeping and reporting relief and to the extent that the adviser does so, the adviser would be required to, no less frequently than quarterly, prepare and distribute to pool participants statements that present, among other things, the net asset value of the exempt pool and the change in net asset value from the end of the previous reporting period.

In addition, information about advisers' fees and about expenses is often included in advisers' marketing documents, or included in the fund documents. Many advisers to private equity funds and other funds that would be determined to be illiquid funds under the proposed rule provide prospective investors with access to a virtual data room for the fund, containing the fund's offering documents (including categories of fees and expenses that may be charged), as well as the adviser's brochure and other ancillary items, such as case studies.[255] These advisers meet the contractual and other needs of investors for updated information by updating the documents in the data room. Many advisers to funds that would be considered liquid funds under the proposed rule, such as hedge funds, tend not to use data rooms. They instead take the approach of sending email or using other methods to convey updated information to investors. For instance, prior to closing on a prospective investor's investment, some advisers send out pre-closing email messages containing updated versions of these and other documents. While these data rooms and email communications are therefore limited in their use for disclosing ongoing fees and expenses over the life of the fund, prospective investors at the start of the life of a fund, or at or before the time of their investment, may use this information in conducting due diligence, in deciding whether to seek to negotiate the terms of investment, and ultimately in deciding whether to invest in the adviser's fund.

The adviser's and related persons' rights to compensation, which are set forth in fund documents, vary across fund types and advisers and can be difficult to quantify at the time of the initial investment. For example, advisers of private equity funds generally receive a management fee (compensating the adviser for bearing the costs relating to the operation of the fund and its portfolio investment) and performance-based compensation (further incentivizing advisers to maximize investor value).[256] Performance-based compensation arrangements in private equity funds typically require that investors recoup capital contributions plus a minimum annual return (called the ''hurdle rate'' or ''preferred return''), but these arrangements can vary according to the waterfall arrangement used, meaning that distribution entitlements between the adviser (or its related persons) and the private fund investors can depend on whether the proceeds are distributed on a whole-fund (known as European-style) basis or a deal-by-deal (known as American-style) basis.[257] In the whole-fund (European) case, the fund typically allocates all investment proceeds to the investors until they recoup 100% of their capital contributions attributable to both realized and unrealized investments plus their preferred return, at which point fund advisers typically begin to receive performance-based compensation.[258] In the deal-by-deal (American) case (or modified versions thereof), it is common for investment proceeds from each portfolio investment to be allocated 100% to investors until investors recoup their capital contributions attributable to that specific investment, any losses from other realized investments, and their applicable preferred return, and then fund advisers can begin to receive performance-based compensation from that investment.[259] Under the deal-by-deal waterfall, advisers can potentially receive performance-based compensation earlier in the life of the fund, as successful investments can deliver advisers performance-based compensation before investors have recouped their entire capital contributions to the fund.[260]

Management fee compensation figures and performance-based compensation figures are not widely disclosed or reported,[261] but the sizes of certain of these fees have been estimated in industry and academic literature. For example, one study estimated that from 2006–2015, performance-based compensation alone for private equity funds averaged $23 billion per year.[262] Private fund fees increase as assets under management increase, and the private fund industry has grown since 2015, and as a result private equity management fees and performance-based compensation fees may together

[255] To the extent that a private fund's securities are offered pursuant to 17 CFR 230.500 through 230.508 (Regulation D of the Securities Act) and such offering is made to an investor who is not an ''accredited investor'' as defined therein, that investor must be provided with disclosure documents that generally contain the same type of information required to be provided in offerings under Regulation A of the Securities Act, as well as certain financial statement information. *See* 17 CFR 230.502(b). However, private funds generally do not offer interests in funds to non-accredited investors.

[256] *See supra* section II.A.1.

[257] *See, e.g.,* David Snow, Private Equity: A Brief Overview, *PEI Media* (2007), *available at https://www.law.du.edu/documents/registrar/adv-assign/Yoost_PrivateEquity%20Seminar_PEI%20Media's%20Private%20Equity%20-%20A%20Brief%20Overview_318.pdf. See also supra* footnote 166.

[258] *Id.*

[259] *Id.*

[260] Waterfalls (especially deal-by-deal waterfalls) typically have clawback arrangements to ensure that advisers do not retain carried interest unless investors recoup their entire capital contributions on the whole fund, plus a preferred return. The result is that total distributions to investors and advisers under the two waterfalls can be equal (but may not always be), conditional on correct implementation of clawback provisions. In that case, the key difference in the two arrangements is that deal-by-deal waterfalls result in fund advisers potentially receiving their performance-based compensation faster. However, some deal-by-deal waterfalls may also require fund advisers to escrow their performance-based compensation until investors receive their total capital contributions to the fund plus their preferred return on the total capital contributions. These escrow policies can help secure funds that may need to be available in the event of a clawback. *Id.*

[261] Ludovic Phalipoou, An Inconvenient Fact: Private Equity Returns & The Billionaire Factory *University of Oxford, Said Business School,* (Working Paper), (June 10, 2020), *available at https://ssrn.com/abstract=3623820* or *http://dx.doi.org/10.2139/ssrn.3623820.*

[262] *Id. See also* Division of Investment Management: Analytics Office, Private Funds Statistics Report: Fourth Calendar Quarter 2015, at 5 (July 22, 2016), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2015-q4.pdf.*

currently total over $100 billion dollars in fees per year.[263] Private equity represents $4.2 trillion of the $11.5 trillion dollars in net assets under management by private funds,[264] and so total fees across the private fund industry may be over $200 billion dollars in fees per year.[265]

In addition, advisers or their related persons may receive a monitoring fee for consulting services targeted to a specific asset or company in the fund portfolio.[266] Whether they ultimately retain the monitoring fee depends, in part, on whether the fund's governing documents require the adviser to offset portfolio investment compensation against other revenue streams or otherwise provide a rebate to the fund (and so indirectly to the fund investors).[267] There can be substantial variation in the fees private fund advisers charge for similar services and performances.[268] Ultimately, the fund (and indirectly the investors) bears the costs relating to the operation of the fund and its portfolio investments.[269]

Regarding performance disclosure, advisers typically provide information about fund performance to investors through the account statements, transaction reports, and other reports. Some advisers, primarily private equity fund advisers, also disclose information about past performance of their funds in the private placement memoranda that they provide to prospective investors.

Many standardized industry methods have emerged that private funds rely on to report returns and performance.[270] However, each of these standardized industry methods has a variety of benefits and drawbacks, including differences in the information they are able to capture and their susceptibility to manipulation by fund advisers.

For private equity and other funds that would be determined to be illiquid under the proposed rules, standardized industry methods for measuring performance must contend with the complexity of the timing of illiquid investments. One approach that has emerged for computing returns for private equity and other fund that would be determined to be illiquid funds is the internal rate of return (''IRR'').[271] As discussed above, an important benefit of IRR that drives its use is that IRR can reflect the timing of cash flows more accurately than other performance measures.[272] All else equal, a fund that delivers returns to its investors faster will have a higher IRR.

However, current use of IRR to measure returns has a number of drawbacks, including an upward bias in the IRR that comes from a fund's use of leverage, assumptions about the reinvestment of proceeds, and a large effect on measured IRR from cash flows that occur early in the life of the pool. For example, as discussed above, some private equity funds borrow extensively at the fund level.[273] This can cause IRRs to be biased upwards. Since IRRs are based in part on the length of time between the fund calling up investor capital and the fund distributing profits, private equity funds can delay capital call-ups by first borrowing from fund-level subscription facilities to finance investments.[274] This practice has been used by private equity funds to artificially boost reported IRRs, but investors must pay the interest on the debt used and so can potentially suffer lower total returns.[275]

As for reinvestment assumptions, the IRR as a performance measure assumes that cash proceeds have been reinvested at the IRR over the entire investment period. For example, if a private equity or other fund determined to be illiquid reports a 50% IRR but has exited an investment and made a distribution to investors early in its life, the IRR assumes that the investors were able to reinvest their distribution again at a 50% annual return for the remainder of the life of the fund.[276]

Although IRR remains one of the leading standardized methods of reporting returns at present, these and other drawbacks make IRR difficult as a singular return measure, especially for investors who likely may not understand the limitations of the IRR metric, and the differences between IRR and total return metrics used for public equity or registered investment funds.

Several other measures have emerged for measuring the performance of

[263] Private equity management fees are currently estimated to typically be 1.76 percent and performance-based compensation is currently estimated to typically be 20.3 percent of private equity fund profits. *See, e.g.,* Ashley DeLuce and Pete Keliuotis, How to Navigate Private Equite Fees and Terms, *Callan's Research Café* (October 7, 2020), *available at https://www.callan.com/uploads/2020/12/2841fa9a3ea9dd4dddf6f4daefe1cec4/callan-institute-private-equity-fees-terms-study-webinar.pdf.* Private equity net assets under management as of the fourth quarter of 2020 were approximately $4.2 trillion. Division of Investment Management: Analytics Office, Private Funds Statistics Report: Fourth Calendar Quarter 2020 at 5 (August 4, 2021), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q4.pdf.* Total fees may be estimated by multiplying management fee percentages by net assets under management, and by multiplying performance-based compensation percentages by net assets under management and again by an estimate of private equity annual returns, which may conservatively be assumed to be approximately 10 percent. *See, e.g.,* Michael Cembalest, Food Fight: An Update on Private Equity Performance vs. Public Equity Markets, *J.P. Morgan Asset and Wealth Management* (June 28, 2021), *available at https://privatebank.jpmorgan.com/content/dam/jpm-wm-aem/global/pb/en/insights/eye-on-the-market/private-equity-food-fight.pdf.*

[264] *See* Division of Investment Management: Analytics Office, Private Funds Statistics Report: Fourth Calendar Quarter 2020 at 5 (August 4, 2021), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q4.pdf.*

[265] For example, hedge fund management fees are currently estimated to typically be 1.4 percent per year and performance-based compensation is currently estimated to typically be 16.4 percent of hedge fund profits, approximately consistent with private equity fees. *See, e.g.* Leslie Picker, Two and Twenty is Long Dead: Hedge Fund Fees Fall Further Below Onetime Industry Standard, CNBC, *available at https://www.cnbc.com/2021/06/28/two-and-twenty-is-long-dead-hedge-fund-fees-fall-further-below-one-time-industry-standard.html* (citing HRF Microstructure Hedge Fund Industry Report Year End 2020). Hedge funds as of the fourth quarter of 2020 were represented another approximately $4.7 trillion in net assets under management. *See* Division of Investment Management: Analytics Office, Private Funds Statistics Report: Fourth Calendar Quarter 2020 at 5 (August 4, 2021), *available at https://www.sec.gov/divisions/investment/private-funds-statistics/private-funds-statistics-2020-q4.pdf.*

[266] *See e.g.,* Ludovic Phalippou, Christian Rauch, and Marc Umber, Private Equity Portfolio Company Fees, 129 (3) *Journal of Financial Economics,* 559–585 (2018).

[267] *See supra* section II.A.1. There may be certain economic arrangements where only certain investors to the fund receive credits from rebates.

[268] *See e.g.,* Juliane Begenau and Emil Siriwardane, How Do Private Equity Fees Vary Across Public Pensions?, 20–073 *Harvard Business School* (Working Paper) (January 2020) (Revised February 2021) (concluding that a sample of public pension funds investing in a sample of private equity funds would have received an average of an additional $8.50 per $100 invested had they received the best observed fees in the sample); Tarun Ramadorai and Michael Streatfield, Money for Nothing? Understanding Variation in Reported Hedge Fund Fees, *Paris December 2012 Finance Meeting EUROFIDAI–AFFI Paper,* (March 28, 2011) (finding that a sample of hedge fund advisers, management fees ranging from less than .5 percent to over 2 percent and finding incentive fees ranging from less than 5 percent to over 20 percent, with no detectible difference in performance by funds with different management fees and only modest evidence of higher incentive fees yielding higher returns), *available at https://ssrn.com/abstract=1798628* or *http://dx.doi.org/10.2139/ssrn.1798628.*

[269] *See supra* section II.A.1, II.D.1.

[270] As discussed above, certain factors are currently used for determining how certain types of private funds should report performance under U.S. GAAP. *See supra* footnote 71 (with accompanying text).

[271] *See supra* section II.A.2.b.

[272] *Id.*

[273] *Id.*

[274] *Id.*

[275] *See e.g.,* James F. Albertus & Matthew Denes, Distorting Private Equity Performance: The Rise of Fund Debt, Frank Hawkins Kenan Institute of Private Enterprise Report (June 2019), *available at https://www.kenaninstitute.unc.edu/wp-content/uploads/2019/07/DistortingPrivateEquityPerformance_07192019.pdf.*

[276] *See e.g.,* Oliver Gottschalg and Ludovic Phalippou, The Truth About Private Equity Performance, *Harvard Business Review* (Dec. 2007), *available at https://hbr.org/2007/12/the-truth-about-private-equity-performance.*

private equity and other funds that would be determined to be illiquid under the proposal. These measures compensate for some of the shortcomings of IRR at the cost of their own drawbacks. Multiple of invested capital (MOIC), used by private equity funds, is the sum of the net asset value of the investment plus all the distributions received divided by the total amount paid in. MOIC is simple to understand in that it is the ratio of value received divided by money invested, but has a key drawback that, unlike IRR, MOIC does not take into account the time value of money. Another measure, Public Market Equivalent (''PME''), also used by private equity and other funds determined to be illiquid, is sometimes used to compare the performance of a fund with the performance of an index.[277] The measure is an estimate of the value of fund cash flows relative to the value of a public market index. Relative to a given benchmark, differences in PME can indicate differences in the performance of different private fund investments. However, the computation of the PME for a fund requires the availability of information about fund cash flows including their timing and magnitude.

Regardless of the performance measure applied, another fundamental difficulty in reporting the performance of funds determined to be illiquid is accounting for differences in realized and unrealized gains. Funds determined to be illiquid funds generally pursue longer-term investments, and reporting of performance before the fund's exit requires estimating the unrealized value of ongoing investments.[278] There are often multiple methods that may be used for valuing an unrealized illiquid investment. As discussed above, the valuations of these unrealized illiquid investments are typically determined by the adviser and, given the lack of readily available market values, can be challenging. Such methods may rely on unobservable models and other inputs.[279] Because advisers are typically evaluated (and, in certain cases, compensated) based on the value of these illiquid investments, unrealized valuations are at risk of being inflated, such that fund performance may be overstated.[280] Some academic studies have found broadly that private equity performance is overstated, driven in part by inflated accounting of ongoing investments.[281]

Other approaches tend to be used for evaluating the performance of hedge funds and other liquid funds. In particular, a fund's alpha is its excess return over a benchmark index of comparable risk. A fund's Sharpe ratio is its excess return above the risk-free market rate divided by the investment's standard deviation of returns. Many, but not all, hedge funds disclose these and other performance measures, including net returns of the fund. Many hedge fund-level performance metrics can be calculated by investors directly using data on the fund's historical returns, by either combining with publicly available benchmark index data (in the case of alpha) or by combining with an estimate of the standard deviation of the fund's returns (in the case of the Sharpe ratio). Despite these detailed methods, public data on hedge fund performance reporting may also be biased, because hedge funds choose whether and when to make their performance results publicly available.[282]

While the Commission believes that many advisers currently select from these varying standardized industry methods in order to prepare and present performance information, the difficulty in measuring and reporting returns on a basis comparable with respect to risk, coupled with the potentially high fees and expenses associated with these funds, can present investors with difficulty in monitoring and selecting their investments. Specifically, without disclosure of detailed performance measures and accounting for the impact of risk, debt, the varying impact of realized and unrealized gains, performances across funds can be highly overstated or otherwise manipulated, and so impossible to compare.[283]

4. Fund Audits and Fairness Opinions

Currently under the custody rule, some private fund advisers may obtain financial statement audits as an alternative to the requirement of the rule that an RIA with custody of client assets obtain an annual surprise examination from an independent public accountant.[284] This incentivizes registered private fund advisers to have the financial statements of their private fund clients audited. Advisers of funds that obtain these audits, regardless of the type of fund, are thus able to provide fund investors with reasonable assurances of the accuracy and completeness of the fund's financial statements and, specifically, that the financial statements are free from material misstatements.[285]

Also under the custody rule, an adviser's choice for a fund to obtain an external financial statement audit (in lieu of a surprise examination) may depend on the benefit of the audit from the adviser's perspective, including the benefit of any assurances that an audit might provide investors about the reliability of the financial statement. The adviser's choice also may depend on the cost of the audit, including fees and expenses.

Based on Form ADV data and as shown below, more than 90 percent of the total number of hedge funds and private equity funds that are advised by RIAs currently undergo a financial statement audit, though such audits are not necessarily always by a PCAOB-registered independent public accountant that is subject to regular inspection.[286] Other types of funds

[277] *See e.g.,* Robert Harris, Tim Jenkinson and Steven Kaplan, Private Equity Performance: What Do We Know?, 69 (5) *Journal of Finance* 1851 (Mar. 27, 2014), *available at https://onlinelibrary.wiley.com/doi/full/10.1111/jofi.12154*; Steven Kaplan and Antoinette Schoar, Private Equity Performance: Returns, Persistence, and Capital Flows, 60 (5) *Journal of Finance* (Aug. 2005), *available at http://web.mit.edu/aschoar/www/KaplanSchoar2005.pdf.*

[278] *See supra* section II.A.2.b.

[279] *Id.*

[280] *Id.*

[281] *See e.g.,* Ludovic Phalippou and Oliver Gottschalg, The Performance of Private Equity Funds, 22 (4) *The Review of Financial Studies* 1747–1776 (Apr. 2009).

[282] *See e.g.,* Philippe Jorion and Christopher Schwarz, The Fix Is In: Properly Backing Out Backfill Bias, 32 (12) *The Society For Financial Studies* 5048–5099 (Dec. 2019); see also Nickolay Gantchev, The Costs of Shareholder Activism: Evidence From A Sequential Decision Model, 107 *Journal of Financial Economics* 610–631 (2013).

[283] *See, e.g.,* Ludovic Phalippou and Oliver Gottschalg, The Performance of Private Equity Funds, 22 (4) *The Review of Financial Studies,* 1747–1776 (Apr. 2009); Michael Cembalest, Food Fight: An Update on Private Equity Performance vs. Public Equity Markets, *J.P. Morgan Asset and Wealth Management* (June 28, 2021), *available at https://privatebank.jpmorgan.co/content/dam/jpm-wm-aem/global/pb/en/insights/eye-on-the-market/private-equity-food-fight.pdf.*

[284] *See supra* section II.B; rule 206(4)–2(b)(4). The staff has stated that, in order to meet the requirements of rule 206(4)–2(b)(4), these financial statements must be prepared in accordance with U.S. GAAP or, for certain non-U.S. funds and non-U.S. advisers, prepared in accordance with other standards, so long as they contain information substantially similar to statements prepared in accordance with U.S. GAAP, with material differences reconciled. *See* Staff Responses to Questions About the Custody Rule, *available at https://www.sec.gov/divisions/investment/custody_faq_030510.htm.*

[285] *See, e.g.,* AS 2301: The Auditor's Responses to the Risks of Material Misstatement, PCAOB, *available at https://pcaobus.org/oversight/standards/auditing-standards/details/AS2301*; AU–C Section 240: Consideration of Fraud in a Financial Statement Audit, AICPA (2021), *available at https://us.aicpa.org/content/dam/aicpa/research/standards/auditattest/downloadabledocuments/au-c-00240.pdf.*

[286] Rule 206(4)–2(a)(4) requires that an adviser that is registered or required to be registered under Section 203 of the Act with custody of client assets to obtain an annual surprise examination from an independent public accountant. An adviser to a pooled investment vehicle that is subject to an annual financial statement audit by a PCAOB-registered independent public accountant that is

Continued

advised by RIAs undergo financial statement audits with similarly high frequency, with the exception of securitized asset funds, of which fewer than 20 percent are audited according to the recent ADV data.

Fund type	Total funds	Unaudited funds	Unaudited %	Audited %
Hedge Fund	11,508	431	3.7	96.3
Liquidity Fund	86	10	11.6	88.4
Other Private Fund	5,452	545	10.0	90.0
Private Equity Fund	18,820	1,167	6.2	93.8
Real Estate Fund	4,174	518	12.4	87.6
Securitized Asset Fund	2,273	1,931	85.0	15.0
Venture Capital Fund	2,065	380	18.4	81.6
Unique Totals	44,378	4,982	11.2	88.8

Source: Form ADV, Schedule D, Section 7.B.(1) filed between Oct 1st, 2020 and Sep 30th, 2021.

These audits, while currently valuable to investors, do not obviate the issues with fee, expense, and performance reporting discussed above.[287] First, as shown in the table above, not all funds advised by RIAs currently undergo annual financial statement audits. Second, statements regarding fees, expenses, and performance tend to be more frequent, and thus more timely, than audited annual financial statements. Lastly, more frequent fee, expense, and performance disclosures can include incremental and more granular information that would be useful to investors and that would not typically be included in an annual financial statement.[288]

Regarding fairness opinions, our staff has observed a recent rise in adviser-led secondary transactions where an adviser offers fund investors the option to sell their interests in the private fund or to exchange them for new interests in another vehicle advised by the adviser.[289] We understand that some, but not all, advisers obtain fairness opinions in connection with these transactions that typically address whether the price offered is fair. These fairness opinions provide investors with some third-party assurance as a means to help protect participating investors.

5. Books and Records

The books and records rule includes requirements for recordkeeping to promote, and facilitate internal and external monitoring of, compliance. For example, the books and records rule requires advisers registered or required to be registered under Section 203 of the Act to make and keep true, accurate and current certain books and records relating to their investment advisory businesses, including advisory business financial and accounting records, and advertising and performance records.[290] Advisers are required to maintain and preserve these records in an easily accessible place for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.[291]

6. Documentation of Annual Review Under the Compliance Rule

Under the Advisers Act compliance rule, advisers registered or required to be registered under Section 203 of the Act must review no less frequently than annually the adequacy of their compliance policies and procedures and the effectiveness of their implementation. Currently, there is no requirement to document that review in writing.[292] This rule applies to all investment advisers, not just advisers to private funds.[293] We understand that many investment advisers routinely make and preserve written documentation of the annual review of their compliance policies and procedures, even while the compliance rule does not require such written documentation. Many advisers retain such documentation for use in demonstrating compliance with the rule during an examination by our Division of Examinations. However, based on staff experience, we understand that not all advisers make and retain such documentation of the annual review.

C. Benefits and Costs

1. Overview and Broad Economic Considerations

Private fund investments can be opaque, and we have observed that investors lack sufficiently detailed information about fund fees and expenses and the preferred terms granted to certain investors and often lack sufficient transparency into how private fund performance is calculated. In addition, we have observed that certain sales practices, conflicts of interest, and compensation schemes are either not transparent to investors or can be harmful and have significant negative effects on private fund returns.

The proposed rules would (a) require registered investment advisers to provide certain disclosures in quarterly statements to private fund investors, (b) require all investment advisers, including those that are not registered with the Commission, to make certain disclosures of preferential terms offered to prospective and current investors, (c) prohibit all private fund advisers, including those that are not registered with the Commission, from engaging in certain activities with respect to the private fund or any investor in that private fund, (d) require a registered private fund adviser to obtain an annual financial statement audit of a private fund and, in connection with an adviser-led secondary transaction, a fairness opinion from an independent opinion provider, and (e) impose further

subject to regular inspection is not, however, required to obtain an annual surprise examination if the vehicle distributes the audited financial statements prepared in accordance with generally accepted accounting principles to the pool's investors within 120 days of the end of its fiscal year. *See* rule 206(4)–2(b)(4).

[287] *See supra* section V.B.3.

[288] For example, annual financial statements may not include both gross and net IRRs and MOICs, separately for realized and unrealized investments, and without the impact of fund-level subscription facilities. Annual financial statements may also vary in the level of detail provided for portfolio investment-level compensation. *See, e.g.,* Illustrative Financial Statements: Private Equity Funds, *KPMG* (November 2020), *available at https://audit.kpmg.us/content/dam/advisory/en/pdfs/2020/financial-statements-private-equity-funds-2020.pdf*; Illustrative Financial Statements: Hedge Funds, *KPMG* (November 2020), *available at https://audit.kpmg.us/content/dam/advisory/en/pdfs/2020/financial-statements-hedge-funds-2020.pdf.*

[289] *See supra* section II.B.

[290] *See* rule 204–2 under the Advisers Act.

[291] *See* rule 204–2(e)(1) under the Advisers Act.

[292] Advisers Act rule 206(4)–7.

[293] *Id.*

requirements, including certain requirements that apply to all fund advisers, to enhance the level of regulatory and other external monitoring of private funds and other clients.

Without Commission action, private funds and private fund advisers would have limited abilities and incentives to implement effective reform. First, it may be difficult for private funds to adopt a common, standardized set of detailed disclosures and practices. This is because investors and advisers compete and negotiate independently of each other, and also because of the substantial complexity of information that fund advisers maintain on their funds and may potentially disclose. For example, and as discussed above, developing an industry standard on fee and expense disclosures would require independent and competing investors and advisers to determine which of management fees, fund expenses, performance-based compensation, monitoring fees, and more should be disclosed and at what frequency.[294] Investors and advisers would face substantial costs in developing a single industry standard that encompasses all of the dimensions considered in this proposal.

Second, fund adviser incentives to develop and implement reforms, such as developing more detailed disclosures, are limited by principal-agent problems that are inherent to the relationship between fund advisers and clients.[295] Advisers to private funds can potentially engage in opportunistic behavior (''hold up'') toward the client in which they exploit their informational advantage or bargaining power over the client, after the client has entered into the relationship.[296] Advisers may also face scenarios in which they have conflicts of interest between certain investors and their own interests (or ''conflicting arrangements''), reducing their incentives to act in the investors' best interests. Advisers may not have sufficient incentives and abilities to commit to a solution to these problems with existing governance mechanisms. These problems of information asymmetry and post-contractual hold-up are amplified by the inherent discretion that private fund advisers have over what information to disclose to prospective investors and the complexity of the disclosures that they provide. In addition, the incentives of advisers to provide investors with transparency are limited and may depend on the investor's scale of operations or relationship with the adviser. For example, the adviser of a private fund may choose not to disclose to smaller investors information regarding the preferred terms that are granted to larger investors, even when those terms are material to smaller investor's choices regarding the fund investment.[297]

These issues carry costs and risks of investor harm in financial markets. The relationship between fund adviser and investor can provide valuable opportunities for diversification of investments and an efficient avenue for the raising of capital, enabling economic growth that would not otherwise occur. However, the current opacity of the market can prevent even sophisticated investors from optimally obtaining certain terms of agreement from fund advisers, and this can result in investors paying excess costs, bearing excess risk, receiving limited and less reliable information about investments, and receiving contractual terms that may reduce their returns relative to what they would obtain otherwise. The proposed rules provide a regulatory solution that addresses these problems and enhances the protection of investors. Moreover, the proposed rules do so in a way that does not deprive fund advisers of compensation for their services: Insofar as the proposed rules shift costs and risks back onto fund advisers, the rules strengthen the incentives of advisers to manage risk in the interest of fund investors and, in doing so, does not preclude fund advisers from responding by raising prices of services that are not prohibited and are appropriately, transparently disclosed.

Effects. In analyzing the effects of the proposed rules, we recognize that investors may benefit from access to more useful information about the fees, expenses, and performance of private funds. They also may benefit from more intensive monitoring of funds and fund advisers by third parties, including auditors and persons who prepare assessments of secondary transactions. Finally, investors may benefit from the prohibition of certain sales practices, conflicts of interest, and compensation schemes that result in investor harm. We recognize that the specific provisions of the proposed rules would benefit investors through each of these basic effects.

More useful information for investors. Investors rely on information from fund advisers in deciding whether to continue an investment, how strictly to monitor an ongoing investment or their adviser's conduct, whether to consider switching to an alternative, whether to continue investing in subsequent funds raised by the same adviser, and how to potentially negotiate terms with their adviser on future investments.[298] By requiring detailed and standardized disclosures across certain funds, the proposal would improve the usefulness of the information that current investors receive about private fund fees, expenses, and performance, and that both current and prospective investors receive about preferential terms granted to certain investors. This would enable them to evaluate more easily the performance of their private fund investments, net of fees and expenses, and to make comparisons among investments. Finally, enhanced disclosures would help investors shape the terms of their relationship with the adviser of the private fund. The rules may also improve the quality and accuracy of information received by investors through the proposed audit requirement, both by providing independent checks of financial statements, and by potentially improving advisers' regular performance reporting, to the extent that regular audits improve the completeness and accuracy of fund adviser valuation of ongoing investments.

Enhanced external monitoring of fund investments. Many investors currently rely on third-party monitoring of funds

[294] *See supra* section V.B.3.

[295] The relationship between an adviser and its client or a fund and its investor is generally one where the principal (the client, here a fund) relies on an agent (the investment adviser) to perform services on the principal's behalf. *See* Michael C. Jensen & William H. Meckling, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, 3 *Journal of Financial Economics* 305–360 (1976). To the extent that principals and their agents do not have perfectly aligned preferences and goals, agents may take actions that increase their well-being at the expense of principals, thereby imposing ''agency costs'' on the principals. Principals may seek contractual solutions to the principal-agent problem, although these solutions may be limited in the presence of information asymmetry.

[296] The potential for exploitation can be reduced to the extent that investors have strong rights of exit. *See, e.g.,* John Morley, The Separation of Funds and Managers: A Theory of Investment Fund Structure and Regulation, 123 (5) *Yale Law Journal* 1228–1287 (2014), *available at https://openyls.law.yale.edu/bitstream/handle/20.500.13051/4449/123YaleLJ.pdf?sequence=2&isAllowed=y.*

[297] Results from studies of other markets suggest that mandatory disclosures can cause managers to focus more narrowly on maximizing investor value. *See, e.g.,* Michael Greenstone, Paul Oyer, and Annette Vissing-Jorgensen, Mandated Disclosure, Stock Returns, and the 1964 Security Acts Amendments, 121 (2) *The Quarterly Journal of Economics* 399–460 (May 2006).

[298] For example, private equity fund agreements often allow the adviser to raise capital for new funds before the end of the fund's life, as long as all, or substantially all, of the money in prior fund has been invested. *See, e.g.,* Gompers and Lerner (2004) and Morley (2014, at 1254).

for prevention and timely detection of specific harms from misappropriation, theft, or other losses to investors. This monitoring occurs through audits and surprise exams or audits under the custody rule, as well as through other audits of fund financial statements. The proposal would expand the scope of circumstances requiring third-party monitoring, and investors would benefit to the extent that such expanded monitoring increases the speed of detection of misappropriation, theft, or other losses and so results in more timely remediation. Audits may also broadly improve the completeness and accuracy of fund performance reporting, to the extent these audits improve fund valuations of their ongoing investments. Even investors who rely on the recommendations of consultants, advisers, private banks, and other intermediaries would benefit from the proposal, to the extent the recommendations by these intermediaries are also improved by the protections of expanded third-party monitoring by independent public accountants.

Prohibitions of certain activities that are contrary to public interest and to the protection of investors. Certain practices, even if appropriately disclosed or permitted by private fund offering documents, represent potential conflicts of interest and sources of harm to funds and investors. Because many of these conflicts of interest and sources of harm may be difficult for investors to detect or negotiate terms over, full disclosure of the activities considered in the proposal would not likely resolve the potential investor harm. Further, as discussed above, private funds typically lack fully independent governance mechanisms more common to other markets that would help protect investors from harm in the context of the activities considered.[299] The proposal would benefit investors and serve the public interest by prohibiting such practices.

The costs of the proposed rules would include the costs of meeting the minimum regulatory requirements of the rules, including the costs of providing standardized disclosures and, for some funds, refraining from prohibited activities, and obtaining the required external financial statement audit and fairness opinions. Additional costs would arise from the new compliance requirements of the proposed rules. For example, some advisers would update their compliance programs in response to the requirement to make and keep a record of their annual review of the program's implementation and effectiveness. Certain fund advisers may also face costs in the form of declining revenue, declining in compensation to fund personnel and a potential resulting loss of employees, or losses of investor capital. However, some of these costs, such as declining compensation to fund personnel, would be a transfer to investors depending on the fund's economic arrangement with the adviser.

Below we discuss these benefits and costs in more detail and in the context of the specific elements of the proposal.

2. Quarterly Statements

We are proposing to require a registered investment adviser to prepare a quarterly statement for any private fund that it advises, directly or indirectly, that has at least two full calendar quarters of operating results, and distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless such a quarterly statement is prepared and distributed by another person.[300] The rule provides that, to the extent doing so would provide more meaningful information to the private fund's investors and would not be misleading, the adviser must consolidate the quarterly statement reporting to cover, as defined above, substantially similar pools of assets.[301]

We discuss the costs and benefits of this proposal to require a quarterly account statement below. The Commission notes, however, that it is generally difficult to quantify these economic effects with meaningful precision, for a number of reasons. For example, there is a lack of quantitative data on the extent to which advisers currently provide information that would be required to be provided under the proposed rule to investors. Even if these data existed, it would be difficult to quantify how receiving such information from advisers may change investor behavior. In addition, the benefit from the requirement to provide the mandated performance disclosures would depend on the extent to which investors already receive the mandated information in a clear, concise, and comparable manner. As discussed above, however, we believe that the format and scope of these disclosures vary across advisers and private funds, with some disclosures providing limited information while others are more detailed and complex.[302] As a result, parts of the discussion below are qualitative in nature.

Quarterly Statement—Fee and Expense Disclosure

The proposed rule would require an investment adviser that is registered or required to be registered and that provides investment advice to a private fund to provide to each of the private fund investors with a quarterly statement containing certain information regarding fees and expenses, including fees and expenses paid by underlying portfolio investments to the adviser or its related persons, is distributed to the fund's investors. The quarterly statement would include a table detailing all adviser compensation to advisers and related persons, fund expenses, and the amount of offsets or rebates carried forward to reduce future payments or allocations to the adviser or its related persons.[303] Further, the quarterly statement would include a table detailing portfolio investment compensation and, for portfolio investments in which portfolio investment compensation was received, certain ownership percentage information.[304] The proposed quarterly statement rule would require each quarterly statement to be distributed within 45 days, include clear and prominent, plain English disclosures regarding the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated, and include cross-references to the sections of the private fund's organizational and offering documents that set forth the applicable calculation methodology.[305]

Benefits

The effect of this requirement to provide a standardized minimum amount of information in an easily understandable format would be to lower the cost to investors of monitoring fund fees and expenses, lower the cost to investors of monitoring any conflicting arrangements, improve the ability of investors to negotiate terms related to the governance of the fund, and improve the ability of investors to evaluate the value of services provided by the adviser and other service providers to the fund.

For example, investors could more easily compare actual investment returns to the projections they received prior to investing. As discussed above, any waterfall arrangements governing

[299] *See supra* section V.B.1.

[300] *See supra* section II.A.

[301] *See supra* section II.A.4.

[302] *See supra* section V.B.3.

[303] *See supra* section II.A.1.a.

[304] *See supra* section II.A.1.b.

[305] *See supra* section II.A.1.c.

fund adviser compensation may be complex and opaque.[306] As a result, investor returns from a fund may be affected by whether investors are able to follow, and verify, payments that the fund is making to investors and to the adviser in the form of performance-based compensation, as these payments are often only made after investors have recouped the applicable amount of capital contributions and received any applicable preferred returns from the fund. This information may also help investors evaluate whether they are entitled to the benefit of a clawback. This may particularly be the case for deal-by-deal waterfalls, where advisers may be more likely to be subject to a clawback.[307] As discussed above, even sophisticated investors have reported difficulty in measuring and evaluating compensation made to fund advisers and determining if adviser fees comply with the fund's governing agreements.[308] Any such investors would benefit to the extent that the required disclosures under the proposal address these difficulties.

Investors may also find it easier to compare alternative funds or other investments. As a result, some investors may reallocate their capital among competing fund investments and, in doing so, achieve a better match between their choice of private fund and their preferences over private fund terms, investment strategies, and investment outcomes. For example, investors may discover differences in the cost of compensating advisers across funds that lead them to move their assets into funds (if able to do so) with less costly advisers or other service providers. Investors may also have an improved ability to negotiate expenses and other arrangements in any subsequent private funds raised by the same adviser. Investors may therefore face lower overall costs of investing in private funds as a benefit of the standardization. In addition, an investor may more easily detect errors by reading the adviser's disclosure of any offsets or rebates carried forward to subsequent periods that would reduce future adviser compensation. This information would make it easier for investors to understand whether they are entitled to additional reductions in future periods.

Because the rule requires disclosures at both the private-fund level and the portfolio level, investors can more easily evaluate the aggregate fees and expenses of the fund, including the impact of individual portfolio investments. The private fund level information would allow investors to more easily evaluate their fund fees and expenses relative to the fund governing documents, evaluate the performance of the fund investment net of fees and expenses, and evaluate whether they want to pursue further investments with the same adviser or explore other potential investments. The portfolio investment level information would allow investors to evaluate the fees and costs of the fund more easily in relation to the adviser's compensation and ownership of the portfolio investments of the fund. For example, investors would be able to evaluate more easily whether any portfolio investments are providing compensation that could entitle investors to a rebate or offset of the fees they owe to the fund adviser. This information would also allow investors to compare the adviser's compensation from the fund's portfolio investments relative to the performance of the fund and relative to the performance of other investments available to the investor. To the extent that this heightened transparency encourages advisers to make more substantial disclosures to prospective investors, investors may also be able to obtain more detailed fee and expense and performance data for other prospective fund investments. As a result of these required disclosures, investor choices over private funds may more closely match investor preferences over private fund terms, investment strategies, and investment outcomes.

The magnitude of the effect depends on the extent to which investors do not currently have access to the information that would be reported in the quarterly statement in an easily understandable format. While many advisers not required to send quarterly statements choose to do so anyway, existing quarterly statements are not standardized across advisers and may vary in their level of detail. For example, we understand that many private equity fund governing agreements are broad in their characterization of the types of expenses that may be charged to portfolio investments and that investors receive reports of fund expenses that are aggregated to a level that makes it difficult for investors to verify that the individual charges to the fund are justified.[309] Further, as discussed above, we believe that some investors in hedge funds operating in reliance on the exemption set forth in CFTC Regulation 4.7 may currently receive quarterly statements that present, among other things, the net asset value of the exempt pool and the change in net asset value from the end of the previous reporting period.[310] While this could have the effect of mitigating some of the benefits of the proposed rule, we do not believe that reports provided to investors pursuant to CFTC Regulation § 4.7 require all of the information, nor their standardized presentation, as required under the proposed rule. The magnitude of the effect also depends on how investors would use the fee and expense information in the quarterly statement. In addition, reports of fund expenses often do not include data about payments at the level of portfolio investments, information about the extent to which fees and expenses are allocated to a given fund versus other similar funds and co-investment accounts, or about how offsets are calculated, allocated and applied. Lack of disclosure has been at issue in enforcement actions against fund managers.[311]

Costs

The cost of the proposed changes in fee and expense disclosure would include the cost of compliance by the adviser. For advisers that currently maintain the records needed to generate the required information, the cost of complying with this new disclosure requirement would be limited to the costs of compiling, preparing, and distributing the information for use by investors and the cost of distributing the information to investors. We expect these costs would generally be ongoing costs. Advisers would also incur costs associated with determining and verifying that the required disclosures comply with the format requirements under the proposed rule, including demands on personnel time required to verify that disclosures are made in plain English regarding the manner in which calculations are made and to verify that disclosures include cross-references to the sections of the private fund's organizational and offering documents. This also includes demands on personnel time to verify that the information required to be provided in tabular format is distributed with the correct presentation. Advisers may also choose to undertake additional costs of ensuring that all information in the quarterly statements is drafted

[306] *See supra* section V.B.3.

[307] *Id.*

[308] *See supra* footnote 24 (with accompanying text).

[309] *See, e.g.,* StepStone, Uncovering the Costs and Benefits of Private Equity (Apr. 2016), *available at https://www.stepstonegroup.com/wp-content/uploads/2021/07/StepStone_Uncovering_the_Costs_and_Benefits_of_PE.pdf.*

[310] *See supra* section V.B.3.

[311] *See supra* footnotes 25–27 (with accompanying text).

consistently with the information in fund offering documents, to avoid inconsistent interpretations across fund documents and resulting confusion for investors. Many of these costs we would expect would be borne more heavily in the initial compliance phases of the rule and would wane on an ongoing basis.

Some of these costs of compliance could be reduced by the rule provision providing that advisers must consolidate the quarterly statement reporting to cover substantially similar pools of assets, avoiding duplicative costs across multiple statements. However, in other cases the rule provision requiring consolidation may further increase the costs of compliance with the proposed rules, not decrease the costs of compliance. For example, in the case where a private fund adviser is preparing quarterly statements for investors in a feeder fund, and therefore consolidating statements between a master fund and its feeder funds, the consolidation may require the adviser to calculate the feeder fund's proportionate interest in the master fund on a consolidated basis. The additional costs of these calculations of proportionate interest in the master fund, to the extent the adviser does not already undertake this practice, may offset any reduced costs the adviser receives from not being required to undertake duplicative costs across multiple statements.

There are other aspects of the rule that would impose costs. The proposed rule would require each portfolio investment table to list the fund's ownership percentage of covered portfolio investments as of the end of the reporting period and impose record-keeping and timing requirements. The costs associated with implementing this requirement are likely to vary among advisers depending on the current record keeping and disclosure practices of the adviser. These costs are likely to be initially higher, but could also vary over time. In addition, some advisers may choose to update their systems and internal processes and procedures for tracking fee and expense information in order to better respond to this disclosure requirement. The costs of those improvements would be an indirect cost of the rule, to the extent they would not occur otherwise, and they are likely to be higher initially than they would be on an ongoing basis.

Preparation and distribution of Quarterly Statements. As discussed below, for purposes of the Paperwork Reduction Act of 1995 (''PRA''), we anticipate that the compliance costs associated with preparation and distribution of quarterly statements (including the preparation and distribution of fee and expense disclosure, as well as the performance disclosure discussed below) would include an aggregate annual internal cost of $200,643,858 and an aggregate annual external cost of $112,403,250, or a total cost of $313,047,108 annually.[312] For costs associated with potential upgrades to fee tracking and expense information systems, funds are likely to vary in the intensity of their upgrades, because for example some advisers may not pursue any system upgrades at all, and moreover the costs may be pursued or amortized over different periods of time. Advisers are similarly likely to vary in their choices of whether to invest in increasing the quality of their services. For both of these categories of costs, the data do not exist to estimate how funds or investors may respond to the reporting requirements, and so the costs may not be practically quantified.

Under the proposed rule, these compliance costs may be borne by advisers and, where permissible, could be imposed on funds and therefore indirectly passed on to investors. For example, under current practice, advisers to private funds generally charge disclosure and reporting costs to the funds, so that those costs are ultimately paid by the fund investors. Also, currently, to the extent advisers use service providers to assist with preparing statements (*e.g.,* fund administrators), those costs often are borne by the fund (and thus indirectly investors). To the extent not prohibited, we expect similar arrangements may be made going forward to comply with the proposed rule. Advisers could alternatively attempt to introduce substitute charges (for example, increased management fees) in order to cover the costs of compliance with the rule, and their ability to do so may depend on the willingness of investors to incur those substitute charges.

Further, to the extent that the additional standardization and comparability of the information in the required disclosures makes it more difficult to charge fees higher than those charged for similar adviser services or otherwise to continue current levels and structures of fees and expenses, the proposal may reduce revenues for some advisers and their related persons. These advisers may respond by reducing their fees or by differentiating their services from those provided by other advisers, including by, for example, increasing the quality of their services in a manner that could attract additional capital to funds they advise. To the extent these reduced revenues result in reduced compensation for some advisers and their related persons, those entities may become less competitive as employers. However, this cost is likely to be mitigated because some advisers may attract new capital under the proposal, and so those advisers and their related persons may become more competitive as employers.

Quarterly statement—Performance Disclosure

Advisers would also be required to include standardized fund performance information in each quarterly statement provided to fund investors. Specifically, the proposed rule would require an adviser to a fund considered a liquid fund under the proposed rule to disclose the fund's annual total returns for each calendar year since inception and the fund's cumulative total return for the current calendar year as of the end of the most recent calendar quarter covered by the quarterly statement.[313] For funds determined to be illiquid funds under the proposed rule, the proposed rule would require an adviser to show the internal rate of return (IRR) and multiple of invested capital (MOIC) (each, on a gross and net basis), the gross IRR and the gross MOIC for the unrealized and realized portions of the portfolio (each shown separately), and a statement of contributions and distributions.[314] Each would be computed without the effect of any fund level subscription facilities.[315] The statement of contributions and distributions would provide certain cash flow information for each fund.[316] Further, advisers would be required to include clear and prominent plain English disclosure of the criteria used and assumptions made in calculating the performance.[317]

Benefits

As a result of these performance disclosures, some investors would find it easier to obtain and use information about the performance of their private fund investments. They may, for example, find it easier to monitor the performance of their investments and compare the performance of the private funds in their portfolios to each other and to other investments. In addition, they may use the information as a basis for updating their choices between

[312] *See infra* section VI.B. As explained in that section, this estimated annual cost is the sum of the estimated recurring cost of the proposed rule in addition to the estimated initial cost annualized over the first three years.

[313] *See supra* section II.A.2.a.

[314] *See supra* section II.A.2.b.

[315] *Id.*

[316] *Id.*

[317] *See supra* section II.A.2.c.

different private funds or between private fund and other investments. In doing so, they may achieve a better alignment between their investment choices and preferences. Cash flow information would be provided in a form that allows investors to compare the performance of the fund (or a fund investment) with the performance of other investments, such as by computing PME or other metrics.

We understand that some investors receive the required performance information under the baseline, independently of the proposed rule. For example, some investors receive performance disclosures from advisers on a tailored basis. Those investors may not experience easier access to performance information from the proposal. They may, however, benefit from standardization of the information in quarterly statements across investors in a fund and across advisers. For example, the standardization of the data that a fund provides to all of its investors could benefit some investors by facilitating the development and sharing of tools and methods for analyzing the data among the various investors of the fund. In addition, to the extent that investors share the complete, comparable data with consultants or other intermediaries they work with (as is often current practice to the extent permitted under confidentiality provisions), this may allow such intermediaries to provide broader views across the private funds market or segments of the market. This may facilitate better decision making and capital allocation more broadly.

The required presentation of performance information and the resulting economic benefits would vary based on whether the fund is determined to be a liquid fund or an illiquid fund. For example, for private equity and other funds determined to be illiquid funds, investors would benefit from receiving multiple pieces of performance information, because the shortcomings discussed above that are associated with each method of measuring performance make it difficult for investors to evaluate fund performance from any singular piece of performance information alone, such as IRR or MOIC.[318] For hedge funds, the primary benefit is the mandating of regular reporting of returns by advisers, avoiding any potential biases associated with hedge funds choosing whether and when to report returns.[319] The benefits from the proposed requirements are therefore potentially more substantial for the funds determined to be illiquid funds, as the breadth of the performance information that would be required under the proposal for the private equity and other funds determined to be illiquid funds is designed to address the shortcomings of individual performance metrics. For both types of funds, because the factors we propose to use to distinguish between liquid and illiquid funds align with the current factors for determining how certain types of private funds should report performance under U.S. GAAP, market participants may be more likely to understand the presentation of performance.

Costs

The cost of the required performance disclosure by fund advisers would vary according to the existing practices of the adviser and the complexity of the required disclosure. For advisers who already (under their current practice) incur the costs of generating the necessary performance data, presenting and distributing it in a format suitable for disclosure to investors, and checking the disclosure for accuracy and completeness, the cost would likely be small. In particular, for those advisers, the cost of the performance disclosure may be limited to the cost of reformatting the performance information for inclusion in the mandated quarterly report. However, we understand that some advisers may face costs of changing their performance tracking or reporting practices under the current rule. Some of these costs would be direct costs of the rule requirements. Costs of updating an adviser's internal controls or internal compliance system to verify the accuracy and completeness of the reported performance information would be indirect costs of the rule. We expect the bulk of the costs associated with complying with this aspect of the proposed rules would likely be most substantial initially rather than on an ongoing basis.[320]

Some of these costs of compliance could again be affected by the rule provision providing that advisers must consolidate the quarterly statement reporting to cover substantially similar pools of assets. These costs of compliance would be reduced to the extent that advisers are able to avoid duplicative costs across multiple statements, but would be increased to the extent that advisers must undertake costs associated with calculating feeder fund proportionate interests in a master fund, to the extent advisers do not already do so.

The required presentation of performance, and the resulting costs, would vary based on whether the fund is categorized as liquid or illiquid. In particular, for funds determined to be liquid funds, the cost is mitigated by the limited nature of the required disclosure, as the proposal requires only annual total returns and cumulative total returns for the current calendar year as of the end of the most recent calendar quarter covered, while the more detailed required disclosures for funds determined to be illiquid funds may require greater cost (yielding, as just discussed, greater benefit).[321] For both categories of funds, because the factors we proposed to use to distinguish between liquid and illiquid funds align with the current factors for determining how certain types of private funds should report performance under U.S. GAAP, and as a result, market participants may be more familiar with these methods of presenting information, which may mitigate costs.

Under the proposed rule, these compliance costs may be borne by advisers and, where permissible, could be imposed on funds and therefore indirectly passed on to investors. For example, under current practice, advisers to private funds generally charge disclosure and reporting costs to the funds, so that those costs are ultimately paid by the fund investors. Similarly, to the extent advisers currently use service providers to assist with performance reporting (*e.g.,* administrators), those costs are often borne by the fund (and thus investors). To the extent not prohibited, we expect similar arrangements may be made going forward to comply with the proposed rule. Advisers could alternatively attempt to introduce substitute charges (for example, increased management fees) in order to cover the costs of compliance with the rule, but their ability to do so may depend on the willingness of investors to incur those substitute charges.

Further, to the extent that the additional standardization and comparability of the information in the required disclosures make it easier for investors to compare and evaluate performance, the rule may prompt some investors to search for and seek higher performing investment opportunities. This could reduce the ability for advisers of low-performing funds to attract additional capital. By the same rationale, the rule may prompt some

[318] *See supra* section V.B.3.

[319] *Id.*

[320] The quantification of the direct costs associated with completing performance disclosures is included in the analysis of costs associated with fee and expense disclosures above.

[321] *See supra* section II.A.2.a and II.A.2.b.

investors to search for and seek higher performing investment opportunities, further reducing the ability for advisers of low-performing funds to attract additional capital.

3. Prohibited Activities and Disclosure of Preferential Treatment

The proposed rules would prohibit a private fund adviser from engaging in certain activities with respect to the private fund or any investor in that private fund, including (i) charging certain regulatory and compliance fees and expenses or fees or expenses associated with certain examinations or investigations,[322] (ii) charging fees for certain unperformed services,[323] (iii) certain non-pro rata fee and expense allocations,[324] (iv) borrowing money, securities, or other fund assets, or receiving a loan or an extension of credit, from a private fund client,[325] (v) reducing the amount of any adviser clawback by the amount of certain taxes,[326] (vi) limiting or eliminating liability for certain adviser misconduct,[327] and (vii) granting an investor in the private fund or a substantially similar pool of assets preferential terms regarding liquidity or transparency that the adviser reasonably expects to have a material, negative effect on other investors in the fund or a substantially similar pool of assets.[328] In addition, we also propose to prohibit all private fund advisers from providing any other preferential treatment to any investor in the private fund unless the adviser provides written disclosures to prospective and current investors.[329] These prohibitions would apply to activities of the private fund advisers even if they are performed indirectly, for example, by an adviser's related persons, recognizing that the potential for harm to the fund and its investors arises independently of whether the adviser engages in the activity directly or indirectly.[330]

We discuss the costs and benefits of each of these prohibitions and requirements below. The Commission notes, however, that several factors make the quantification of many of these economic effects of the proposed amendments and rules difficult. For example, there is a lack of data on the extent to which advisers engage in certain of the activities that would be prohibited under the proposed rules, as well as their significance to the businesses of such advisers. It is, therefore, difficult to quantify how costly it would be to comply with the prohibitions. Similarly, it is difficult to quantify the benefits of these prohibitions, because there is a lack of data regarding how and to what extent the changed business practices of advisers would affect investors, and how advisers may change their behavior in response to these prohibitions. Further, there is a lack of data on the frequency with which advisers grant certain investors the preferential treatment that would be prohibited under the proposed rules, as well as the frequency with which preferential terms are currently disclosed to other investors, as well as how and to what extent these disclosures affect investor behavior. As a result, parts of the discussion below are qualitative in nature.

Certain Fees and Expenses

The proposal would prohibit a private fund adviser from charging the fund for fees or expenses associated with an examination or investigation of the adviser or its related persons by any governmental or regulatory authority or for the regulatory and compliance fees and expenses of the adviser or its related persons.[331] The benefit to investors would be to lower charges on the funds they have invested in, which could increase returns, and potentially lower the cost of effort to avoid and evaluate such charges, or a combination of these benefits. To the extent that these charges, even when disclosed, create adverse incentives for advisers to allocate expenses to the fund at a cost to the investor, they represent a possible source of investor harm. For example, when these charges are in connection with an investigation of an adviser, it may not be in the fund's best interest to bear the cost of the investigation.[332] These fees may also, even when disclosed, incentivize advisers to engage in excessive risk-taking, as the adviser will no longer bear the cost of any ensuing government or regulatory examinations or investigations.[333] By prohibiting this activity, investors would benefit from the reduced risk of having to incur costs associated with the adviser's adverse incentives, such as allocating inappropriate expenses to the fund. Investors would also be able to search across fund advisers knowing that these charges would not be assessed on any fund, which may lead to a better match between investor choices of private funds and their preferences over private fund terms, investment strategies, and investment outcomes. The magnitude of the benefit would to some extent depend on whether advisers could introduce substitute charges (for example, increased management fees), and the willingness of investors to incur those substitute charges, for the purpose of making up any revenue that would be lost to the adviser from the prohibition. However, any such substitute charges would be more transparent to the investor and would not create the same adverse incentives as the prohibited charges, and so investors would likely ultimately still benefit.

This prohibition would impose direct costs on advisers from the need to update their charging and contracting practices to bring them into compliance with the new requirements. Advisers would also incur costs related to this prohibition, in connection with not being able to charge private fund clients for the prohibited expenses. In addition, advisers may incur indirect costs related to adapting their business models in order to identify and substitute non-prohibited sources of revenue. For example, advisers may identify and implement methods of replacing the lost charges from the prohibited practice with the other sources of fund revenue. These costs would likely be transitory.

Further, as discussed above, we understand that certain private fund advisers, most notably hedge funds and other funds determined to be liquid funds,[334] that utilize a pass-through expense model where the private fund pays for most, if not all, of the adviser's expenses in lieu of being charged a management fee. The proposed rules would likely prohibit certain aspects of pass-through expense models or other similar models in which advisers charge investors fees associated with certain of the adviser's cost of being an investment adviser. These expenses that would no longer be passed through to the fund could represent additional costs to the fund adviser, unless the adviser

[322] *See supra* section II.D.2.

[323] *See supra* section II.D.1.

[324] *See supra* section II.D.5.

[325] *See supra* section II.D.6.

[326] *See supra* section II.D.3.

[327] *See supra* section II.D.4.

[328] *See supra* section II.E.

[329] *Id.*

[330] *See supra* section II.D, II.E.

[331] *See supra* section II.D.2.

[332] *Id.*

[333] Fund adviser fees can allow the adviser to obtain leverage, and thereby gain disproportionately from successes, encouraging advisers to take on additional risk. *See, e.g.,* Alon Brav, Wei Jiang, and Rongchen Li, Governance by Persuasion: Hedge Fund Activism and Market-Based Shareholder Influence, *European Corporate Governance Institute—Finance* (Working Paper No. 797/2021) (December 10, 2021), *available at https://ssrn.com/abstract=3955116* or *http://dx.doi.org/10.2139/ssrn.3955116.*

[334] *See, e.g.,* Welcome To Hedge Funds' Stunning Pass-Through Fees, *Seeking Alpha* (January 24, 2017), *available at https://seekingalpha.com/article/4038915-welcome-to-hedge-funds-stunning-pass-through-fees.*

negotiates a new fixed management fee to compensate for the new costs. In addition, any such fund restructurings that are undertaken would likely impose costs that would be borne by advisers. The costs may also be borne partially or entirely by the private funds, to the extent permissible or to the extent advisers are able to compensate for their costs with substitute charges (for example, increased management fees). These costs would likely be transitory. In addition, investors may incur costs from this prohibition that take the form of lower returns from some fund investments, depending on the extent to which the prohibition limits the adviser's efficiency or effectiveness in providing the services that generate returns from those investments. For example, in the case of pass-through expense models, fund advisers who would have to bear new costs of providing certain services under the prohibition may reduce or eliminate those services from the fund in order to reduce costs, which may be to the detriment of the fund's performance or lead to an increase of compliance risk.

Moreover, to the extent that re-structuring a pass-through expense model of a hedge fund under the proposal diverts the hedge fund's resources away from the hedge fund's investment strategy, this could lead to a lower return to investors in hedge funds. The cost of lower returns would be mitigated to the extent that investors can distinguish and identify those funds that require restructuring as to how they collect revenue from investors and use this information to search for and identify substitute funds that have expense models that do not need to be restructured under the rule and that do not present the investor with reduced returns as a result of the rule. Investors would also need to be able to evaluate whether these substitute funds would be likely to present them with better performance than their current funds. Any such search costs would be a cost of the rule. As a result, the cost to investors may include a combination of the cost of lower returns and the cost of avoiding such reductions in returns.

Fees for Unperformed Services

In addition, the proposal would prohibit a private fund adviser from charging a portfolio investment for monitoring, servicing, consulting or other fees in respect of services that the adviser does not, or does not reasonably expect, to provide to the portfolio investment, such as through an accelerated payment. As discussed above, these fees are likely to reflect conflicts of interest between the fund and the adviser that are difficult for the investor to detect and mitigate.[335] For example, in receiving the accelerated payment, discussed above, the adviser imposes a charge for services that it may not provide.[336] An adviser also may have an incentive to cause the fund to exit a portfolio investment earlier than anticipated, which may result in the fund receiving a lesser return on its investment.[337] Because adviser misconduct in response to these incentives may be difficult for investors to detect, full disclosure of this practice does not resolve the conflict of interest. Under the proposed prohibition, investors would be able to choose among fund advisers and invest knowing that they would not face the costs of such conflicts of interests, which also may lead to a better match between investor choices of private funds and their preferences over private fund terms, investment strategies, and investment outcomes.

Investors would also benefit directly via lower costs from the prohibition through the elimination of the fees charged to the fund's portfolio investment.[338] These cost savings could be partially mitigated, however, to the extent that advisers are using portions of the proceeds from the accelerated payment to cover costs of services that benefit the fund client.[339]

This prohibition would impose direct costs on advisers from the need to update their charging and contracting practices to bring them into compliance with the new requirements. Advisers would also incur costs related to this prohibition in connection with not being able to receive these charges for unperformed services. For example, advisers would incur costs in connection with not being able to receive the accelerated payments, and as a result, advisers could attempt to replace the accelerated payments with some new fee or charge. Advisers could, therefore, incur transitory costs related to adapting their business models in order to identify and substitute non-prohibited sources of revenue. These costs may be particularly high in the short term to the extent that advisers re-negotiate, re-structure and/or revise certain existing deals or existing economic arrangements in response to this prohibition.

In addition, investors may incur some costs from this prohibition that take the form of lower returns from certain fund investments, depending on the extent to which the fund adviser's loss of revenue from the prohibited activity diverts resources away from the fund's investment strategy. For example, the loss of revenue under this prohibition could cause some advisers to update their portfolio investment strategies, so that they are less reliant on the prohibited fees for revenue. The advisers could limit their portfolio investments that are reliant on accelerated payments for revenue, for example. This could lead to a cost to investors in the form of reduced returns from those investments. Investors could mitigate this cost to the extent that they can distinguish and identify those funds that require restructuring as to how they collect revenue from investors and use this information to search for and identify substitute funds that do not present the investor with reduced returns as a result of the rule. Investors would also need to be able to evaluate whether these substitute funds would be likely to present them with better performance than their current funds. These alternative search costs would be a cost of the rule. As a result, the cost of the prohibition to investors could thus include a combination of the cost of lower returns and the cost of avoiding such reductions in returns.

Certain Non-Pro Rata Fee and Expense Allocations

The proposal would prohibit a private fund adviser from charging certain fees and expenses related to a portfolio investment (or potential portfolio investment) on a non-pro rata basis when multiple private funds and other clients advised by the adviser or its related persons have invested (or propose to invest) in the same portfolio investment.[340]

These non-pro rata fee and expense allocations tend to adversely affect some investors who are placed at a disadvantage to other investors. We associate these practices and disadvantages with a tendency towards opportunistic hold-up of investors by advisers, involving exploitation of an informational or bargaining advantage.[341] The disadvantaged investors currently pay greater than their pro rata shares of fees and expenses. The disparity may arise from

[335] *See supra* section II.D.1.

[336] *Id.*

[337] *See supra* section II.D.1

[338] The portfolio investments themselves may also benefit directly from no longer paying these fees.

[339] As discussed above, the proposal would not prohibit an arrangement where the adviser shifts 100% of the economic benefit of a portfolio investment fee to the private fund investors, whether through an offset, rebate, or otherwise. *See supra* section II.D.1.

[340] *See supra* section II.D.5.

[341] *See infra* (discussing opportunism in the context of certain preferential treatment).

differences in the bargaining power of different investors. For example, a fund adviser may have an incentive to assign lower than pro rata shares of fees and expenses to larger investors that bring repeat business to the adviser and correspondingly lower pro rata shares to the smaller investors paying greater than pro rata shares.

Investors could either benefit or face costs from the resulting revised apportionment of expenses to the fund they are invested in, based on whether their share of expenses is decreased or increased under the rule. Investing clients in these portfolio investments paying greater than pro rata shares of such fees and expenses would benefit as a result of lowered fees. However, to the extent that a client was previously able to obtain fee and expense allocations at rates less than a pro rata apportionment, the client could incur higher fee and expense costs in the future. Investors may not be aware of the extent to which fees are charged on a non pro-rata basis. Even if disclosed, the complexity of fee arrangements may mean that these arrangements are hard to follow. More sophisticated investors may be aware that they risk non pro-rata fees, but nonetheless be harmed by the uncertainty from complex fee arrangements. Fund advisers may face a commitment problem in that they and their clients might be better off if they could commit to pro-rata arrangements; thus a prohibition could serve as a net benefit to clients and advisers.[342]

This prohibition would impose direct costs on advisers to updating their charging and contracting practices to bring them into compliance with the new requirements. These compliance costs may be particularly high in the short term to the extent that advisers re-negotiate, re-structure, and/or revise certain existing deals or existing economic arrangements in response to this prohibition. Advisers may face additional costs in the form of lower expenses and fees, to the extent that less flexible pro-rata fee and expense allocations result in lower average fees and expenses to the adviser or are more costly to administer and monitor.

Borrowing

The proposal prohibits an adviser, directly or indirectly, from borrowing money, securities, or other fund assets, or receiving a loan or an extension of credit, from a private fund client.[343] In cases where, as the Commission has observed, fund assets were used to address personal financial issues of one of the adviser's principals, used to pay for the advisory firm's expenses, or used in association with any other harmful conflict of interest, [344] then this prohibition would increase the amount of fund resources available to further the fund's investment strategy. Investors would benefit from any resulting increased payout. In addition, investors would benefit from the elimination or reduction of any need to engage in costly research or negotiations with the adviser to prevent the uses of fund resources by the adviser that would be prohibited. The prohibition also has the potential to benefit investors by reducing moral hazard: If an adviser borrows from a private fund client and does not pay back the loan, it is the investors who bear the cost, providing the adviser with incentives to engage in potentially excessive borrowing.

Advisers may experience costs as a result of this prohibition related to any marginal increases in the cost of capital incurred from new sources of borrowing, as compared to what was being charged by the fund.

Reducing Adviser Clawbacks for Taxes

The proposed rule would prohibit certain uses of fund resources by the private fund adviser by prohibiting advisers from reducing the amount of their clawback obligation by actual, potential, or hypothetical taxes applicable to the adviser, its related persons, or their respective owners or interest holders.[345] Some investors would benefit from this rule from effectively increasing clawbacks (and thus investor returns) by actual, potential, or hypothetical tax rates. Investors would also benefit from the elimination or reduction of any need to engage in costly research or negotiations with the adviser to prevent these uses of fund resources by the adviser. These benefits would likely be more widespread, as such research or negotiations may have been necessary at the start of fund lives even in cases where investor returns were not ultimately impacted by tax treatments of clawbacks. Advisers, however, may be unable to recoup the cost of the tax payments made in connection with the excess distributions and allocations affected by the rule, and therefore would face greater costs when clawbacks do occur under the prohibition.

This prohibition would impose direct costs on advisers of updating their charging and contracting practices to bring them into compliance with the new requirements. Advisers may also attempt to mitigate the greater costs of clawbacks under the prohibition by introducing some new fee, charge, or other contractual provision that would make up for the lost tax reduction on the clawback, and they would then incur costs of updating their contracting practices to introduce these new provisions.

Advisers may attempt to mitigate their increased costs associated with clawbacks by reducing the risk of a clawback occurring. For example, certain advisers may adopt new waterfall arrangements designed to delay carried interest payments until later in the life of a fund, in order to limit the possibility of a clawback or reduce the possible sizes of clawbacks. In this case, investors would benefit from earlier distributions of proceeds from the fund and reduced costs associated with monitoring their potential need for a clawback. However, some fund advisers are able to attract investors even though their fund terms do not provide for full or partial clawbacks. To the extent such advisers were able to update their business practices, for example by providing for an advance on tax payments with no option for a clawback, this would reduce the benefit of the proposal, as investors would continue to receive the reduced clawback amounts and bear portions of the adviser's tax burden. In either case, advisers would also bear additional costs from the proposal of updating their business practices.

Advisers could, therefore, incur transitory costs related to adapting their business models in order to identify and substitute non-prohibited sources of revenue. These direct costs may be particularly high in the short term to the extent that advisers re-negotiate, re-structure, and/or revise certain existing deals or existing economic arrangements in response to this prohibition.

Limiting or Eliminating Liability for Adviser Misconduct

In addition, the proposal would prohibit an adviser to a private fund, directly or indirectly, from seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund.[346] These practices, even

[342] In a related setting, ex ante commitment to a financing policy has been argued to raise value and lower the cost of capital. *See* Peter DeMarzo, Presidential Address, Collateral and Commitment, *Journal of Finance,* (July 15 2019).

[343] *See supra* section II.D.6.

[344] *Id.*

[345] *See supra* section II.D.3.

[346] *See supra* section II.D.4.

when disclosed and permissible under state law, may involve breaches of fiduciary duty to the fund or investors, and possible harms to investors, and so investors will likely benefit from their prohibition. For example, because investors may be unable to anticipate willful malfeasance by their fund advisers, they may be unable to anticipate the costs associated with an adviser seeking reimbursement for its malfeasance, even if the adviser discloses that possibility.[347] Investors would therefore benefit from the elimination of fund expenses, which would otherwise reduce investor returns, associated with reimbursing or indemnifying the adviser for losses associated with its malfeasance. These benefits may be diminished to the extent that advisers are able to obtain alternative permissible sources of compensation for these expenses from investors (for example, from increased management fees), although this ability would likely be limited.

Further, these contractual clauses may lead investors to believe that they do not have any recourse in the event of such a breach. To the extent that any such investors do not seek damages under this belief, the contractual clauses eliminating liability for breach of fiduciary duty would represent a harm to the investors. By prohibiting these scenarios, this proposal could make such breaches of fiduciary duty incrementally less likely to occur. Investors would therefore benefit from a reduced need to engage in costly research or negotiations with the adviser to prevent such breaches.

Certain Preferential Terms

The proposal would prohibit a private fund adviser from providing certain preferential terms to some investors that have a material negative effect on other investors in the private fund or in a substantially similar pool of assets. We associate these practices with a tendency towards opportunistic hold-up of investors by advisers, involving the exploitation of an informational or bargaining advantage by the adviser or advantaged investor.[348] The proposal would prohibit a private fund adviser and its related persons from granting an investor in the private fund or in a substantially similar pool of assets the ability to redeem its interest on terms that the adviser reasonably expects to have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets.[349] In addition, the proposal would prohibit an adviser and its related persons from providing information regarding the private fund's or a substantially similar pool of asset's portfolio holdings or exposures to an investor that the adviser reasonably expects that providing the information would have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets.[350]

Benefits may accrue from these prohibitions in two situations. First, the prohibitions may benefit the non-preferred investors in situations where advisers lack the ability to commit to avoid the opportunistic behavior after entering into the agreement (or relationship) with the investor. For example, similar to the case regarding non-pro rata fee and expense allocations, an adviser with repeat business from a large investor with early redemption rights and smaller investors with no early redemption rights may have adverse incentives to take on extra risk, as the adviser's preferred investor could exercise its early redemption rights to avoid the bulk of losses in the event an investment begins to fail. The adviser would then continue to receive repeat business with the investors with preferential terms, to the detriment of the investors with no preferential terms.

Investors who do receive preferential terms may also receive information over the course of a fund's life that the investors can use to their own gain but to the detriment of the fund and, by extension, the other investors. For instance, if a fund was heavily invested in a particular sector and an investor with early redemption rights learned the sector was expected to suffer deterioration, that investor could submit a redemption request, securing their funds early but forcing the fund to sell assets in a declining market, harming the other investors. In this situation, the prohibitions would provide a solution to the hold-up problem that is not currently available. The rule would benefit the disadvantaged investors by prohibiting such a situation, and so the disadvantaged investors would be less susceptible to hold-up and experience better performance on their fund investments as a benefit of the proposed rule.

Second, in situations where investors face uncertainty as to whether the adviser engages in the prohibited practice, the benefit from the prohibition would be to eliminate the costs to investors of avoiding entering into agreements with advisers that engage in the practice and the costs to investors from inadvertently entering into such agreements.

Specifically, in this second case, the prohibited preferential terms would harm investors in private funds and cause investors to incur extra costs of researching fund investments to avoid fund investments in which the prospective fund adviser engages in these practices (or costs of otherwise avoiding or mitigating the harm to those disadvantaged investors from the practice). The benefit of the prohibition to investors would be to eliminate such costs. It would prohibit disparities in treatment of different investors in substantially similar pools of assets in the case where the disparity is due to the adviser placing their own interests ahead of the client's interests or due to behavior that may be deceptive. Investors would benefit from the costs savings of no longer needing to evaluate whether the adviser engages in such practices. Investors and advisers also may benefit from reduced cost of negotiating the terms of a fund investment. Investors who would have been harmed by the prohibited practices would benefit from the elimination of such harms through their prohibition.

The cost of the prohibitions would depend on the extent to which investors would otherwise obtain such preferential terms in their agreements with advisers and the conditions under which they make use of the preferential treatment. Investors who would obtain and make use of the preferential terms would incur a cost of losing the prohibited redemption and information rights. This would include any investors who might benefit from the ability to redeem based on negotiated exceptions to the private fund's stated redemption terms, in addition to the investors who might benefit from the hold-up problems discussed above. In addition, advisers would incur direct costs of updating their processes for entering into agreements with investors, to accommodate what terms could be effectively offered to all investors once the option of preferential terms to certain investors has been removed. These direct costs may be particularly high in the short term to the extent that advisers re-negotiate, re-structure and/or revise certain existing deals or existing economic arrangements in response to this prohibition.

To the extent advisers respond to the prohibition by developing new preferential terms and disclosing them to all investors, there may be new costs to investors who do not receive these new preferential terms. As discussed below, such costs would be mitigated by

[347] *Id.*

[348] *See supra* section II.E.

[349] *Id.*

[350] *Id.*

the prohibition of such preferential terms unless appropriately disclosed.

Prohibition of Other Preferential Treatment Without Disclosure

The proposed rule also would prohibit other preferential terms unless the adviser provides certain written disclosures to prospective and current investors, and these disclosures must contain information regarding all preferential treatment the adviser provides to other investors in the same fund.[351] This would reduce the risk of harm that some investors face from expected favoritism toward other investors, and help investors understand the scope of preferential terms granted to other investors, which could help investors shape the terms of their relationship with the adviser of the private fund. Because these disclosures would need to be provided to prospective investors prior to their investments and to current investors annually, these disclosures would help investors shape the terms of their relationship with the adviser of the private fund. This may lead the investor to request additional information on other benefits to be obtained, such as co-investment rights, and would allow an investor to understand better certain potential conflicts of interest and the risk of potential harms or other disadvantages.

Disclosures of such preferential treatment would impose direct costs on advisers to update their contracting and disclosure practices to bring them into compliance with the new requirements, including by incurring costs for legal services. These direct costs may be particularly high in the short term to the extent that advisers re-negotiate, re-structure and/or revise certain existing deals or existing economic arrangements in response to this prohibition. However, these costs may also be reduced by an adviser's choice between not providing the preferential terms and continuing to provide the preferential terms with the required disclosures, as the costs to some advisers from not providing the preferential terms to investors may be lower than the costs from the disclosure.

As discussed below, for purposes of the PRA, we anticipate that the disclosure of preferential treatment would impose an aggregate annual internal cost of $128,902,375 and an aggregate annual external cost of $32,550,000, or a total cost of $161,452,375 annually.[352] To the extent that advisers are not prohibited from categorizing all or a portion of these costs as expenses to be borne by the fund, then these costs may be borne indirectly by investors to the fund instead of advisers.

To the extent that these disclosures could discourage advisers from providing certain preferential terms in the interest of avoiding future negotiations with other investors on similar terms, this prohibition could ultimately decrease the likelihood that some investors are granted preferential terms. As a result, some investors may find it harder to secure such terms.

4. Audits, Fairness Opinions, and Documentation of Annual Review of Compliance Programs

The proposed audit rule would require an investment adviser that is registered or required to be registered to cause each private fund that it advises, directly or indirectly, to undergo a financial statement audit that meets certain elements at least annually and upon liquidation, if the private fund does not otherwise undergo such an audit. These audits would need to be performed by an independent public accountant that meets certain standards of independence and is registered with and subject to regular inspection by the PCAOB, and the statements would need to be prepared in accordance with U.S. GAAP or, for foreign private funds, must contain information substantially similar to statements prepared in accordance with U.S. GAAP, with material differences with U.S. GAAP reconciled.[353] The rule would also require that auditors notify the Commission in certain circumstances.

In addition, the rule would require advisers to obtain fairness opinions from an independent opinion provider in connection with certain adviser-led secondary transactions with respect to a private fund. This requirement would not apply to advisers that are not required to register as investment advisers with the Commission, such as state-registered advisers and exempt reporting advisers. In connection with this fairness opinion, the proposal would also require a summary of any material business relationships the adviser or any of its related persons has, or has had within the past two years, with the independent opinion provider. The proposal would lastly require all advisers, not just those to private funds, to document the annual review of their compliance policies and procedures in writing.

We discuss the costs and benefits of these rule provisions below. The Commission notes, however, several factors make the quantification of many of the economic effects of the proposed amendments and rules difficult. For example, there is a lack of quantitative data on the extent to which adviser-led secondaries without fairness opinions differ in fairness of price from adviser-led secondaries with fairness opinions attached. It would also be difficult to quantify how investors and advisers may change their preferences over secondary transactions once fairness opinions are required to be provided. As a result, parts of the discussion below are qualitative in nature.

Benefits

We recognize that many advisers already provide audited fund financial statements to fund investors in connection with the adviser's alternative compliance with the custody rule. However, to the extent that an adviser does not currently have its private fund client undergo a financial statement audit, investors would receive more reliable information from private fund advisers as a result of the proposed audit rule. The benefit to investors in securitized asset funds may be relatively greater from the proposal, given the relatively lower frequency with which securitized asset funds currently undergo financial statement audits.[354]

The audit requirement would provide an important check on the adviser's valuation of private fund assets, which often serve as the basis for the calculation of the adviser's fees. These audits would likely detect valuation irregularities or errors, as well as an investment adviser's loss, misappropriation, or misuse of client investments. It may thereby limit some opportunities for advisers to materially over-value investments. Audits provide substantial benefits to private funds and their investors because audits also test other assertions associated with the investment portfolio (*e.g.,* completeness, existence, rights and obligations, presentation). Audits may also provide a check against adviser misrepresentations of performance, fees, and other information about the fund. Enhanced and standardized regular auditing may therefore broadly improve the completeness and accuracy of fund performance reporting, to the extent these audits improve fund valuations of their ongoing investments.

[351] *See supra* section II.E.

[352] *See infra* section VI.E. As explained in that section, this estimated annual cost is the sum of the estimated recurring cost of the proposed rule in addition to the estimated initial cost annualized over the first three years.

[353] *Id.*

[354] *See supra* section V.B.4.

Investors who are not currently provided with audited fund financial statements, and who would be under the proposal, may, as a result, have additional confidence in information regarding their investments and, in turn, the fees being paid to advisers. Further, this additional confidence may facilitate investors' capital allocation decisions. Anticipating a lower risk of harm from a private fund investment, investors may be more likely to invest in private funds and participate in the resulting returns.

As discussed above, currently not all financial statement audits are necessarily conducted by a PCAOB-registered independent public accountant that is subject to regular inspection.[355] The proposed audit rule's requirement that the independent public accountant performing the audit be registered with, and subject to regular inspection by, the PCAOB, is likely to improve the audit and financial reporting quality of private funds.[356] Higher quality audits generally have a greater likelihood of detecting material misstatements due to fraud or error, and we further believe that investors would likely have relatively greater confidence in the quality of audits conducted by an independent public accountant registered with, and subject to regular inspection by, the PCAOB.[357] Lastly, we believe that the proposed audit rule's requirement to promptly distribute the audited financial statements to current investors would allow investors to evaluate the audited financial information in the audit in a timely manner.

In addition, investors would benefit from enhanced regulatory oversight as a result of the requirement for the adviser to engage the auditor to notify the Commission under some conditions.[358] The proposed requirement for the auditor to report terminations and modified opinions privately to the SEC would enable the SEC to receive more timely, complete, and independent information in these circumstances and to evaluate the need for an examination of the adviser. As a result, the SEC would be able to allocate its resources more efficiently. This could lead to a higher rate of detection of fund adviser activities that lead to harms from misstatements and a greater potential for mitigation of such harms. Anticipating this, fund advisers would have stronger incentives to avoid such harmful activities.

The proposal's requirement that an adviser distribute a fairness opinion and summary of material business relationships with the opinion provider in connection with certain adviser-led secondary transactions may provide similar increases in investor confidence in the specific context of adviser-led secondary transactions. This requirement would provide an important check against an adviser's conflicts of interest in structuring and leading these transactions. Investors would have decreased risk of experiencing harm from mis-valuation of secondary-led transactions. Further, anticipating a lower risk of harm from mis-valuation when participating in such transactions, investors may be more likely to participate. The result may be a closer alignment between investor choices and investor preferences over private fund terms, investment strategies, and investment outcomes. These benefits would, however, be reduced to the extent that advisers are already obtaining fairness opinions as a matter of best practice.

Finally, this proposed rule amendment would require all SEC-registered advisers to document the annual review of their compliance policies and procedures in writing. This would allow our staff to better determine whether an adviser has complied with the review requirement of the compliance rule, and would facilitate remediation of non-compliance. Because our staff's determination of whether the adviser has complied with the compliance rule will become more effective, the rule may reduce the risk of non-compliance, as well as any risk to investors associated with non-compliance.

These benefits from mandatory audits and fairness opinions are particularly relevant for illiquid investments. Illiquid assets currently are where we believe it is most feasible for financial information to have material misstatements of investment values, for adviser-led secondary transactions to occur at unfair prices, and where there is broadly a higher risk of investor harm from potential conflicts of interest or fraud. This is because currently, as discussed above, advisers may use a high level of discretion and subjectivity in valuing a private fund's illiquid investments, and the adviser further may have incentives to bias the fair value estimates of the investment upwards in order to generate larger fees.[359] Because both funds determined to be liquid funds and illiquid funds may have illiquid investments, investors in both types of funds will benefit, though the benefits may be larger for investors in illiquid funds (as such funds may have more illiquid investments than liquid funds and are more likely to have adviser-led secondary transactions). The benefits from documentation of compliance programs will be relevant for all investors, as the rule applies to all fund advisers, not just private fund advisers.

Costs

As discussed above, we recognize that many advisers already provide audited financial statements to fund investors in connection with the adviser's alternative compliance with the custody rule.[360] To the extent that an adviser does not currently have its private fund client undergo the required financial statement audit, there would be direct costs of obtaining the auditor, providing the auditor with resources needed to conduct the audit, the audit fees, and promptly distributing the audit results to current investors. We recognize that the proposed audit rule's requirement to promptly distribute the audited financial statements to current investors after the audit's completion may also impose compliance costs, which would be mitigated by the flexibility of the proposal's requirement for prompt distribution, relative to a requirement for distribution to occur by a a specific deadline. Under current practice, the costs of undergoing a financial statement audit are often paid by the fund, and therefore, ultimately, by the fund investors, though in some cases the costs may be partially or fully paid by the adviser. To the extent not prohibited, we expect similar arrangements may be made going forward to comply with the proposed rule: In some instances, the fund will bear the audit expense, in others the

[355] *See supra* section V.B.4.

[356] *See, e.g.,* Daniel Aobdia, The Impact of the PCAOB Individual Engagement Inspection Process—Preliminary Evidence, 93 (4) *The Accounting Review* 53–80 (2018) (concluding that ''engagement-specific PCAOB inspections influence non-inspected engagements, with spillover effects detected at both partner and office levels'' and that ''the information communicated by the PCAOB to audit firms is applicable to non-inspected engagements''); Daniel Aobdia, The Economic Consequences of Audit Firms' Quality Control System Deficiencies, 66 (7) *Management Science* (July 2020) (concluding that ''common issues identified in PCAOB inspections of individual engagements can be generalized to the entire firm, despite the PCAOB claiming that its engagement selection process targets higher-risk clients'' and that ''[PCAOB quality control] remediation also appears to positively influence audit quality'').

[357] *Id.*

[358] This requirement does not exist under the custody rule, and as a result, the benefits and costs associated with this requirement would extend to even those investors and funds for which advisers are already distributing audits under the custody rule.

[359] *See supra* section II.B.

[360] *See supra* section V.B.4.

adviser will bear it, and there also may be arrangements in which both the adviser and fund will share the expense.[361] Advisers could alternatively attempt to introduce substitute charges (for example, increased management fees) in order to cover the costs of compliance with the rule, but their ability to do so may depend on the willingness of investors to incur those substitute charges.

As discussed below, based on Form ADV filings, as of November 30, 2021, there were 5,037 registered advisers providing advice to private funds, and we estimate that these advisers would, on average, each provide advice to 9 private funds.[362] We further estimate that the audit fee for the required private fund audit would be $60,000 per fund on average.[363] For purposes of the PRA, the estimated total auditing fees for all funds would therefore be approximately $2,720 million annually.[364] We further anticipate that the audit requirement would impose for all funds approximately 92,479.32 hours of internal annual burden hours and a cost of approximately $27.6 million for internal time.[365] However, some funds would obtain the required financial statement audits in the absence of the proposal. The cost of the proposed audit requirement would therefore depend on the extent to which funds currently receive audits and, if so, whether their auditors are registered with the PCAOB.

For example, all or a portion of the costs described in this section may be disproportionately borne by advisers or investors (or both) to securitized asset funds,[366] given that fewer securitized asset funds currently undergo financial statement audits than other categories of funds.[367] We believe that the costs incurred may approximate 10% of these amounts, because across all types of funds, approximately 90% of funds are currently audited in connection with the fund adviser's alternative compliance under the custody rule.[368] However, because a large portion of funds who do not currently undergo financial statement audits are securitized asset funds, to the extent that audits for securitized asset funds are more costly than for other fund types (for example, if it is more burdensome to audit financial statements that primarily contain securitized assets), then the costs of the proposal may be greater than 10% of the amounts described above.

For advisers that had been complying with the surprise examination requirement of the custody rule and do not have other clients (*e.g.,* separately managed accounts) for which a surprise exam must be obtained, the costs of the audit performed in accordance with the proposed audit rule would be offset by the reduction in costs from no longer obtaining a surprise examination. To the extent that audits cost more than surprise examinations, the offset may be only partial, and to the extent that an adviser must continue to undergo a surprise examination because it has custody of non-private fund client funds and securities, there likely would be no offset. For funds that had received an audit by an auditor that is not registered with the PCAOB, the costs of the audit performed in accordance with the proposed audit rule would also be offset by the reduction in costs from no longer obtaining their previous audit, although we anticipate that the cost of the required audit would likely be greater because a PCAOB-registered and -inspected auditor may cost more than an auditor that is not subject to the same level of PCAOB oversight.

We also understand that the PCAOB registration and inspection requirement may limit the pool of auditors that are eligible to perform these services which could, in turn, increase costs, as a result of the potential for these auditors to charge higher prices for their services. The increase in demand for these services, however, may be limited in light of the high percentage of funds already being audited.[369] The Commission notification requirement of the proposed audit rule would represent a new cost, regardless of whether their private fund clients are already undergoing a financial statement audit. We anticipate that accounting firms would increase their fees as a result of this new obligation and perceived liability. For advisers who had been undergoing a surprise examination for purposes of the custody rule, there may not be as great of an increase in costs in light of similar requirements in connection with those examinations under that rule.

The indirect costs of the independent audit requirement would depend on the quality of the financial statements of the funds newly subject to audits. These costs may be relatively higher for the funds with lower quality financial statements (*i.e.,* the funds with the greatest benefit from the audit requirement). The indirect costs from the independent audit requirement may include costs of changing the fund's internal financial reporting practices, such as improvements to internal controls over financial reporting, to avoid potential harm to investors from a misstatement. Further, we understand that the requirement to have the auditor registered with, and subject to the regular inspection by, the PCAOB may limit the pool of accountants that are eligible to perform these services because only those accountants that conduct public company issuer audits are subject to regular inspection by the PCAOB.[370] The resulting competition for these services might generally lead to an increase in their costs, as an effect of the proposal.

Costs would also be incurred related to obtaining the required fairness opinion and material business relationship summary in the case of an adviser-led secondary transaction. For purposes of the PRA, we estimate that 10% of advisers providing advice to private funds conduct an adviser-led secondary transaction each year and that the funds would pay external costs of $40,849 for each fairness opinion and material business relationship summary.[371] Because only approximately 10 percent of advisers conduct an adviser-led secondary transaction each year, the estimated total fees for all funds per year would therefore be approximately $20.6 million.[372] Further, as discussed in section VI.D below, we anticipate that the fairness opinion and material business relationship summary requirements would impose approximately 3,528 hours of internal

[361] *See infra* section VI.C.

[362] *See infra* section VI.C.

[363] *See infra* footnote 420. The audit fee for an individual fund may be higher or lower than this estimate, with individual fund audit fees varying according to fund characteristics, such as the jurisdiction of the assets, complexity of the holdings, the firm providing the services, and economies of scales.

[364] *See infra* section VI.C.

[365] *Id.*

[366] As noted above, to the extent not prohibited, we expect that in some instances, the fund will bear the audit expense, in others the adviser will bear it, and there also may be arrangements in which both the adviser and fund will share the expense.

[367] *See supra* section V.B.4.

[368] *Id.*

[369] *Id.*

[370] The Sarbanes-Oxley Act authorizes the PCAOB to inspect registered firms for the purpose of assessing compliance with certain laws, rules, and professional standards in connection with a firm's audit work for public company and broker-dealer clients. However, the PCAOB currently has only a temporary inspection program for broker-dealer clients.

[371] *See infra* section VI.D; footnote 430. The fairness opinion fee for an individual fund may be higher or lower than this estimate, with individual fund audit fees varying according to the complexity, terms, and size of the adviser-led secondary transaction, as well as the nature of the assets of the fund.

[372] *See supra* section II.C; see also infra section VI.D.

annual burden hours and a cost of approximately $1,219,499 for internal time annually.[373] These costs will be borne primarily, though not exclusively, by closed-end funds determined to be illiquid funds,[374] as these are the funds that most frequently have the adviser-led secondaries considered by the rule. To the extent that certain hedge fund transactions are captured by the rule, these funds and their investors would also face comparable fees and costs.

The costs associated with obtaining fairness opinions could dissuade some private fund advisers from leading these transactions, which could decrease liquidity opportunities for some private fund advisers. Under current practice, some investors bear the expense associated with obtaining a fairness opinion if there is one. To the extent not prohibited, we expect similar arrangements may be made going forward to comply with the proposed rule. Advisers could alternatively attempt to introduce substitute charges (for example, increased management fees) in order to cover the costs of compliance with the rule, but their ability to do so may depend on the willingness of investors to incur those substitute charges.

In addition, the required documentation of the annual review of the fund compliance program has direct costs that include the cost of legal services associated with the preparation of such documentation. As discussed below, for purposes of the PRA, we anticipate that the requirement for all SEC-registered advisers to document the annual review of their compliance policies and procedures in writing would, for all advisers, impose 44,496 hours of internal annual burden hours at a cost of approximately $18.9 million for internal time, and approximately $4.1 million for external costs.[375]

5. Recordkeeping

Finally, the proposed amendment to the recordkeeping rule would require advisers who are registered or required to be registered to retain books and records related to the proposed quarterly statement rule,[376] to retain books and records related to the mandatory adviser audit rule,[377] to support their compliance with the proposed adviser-led secondaries rule,[378] and to support their compliance with the proposed preferential treatment disclosure rule.[379] The benefit to investors would be to enable an examiner to verify more easily that a fund is in compliance with these proposed rules and to facilitate the more timely detection and remediation of non-compliance. These requirements would also help facilitate the Commission's enforcement and examination capabilities. Also beneficial to investors, advisers may react to the enhanced ability of third parties to detect and impose sanctions against non-compliance due to the recordkeeping requirements by taking more care to comply with the substance of the rule.

These requirements would impose costs on advisers related to maintaining these records. As discussed below, for purposes of the PRA, we anticipate that the additional recordkeeping obligations would impose, for all advisers, 40,800 hours of internal annual burden hours and that the annual cost would be approximately $2.8 million.[380]

D. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The proposed rules would likely enhance economic efficiency by enabling investors more easily to identify funds that align with their preferences over private fund terms, investment strategies, and investment outcomes, and also by causing fund advisers to align their actions more closely with the interests of investors through the elimination of prohibited practices.

First, the proposed rules could increase the usefulness of the information that investors receive from private fund advisers regarding the fees, expenses, and performance of the fund, and regarding the preferential treatment of certain investors of the fund through the more detailed and standardized disclosures discussed above.[381] These enhanced disclosures would provide more information to investors regarding the ability and potential fit of investment advisers, which may improve the quality of the matches that investors make with private funds and investment advisers in terms of fit with investor preferences over private fund terms, investment strategies, and investment outcomes. The enhanced disclosures may also reduce search costs, as investors may be better able to evaluate the funds of an investment adviser based on the information to be disclosed at the time of the investment and in the quarterly statement.

Regarding preferential treatment, the proposed rules further align fund adviser actions and investor interests by prohibiting certain preferential treatment practices altogether (instead of only requiring disclosure), specifically prohibiting preferential terms regarding liquidity or transparency that have a material, negative impact on investors in the fund or a substantially similar pool of assets.[382] Prohibiting these activities, and prohibiting remaining preferential treatment activities unless disclosure is provided, may eliminate some of the complexity and uncertainty that investors face about the outcomes of their investment choices, further reducing costs investors must undertake to find appropriate matches between their choice of private fund and their preferences over private fund terms, investment strategies, and investment outcomes.

In addition, the proposed rules' requirements for advisers to obtain audits of fund financial statements would enhance investor protection and thereby improve the efficiency of the investment adviser search process. While many proposed disclosure requirements involve disclosures only to current investors, and not prospective investors, the proposed rule's disclosure requirements may enhance efficiency through the tendency of some fund advisers to rely on investors in current funds to be prospective investors in their future funds. For example, when fund advisers raise multiple funds sequentially, current investors can base their decisions on whether to invest in subsequent funds based on the disclosures of the prior funds.[383] As such, improved disclosures can improve the efficiency of investments without directly requiring disclosures to all prospective investors. Investors may therefore face a lower overall cost of searching for, and choosing among, alternative private fund investments.

Lastly, the proposed rules prohibit various activities that represent possible conflicting arrangements between investors and fund advisers. To the extent that investors currently bear costs of searching for fund advisers who do not engage in these arrangements, or bear costs associated with monitoring fund adviser conduct to avoid harm, then prohibiting these activities may lower investors' overall costs of searching for, monitoring, and choosing among alternative private fund

[373] *See infra* section VI.D.
[374] *See supra* section II.C.
[375] *See infra* section VI.F.
[376] *See supra* section II.A.5.
[377] *See supra* section II.B.8.
[378] *See supra* section II.C.1.
[379] *See supra* section II.E.1.
[380] *See infra* section VI.G.
[381] *See supra* section V.C.2, V.C.3.
[382] *See supra* section II.E.
[383] *See supra* section V.B.3.

investments. This may particularly be the case for smaller investors who are currently more frequently harmed by the activities being considered.

There may be losses of efficiency from the proposed rules to prohibit various activities, and from any changes in fund practices in response to the proposed rules, to the extent that investors currently benefit from those activities or incur costs from those changes. For example, investors who currently receive preferential terms that would be prohibited under the proposal may have only invested with their current adviser because they were able to secure preferential terms. With those preferential terms removed, those investors may choose to re-evaluate the match between their choice of adviser and their overall preferences over private fund terms, investment strategy, and investment outcomes. Depending on the results of this re-evaluation, those investors may choose to incur costs of searching for new fund advisers or alternative investments.

2. Competition

The proposed rules may also affect competition in the market for private fund investing. As discussed above, private fund adviser fees may currently total in the hundreds of billions of dollars per year.[384] Enhanced competition from additional transparency may lead to lower fees or may direct investor assets to different funds, fund advisers, or other investments.

First, to the extent that the enhanced transparency of certain fees, expenses, and performance of private funds under the proposal may reduce the cost to some investors of comparing private fund investments, then current investors evaluating whether to continue investing in subsequent funds may be more likely to reject future funds raised by their current adviser in favor of the terms of competing funds, including new funds that advisers may offer as alternatives that they would not have offered absent the increased transparency.

To the extent that this heightened transparency encourages advisers to make more substantial disclosures to prospective investors, investors may also be able to obtain more detailed fee and expense and performance data for other prospective fund investments, strengthening the effect of the proposal on competition.[385] Advisers may therefore update the terms that they offer to investors, or investors may shift their assets to different funds.

Second, because enhanced transparency of preferential treatment will be provided to both current and prospective investors, there may be reduced search costs to all investors seeking to compare funds on the basis of which investors receive preferential treatment. For example, some funds may lose investors who only participated in the fund because of the preferential terms they received. We anticipate that investors withdrawing from a fund because of a loss of preferential treatment would redeploy their capital elsewhere, and so new advisers would have a new pool of investment capital to pursue.

3. Capital Formation

We believe the proposed rules would facilitate capital formation by causing advisers to more efficiently manage private fund clients, by prohibiting activities that may currently deter investors from private fund investing because they represent possible conflicting arrangements, and by enabling investors to choose more efficiently among funds and fund advisers. This may reduce the cost of intermediation between investors and portfolio investments. To the extent this occurs, this would lead to enhanced capital formation in the real economy, as portfolio companies would have greater access to the supply of financing from private fund investors. This would contribute to greater capital formation through greater investment into those portfolio companies.

The proposed rules may also enhance capital formation through their competitive effects by inducing new fund advisers to enter private fund markets.[386] To the extent that existing fund advisers reduce their fees in order to compete more effectively, or to the extent that existing pools of capital are redirected to fund advisers who generate enhanced returns for their investors (for example, advisers who generate larger returns, less correlated returns across different investment strategies, or returns with more favorable risk profiles), the competitive effects of the proposal may provide new opportunities for capital allocation and potentially spur new investments.

Similarly, and in addition to lower costs of intermediation between investors and portfolio investments, the proposed rules may directly lower the costs charged by fund advisers to investors by improving transparency over fees and expenses. The proposed rules may also enhance overall investor returns (for example, as above, larger returns, less correlated returns across different investment strategies, or returns with more favorable risk profiles) by improving transparency over performance information, prohibiting conflicting arrangements, and requiring external financial statement audits and fairness opinions. To the extent these increased investor funds from lower expenses and enhanced returns are redeployed to new investments, there would be further benefits to capital formation.

There may be reduced capital formation associated with the proposed rules to prohibit various activities, to the extent that investors currently benefit from those activities. For example, investors who currently receive preferential terms that would be prohibited under the proposal may withdraw their capital from their existing fund advisers. Those investors may have less total capital to deploy after bearing costs of searching for new investment opportunities, or they may redeploy their capital away from private funds more broadly and into investments with less effective capital formation.

E. Alternatives Considered

1. Alternatives to the Requirement for Private Fund Advisers To Obtain an Annual Audit

First, the Commission could consider broadening the application of this rule to, for example, apply to all advisers to private funds, rather than to only advisers to private funds that are registered or required to be registered. Extending the application of the proposed audit rule to all advisers and in the context of these pooled investment vehicles would increase the benefits of helping investors receive more reliable information from private fund advisers associated with the rule. Investors would, as a result, have greater assurance in both the valuation of fund assets and, because these valuations often serve as the basis for the calculation of the adviser's fees, the fees charged by advisers. However, the extension of the proposed rule to apply to all advisers would likely impose the costs of obtaining audits on smaller funds advised by unregistered advisers. For these types of funds, the cost of obtaining such an audit may be large compared to the value of fund assets and fees and the related value to investors of the required audit, and so this alternative could inhibit entry of new funds, potentially constraining the growth of the private fund market.

[384] *Id.*

[385] *See supra* section V.C.2.

[386] *See supra* section V.D.2.

Second, instead of broadening the proposed audit rule, we could consider narrowing the rule by providing full or partial exemptions. For example, we could exempt smaller funds or we could exempt an adviser from compliance with the rule where an adviser plays no role in valuing the fund's assets, receives little or no compensation for its services, or receives no compensation based on the value of the fund's assets. We could also exempt advisers of hedge funds and other funds determined to be liquid funds. Further, we could provide an exemption for private funds below a certain asset threshold, for funds that have only related person investors, or for funds that are below a minimum asset value or have a limited number of investors.

These exemptions could also be applied in tandem, for example by exempting only advisers to hedge funds and other funds determined to be liquid funds below a certain asset threshold. For each of these categories, we could consider partial instead of full exemptions, for example by requiring an audit only every two (or more) years instead of not requiring any annual audits at all. Further, the benefits of the rule may not be substantial for funds below a minimum asset value, where the cost of obtaining such an audit would be relatively large compared to the value of fund assets and fees that the rule is intended to provide a check on.

We believe, however, that this narrower alternative with the above exemptions to the proposed audit rule would likely not provide the same investor protection benefits. Many of the investor protection benefits discussed above are specifically associated with the general applicability of the proposed audit rule.[387]

Finally, instead of requiring an audit as described in the proposed audit rule, we could consider requiring that advisers provide other means of checking the adviser's valuation of private fund assets. For example, we could consider requiring that an adviser subject to the proposed audit rule provide information to substantiate the adviser's evaluation to its LPAC or, if the fund has no LPAC, then to all, or only significant investors in the fund. We believe that such methods for checking an adviser's methods of valuation would be substantially less expensive to obtain, which could reduce the cost burdens associated with an audit.

However, we believe that these alternatives would likely not accomplish the same investor protection benefits as the proposal to require an audit. As an immediate matter, limiting the requirement like so would undermine the broader goal of the proposal to standardize information made available to different investors. We believe, more generally, that these checks would not provide the same level of assurance over valuation and, by extension, fees, to fund investors as an audit. As discussed above, we have historically relied on financial statement audits to verify the existence of pooled investment vehicle investments.

2. Alternatives to the Requirement To Distribute a Quarterly Statement to Investors Disclosing Certain Information Regarding Costs and Performance

The Commission could also consider requiring that additional and more granular information be provided in the quarterly statements that we are proposing be sent by registered investment advisers to investors in private funds. For example, we could require that these statements include investor-level capital account information, which would provide each investor with means of monitoring capital account levels at regular intervals throughout the year. Because this more specific information would show exactly how fees, expenses, and performance have affected the investor, it could, effectively, further reduce the cost to an investor of monitoring the value of the services the adviser provides to the investor. We believe, however, that requiring capital account information for each investor would substantially increase costs for funds associated with the preparation of these quarterly statements.

We could also, for example, require disclosure of performance information for each portfolio investment. For funds determined to be illiquid funds in particular, we could require advisers to report the IRR for portfolio investments, assuming no leverage, as well as the cash flows for each portfolio investment.[388] Given the cash flows, end investors could compute other performance metrics, such as PME, for themselves. In addition, this information would give investors means of checking the more general performance information provided in a quarterly statement, and would, further, allow investors to track and evaluate the portfolio investments chosen by an adviser over time. Cash flow disclosures for each portfolio investment would enable an investor to construct measures of performance that address the MOIC's inability to capture the timing of cash flows, avoid the IRR's assumptions on reinvestment rates of early cash flow distributions, and avoid the IRR's sensitivity to cash flows early in the life of the pool.[389] Investors would also be able to compare performance of individual portfolio investments against the compensation and ownership percentage and other data that advisers would be required to disclose for each portfolio investment under the proposal.[390]

While we believe that advisers would have cash flow data for each portfolio investment available in connection with the preparation of the standardized fund performance information required to be reported pursuant to the proposed rule, calculating performance information for each portfolio investment in accordance with the rule could add significant operational burdens and costs, which would vary depending on factors that include the number of portfolio investments held by a private fund. The operational burden and cost would also depend on whether the alternative proposal required both gross and net performance information for each portfolio investment, which would determine whether the information reflected the impact of fund-level fees and expenses on the performance of each portfolio investment. Requiring both gross and net performance information for each portfolio investment would be of greater use to investors, but would come at a higher operational burden and cost, as providing net performance information would require more complex calculations to allocate fund fees and expenses across portfolio investments. Lastly, to the extent that advisers were required to disclose cash flows for each portfolio investment without the impact of fund-level subscription facilities, this calculation may be more burdensome than the single calculation required to

[387] *See supra* section V.C.4.

[388] For funds determined to be liquid funds, disclosure of performance information for each portfolio investment may be of comparatively lower incremental benefit to investors, because such funds typically have a much larger number of investments. To the extent that investors' preferences over different liquid funds depend on more fund outcomes than their total return on their aggregate capital contributions, for example a preference for fund advisers with uncorrelated returns across different portfolio investments, then this alternative could provide similar additional benefits.

[389] *See supra* section V.B.3. *See, e.g.,* Robert Harris, Tim Jenkinson and Steven Kaplan, Private Equity Performance: What Do We Know?, 69 (5) *Journal of Finance* 1851 (Mar. 27, 2014), *available at https://onlinelibrary.wiley.com/doi/full/10.1111/jofi.12154;* Steven Kaplan and Antoinette Schoar, Private Equity Performance: Returns, Persistence, and Capital Flows, 60 (5) *Journal of Finance* (Aug. 2005), *available at http://web.mit.edu/aschoar/www/KaplanSchoar2005.pdf.*

[390] *See supra* section II.A.1.b.

make the required fund-level performance information disclosures without the impact of fund-level subscription facilities.

As a final granular addition to performance disclosures, the Commission could require the reporting of a wider variety of performance metrics for hedge funds and other funds determined to be liquid funds, similar to the detailed disclosure requirements for funds determined to be illiquid funds. These could include requirements for funds determined to be liquid funds to report estimates of fund-level alphas, betas, Sharpe ratios, or other performance metrics. We believe that for investors of funds determined to be liquid funds, absolute returns are of highest priority, and furthermore investors may calculate many of these additional performance metrics themselves by combining fund annual total returns with publicly available data. Therefore, we believe these additional reporting requirements would impose additional costs with comparatively little benefit.

Further, the Commission could also consider requiring less information be provided to investors in these quarterly statements. For example, instead of requiring the disclosure of comprehensive fee and expense information, we could require that advisers disclose only a subset of these, including investments fees and expenses paid by a portfolio company to the adviser. These fees in particular may currently present the biggest burden on investors to track, and requiring the disclosure of only these fees could reduce some costs associated with the effort of compiling, on a quarterly basis, information regarding management fees more generally. We believe, however, that if we did not require comprehensive information, investors would not derive the same utility in monitoring fund performance.

We could also consider requiring that comprehensive information regarding fees and performance be reported on Form ADV, instead of being disclosed to investors individually. Reporting publicly on Form ADV would continue to allow investors to monitor performance, while also allowing public review of important information about an adviser. However, because the information we propose to require under the rule is tailored to what we believe would serve existing investors in a fund, we believe that direct delivery to investors would better reduce monitoring costs for investors. Further, as discussed above, prospective investors have separate protections, including against misleading, deceptive, and confusing information in advertisements as set forth in the recently adopted marketing rule.[391]

Instead of requiring disclosure of comprehensive fee and expense information to investors, we could consider prohibiting certain fee and expense practices. For example, we could prohibit charging fees at the fund level in excess of a certain maximum amount that we could determine to be what investors could reasonably anticipate being charged by an adviser. This could, effectively, protect investors from unanticipated charges, and reduce monitoring costs to investors. Further, we could prohibit certain compensation arrangements, such as the ''2 and 20'' model or compensation from portfolio investments, to the extent the adviser also receives management fees from the fund. Prohibition of the ''2 and 20'' model would cause investors to reallocate their capital way from funds that employ this model and toward other types of funds. It may cause advisers to consider and adopt more efficient models for private fund investing in which the adviser gets a smaller fee and the investor gets a larger share of the gross fund returns, and in which investors are generally better off.[392] We could also consider restricting management fee practices, for example by imposing limitations on sizes of management fees, or requirement management fees to be based on invested capital or net asset value rather than on committed capital. However, the benefits of prohibiting certain fee and expense practices outright would need to be balanced against the costs associated with limiting an adviser and investor's flexibility in designing fee and expense arrangements tailored to their preferences. We believe that any such prohibitions would, accordingly, need to be carefully tailored.

Similarly, instead of requiring disclosure of comprehensive performance information to investors, we could consider prohibiting certain performance disclosure practices. For example, instead of requiring disclosure of performance without the effect of fund-level subscription facilities, we could consider prohibiting advisers from presenting performance with the effect of such facilities. Similarly, we could consider prohibiting advisers from presenting combined performance information for multiple funds, such as a main fund and a co-investment fund that pays lower or no fees. We believe that the required disclosures present the correct standardized, detailed information for investors to be able to evaluate performance, but we do not believe there are harms from advisers electing to disclose additional information. As such, we think the benefits of prohibiting any performance disclosure practices would likely be negligible, while there could be substantial costs to investors who value the information that would be prohibited under this alternative.

Finally, the Commission could consider broadening the application of this rule to, for example, apply to all advisers to private funds, rather than to only advisers to private funds that are registered or required to be registered. Extending the application of the proposed rule to all advisers would increase the benefits of helping investors receive more detailed and standardized information regarding fees, expenses, and performance. Investors would, as a result, have better information with which to evaluate the services of these advisers. It is, however, not clear to us that these benefits would also be realized in contexts where fund performance is not as heavily relied upon when obtaining new investors, as is the case for private funds. Further, the extension of the proposed rule to apply to all advisers would likely impose the costs of compiling, preparing, and distributing quarterly statements on smaller funds advised by unregistered advisers. For these types of funds, these quarterly statement costs may be large compared to the value of fund assets and fees and the related value to investors of the required audit.

3. Alternative to the Required Manner of Preparing and Distributing Quarterly Statements and Audited Financial Statements

The proposed rules would require private fund advisers to ''distribute'' quarterly statements and audited annual financial statements to investors in the private fund, and this requirement could be satisfied through either paper or electronic means.[393] The Commission could consider requiring private fund advisers to prepare and distribute the required disclosures electronically using a structured data language, such as the

[391] *See supra* section II.A.2.

[392] For example, the compensation model for hedge funds can provide fund advisers with embedded leverage, encouraging greater risk-taking. *See, e.g.,* Alon Brav, Wei Jiang, and Rongchen Li, Governance by Persuasion: Hedge Fund Activism and Market-Based Shareholder Influence, *European Corporate Governance Institute—Finance* (Working Paper No. 797/2021), *available at https://ssrn.com/abstract=3955116* or *http://dx.doi.org/10.2139/ssrn.3955116.*

[393] *See supra* footnote 99.

Inline eXtensible Business Reporting Language (''Inline XBRL'').

An Inline XBRL requirement for the disclosures could benefit private fund investors with access to XBRL analysis software by enabling them to more efficiently access, compile, and analyze the disclosures in quarterly statements and audited annual financial statements, facilitating calculations and comparisons of the disclosed information across different time periods or across different portfolio investments within the same time period. For any such private fund investors who receive disclosures from multiple private funds, an Inline XBRL requirement could also facilitate comparisons of the disclosed information across those funds.

An Inline XBRL requirement for the proposed disclosures would diverge from the Commission's other Inline XBRL requirements, which apply to disclosures that are made available to the public and the Commission, thus allowing for the realization of informational benefits (such as increased market efficiency and decreased information asymmetry) through the processing of Inline XBRL disclosures by information intermediaries such as analysts and researchers.[394] Under the current proposal, the required disclosures would not be provided to the public or the Commission for processing and analysis. Thus, the magnitude of benefit resulting from an Inline XBRL alternative for the disclosure requirements in this proposal may be lower than for other rules with Inline XBRL requirements.[395]

Compared to the proposal, an Inline XBRL requirement would result in additional compliance costs for private funds and advisers, as a result of the requirement to select, apply, and review the appropriate XBRL U.S. GAAP taxonomy element tags for the required disclosures (or pay a third-party service provider to do so on their behalf). In addition, private fund advisers may not have prior experience with preparing Inline XBRL documents, as neither Form PF nor Form ADV is filed using Inline XBRL. Thus, under this alternative, private funds may incur the initial Inline XBRL implementation costs that are often associated with being subject to an Inline XBRL requirement for the first time (including, as applicable, 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). Accordingly, the magnitude of compliance cost resulting from an Inline XBRL requirement under this proposal may be higher than for other rules with Inline XBRL requirements.

4. Alternatives to the Prohibitions From Engaging in Certain Sales Practices, Conflicts of Interest, and Compensation Schemes

The Commission could also consider prohibiting other activities, in addition to those currently prohibited in the proposed rule. For example, we could prohibit advisers from charging private funds for expenses generally understood to be adviser expenses, such as those incurred in connection with the maintenance and operation of the adviser's business. To the extent that the performance of these activities is outsourced to a consultant, for example, and the fund is charged for that service, advisers may be effectively shifting expenses that would be generally recognized as adviser expenses to instead be fund expenses. The prohibition of such charges could reduce investor monitoring costs. We believe, however, that identifying the types of charges associated with activities that should never be charged to the fund would likely be difficult. As a result, any such prohibition could risk effectively limiting an adviser's ability to outsource certain activities that could be better performed by a consultant, because under the prohibition the adviser would not be able to pass those costs on to the fund.

Further, the Commission could consider providing an exemption for funds utilizing a pass-through expense model from the prohibition on charging fees or expenses associated with certain examinations, investigations, and regulatory and compliance fees and expenses. This would allow advisers to avoid the costs associated with re-structuring any arrangements not compliant with the prohibition, given the proposed rules would likely prohibit certain aspects of these expense models.[396] We believe, however, that any exemption would need to be carefully balanced against the risk that it would continue to subject the fund to an adviser's incentive to shift its fees and expenses to the fund to reduce its overhead and operating costs.

We could also consider requiring detailed and standardized disclosures of the activities under consideration, instead of prohibiting the activities outright. This alternative may be desirable to the extent that certain investors would be willing to bear the costs of these activities in exchange for certain other beneficial terms, and would be willing to give informed consent to fund advisers engaging in the practices under consideration. However, we do not believe that disclosure requirements would achieve the same benefit of protecting investors from harm, because many of the practices are deceptive and result in obscured payments, and so may be used to defraud investors even if detailed disclosures are made. Moreover, as discussed above, private funds typically lack fully independent governance mechanisms more common to other markets that could help protect investors from harm in the context of the activities considered.[397]

We could, therefore, consider exceptions that allow certain prohibited activities if disclosed and if appropriate governance or other protections are in place. For example, we could consider requiring a fund's LPAC (or other similar body) or directors to give approval to any of the activities under consideration before the adviser may pursue them. Similarly, we could require advisers to obtain approval for any of the activities under consideration by a majority (either by number or by interest) of investors. However, we believe that allowing such activities, even under such governance, would not achieve all of the same benefits of protecting investors, by the same logic that many of the practices are deceptive and result in obscured payments, and so may be used to defraud investors even if disclosed and governed.

5. Alternatives to the Requirement That an Adviser To Obtain a Fairness Opinion in Connection With Certain Adviser-Led Secondary Transactions

The Commission could consider requiring advisers to obtain a third party

[394] *See, e.g.,* Y. Cong, J. Hao, and L. Zou, The Impact of XBRL Reporting on Market Efficiency, 28 *J. Info. Sys.* 181 (2014) (finding support for the hypothesis that ''XBRL reporting facilitates the generation and infusion of idiosyncratic information into the market and thus improves market efficiency''); Y. Huang, J.T. Parwada, Y.G. Shan, and J. Yang, Insider Profitability and Public Information: Evidence From the XBRL Mandate (Working Paper, 2019) (finding XBRL adoption levels the informational playing field between insiders and non-insiders).

[395] *See, e.g., Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts,* Release No. IC–33814 (Mar. 11, 2020) [85 FR 25964 at 26041 (Jun. 10, 2020)] (Noting that an Inline XBRL requirement for certain variable contract prospectus disclosures, which are publicly available, would include informational benefits stemming from use of the Inline XBRL data by parties other than investors, including financial analysts, data aggregators, and Commission staff. While the required disclosures in this proposal would not be provided to the public or the Commission, such benefits would not accrue from an Inline XBRL requirement for the required disclosures).

[396] *See supra* section V.C.3.

[397] *See supra* section V.B.1.

valuation in connection with certain adviser-led secondary transactions, instead of a fairness opinion. We believe that these third party valuations would likely involve more diligence of the proposed transaction than the reviews conducted in connection with obtaining a fairness opinion, and therefore, requiring these valuations could provide even greater assurances to investors that the terms of the transaction are fair to their interests. However, we believe that obtaining a third-party valuation would likely be significantly more costly to obtain. If these costs could be passed on to participants in these transactions, it could make them less attractive to investors as a means to obtain liquidity.

We could also consider changing the scope of this rule. For example, we could consider broadening the application of this rule to, for example, apply to all advisers, including advisers that are not required to register as investment advisers with the Commission, such as state-registered advisers and exempt reporting advisers. Investors would, as a result, receive the assurance of the fairness of more adviser-led secondary transactions. The extension of the proposed rule to apply to all advisers would, however, likely impose the costs of obtaining fairness opinions on smaller funds advised by unregistered advisers, and for these types of funds, the cost of obtaining such opinions would likely be relatively large compared to the value of fund assets and fees that the rule is intended to provide a check on, which could discourage them from undertaking these transactions. This could ultimately reduce liquidity opportunities for fund investors. Alternatively, we could provide exemptions from the rule. For example, an exemption could be provided where the adviser undertakes a competitive sale process for the assets being sold or for certain advisers to hedge funds or other funds determined to be liquid funds for whom the concerns regarding pricing of illiquid assets may be less relevant. These exemptions would reduce the costs on advisers associated with obtaining the fairness opinion, which could ultimately reduce costs for investors. However, we believe that any such exemptions could reduce the benefits of the proposed rule associated with providing greater assurance to investors of the fairness of the transaction. We believe that, even under circumstances where the adviser has conducted a competitive sales process, the effective check on this process provided by the fairness opinion would benefit investors. Further, even for advisers to hedge funds or other funds determined to be liquid funds who are advising funds with predominantly highly liquid securities, we believe that a fairness opinion would be beneficial to investors because the conflicts of interest inherent in structuring and leading a transaction may, despite the nature of the assets in the fund, harm investors.[398]

6. Alternatives to the Prohibition From Providing Certain Preferential Terms and Requirement To Disclose All Preferential Treatment

Instead of requiring that private fund advisers provide investors and prospective investors with written disclosures regarding all preferential treatment the adviser or its related persons provided to other investors in the same fund, the Commission could consider prohibiting all such terms. This could provide investors in private funds with increased confidence that the adviser's negotiations with other investors would not affect their investment in the private fund. We preliminarily believe, however, that an outright prohibition of all preferential terms may not provide significant additional benefits beyond prohibitions on providing certain preferential terms regarding redemption or information about portfolio holdings or exposures. As discussed above, we believe that certain types of preferential terms raise relatively few concerns, if disclosed.[399] Further, an outright prohibition of all preferential terms may limit the adviser's ability to respond to an individual investor's concerns during the course of attracting capital investments to private funds.

Further, we could consider prohibiting *all* preferential terms regarding redemption or information about portfolio holdings or exposures, rather than just those that the adviser reasonably expects to have a material, negative effect on other investors in that fund or in a substantially similar pool of assets. This could increase the investor protections associated with the rule, by eliminating the risk that a term not reasonably expected to have a material negative effect on investors could, ultimately, harm investors. We believe, however, that this alternative would likely provide more limited benefits and would increase costs associated with the rule similar to the above alternatives, for example by limiting the adviser's ability to respond to an individual investor's concerns during the course of attracting capital investments to private funds.

In addition, for preferential terms not regarding redemption or information about portfolio holdings or exposures, we could consider requiring advisers to private funds to provide disclosure only when the term has a material negative effect on other fund investors. This could reduce the compliance burden on advisers associated with the costs of disclosure. We believe, however, that limiting disclosure to only those terms that an adviser determines to have a material negative effect could reduce an investor's ability to recognize the potential for harm from unforeseen favoritism toward other investors, relative to a requirement to disclose all preferential treatment.

F. Request for Comment

The Commission requests comment on all aspects of the economic analysis of the proposed rule. To the extent possible, the Commission requests that commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed amendments or any reasonable alternatives. In particular, the Commission asks commenters to consider the following questions:

- What additional qualitative or quantitative information should the Commission consider as part of the baseline for its economic analysis of these amendments?
- Has the Commission accurately characterized the costs and benefits of proposed rule? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the Commission take into account? If possible, please offer ways of estimating these costs and benefits. What additional considerations can the Commission use to estimate the costs and benefits of the proposed amendments?
- Has the Commission accurately characterized the effects on competition, efficiency, and capital formation arising from the proposed rules? If not, why not?
- Has the Commission accurately characterized the economic effects of the above alternatives? If not, why not? Should any of the costs or benefits be modified? What, if any, other costs or benefits should the Commission take into account? Are there other reasonable alternatives to the proposed amendments? What are the economic effects of any other alternatives?
- Are there data sources or data sets that can help the Commission refine its

[398] Moreover, the costs to liquid fund advisers are more likely to be limited, as many secondary transactions by liquid fund advisers are not adviser-led and so would not necessitate a fairness opinion.

[399] *See supra* section II.E.

estimates of the costs and benefits associated with the proposed amendments? If so, please identify them.

• How would the proposed delivery of the quarterly statement affect the reporting practices of advisers, including the costs and benefits of these statements? Would advisers add the required report to the report that they currently provide to investors? Would advisers substitute the required report for an existing report? Explain.

• What are the benefits to investors of obtaining the information that would be required under the proposal in a standardized format that would enable them to make comparisons across alternative fund investments? Explain. Would the benefits to investors vary based on the investor's scale of operations, relationship with the adviser, or other factors? Explain. Please provide data, if available, to support your answer along with details regarding data sources and interpretation of statistics, where appropriate.

• Would the proposed rules strengthen the bargaining power of investors in negotiating with private fund advisers? If so, under what circumstances, and for what types of funds and investors would this effect occur? How would it affect other investors who do not gain bargaining power as a result of the proposed rules? Please explain your answer and provide supporting data, if possible.

• What would the aggregate total cost (including but not limited to the audit fee) be of complying with the new audit requirement, separately, for (a) funds that currently receive audits and (b) funds that would newly receive an audit under the proposed rule? For each, what is the current per-fund cost of an audit? Is the per-fund cost different between the funds that currently receive audits and would newly receive audits? If yes, explain Please include an explanation of any differences between the funds that currently receive an audit and the funds that would newly receive an audit that would explain the differences in their per-fund audit costs. Provide quantitative evidence to support your explanation, if available.

• Would the proposed rules introduce new fixed costs of compliance? Would they cause private funds or fund advisers to consolidate their operations to economize on those costs? Please explain. Provide quantitative evidence to support your explanation, if available.

• To what extent do funds currently provide quarterly statements to investors, and what is the cost of providing these statements? How are they delivered? How do investors use them? What are the contents of these statements currently? How do the current contents compare with the contents that would be required under the proposed rule? Explain.

• We believe that the information in the new quarterly statements would supplement the information that investors currently receive about their fund investments and that advisers would not respond to the proposal by discontinuing any reports to investors. Is this correct? Why or why not? Please explain.

• What fee and expense information is currently available to investors for use in comparing investment opportunities among similar funds (sponsored by the same adviser or different advisers)? How does this information differ from the information that advisers would be required to provide under the proposed rule? In what way does the lack of this information affect investor choice or the ability of investors to monitor fund performance net of fees and expenses?

• What performance information is currently available for investors for use in comparing investment opportunities among similar funds (sponsored by the same adviser or different advisers)? How does this information differ from the information that advisers would be required to provide under the proposed rule?

• How frequently do advisers currently engage in each of the activities that would be prohibited under the proposed rule? Does this frequency vary depending on the type of adviser or investor? For each practice, what is the current business purpose of the activity and how else might that purpose be achieved (if the activity were prohibited)? Please provide quantitative evidence on the magnitude of the activity, *e.g.,* how much money do advisers and related persons receive from the fee and expense arrangements that would be prohibited?

• What is the economic effect on investors, currently, of the activities we propose to prohibit under the proposed rule? What empirical evidence is there that those activities make investors worse off?

• What data exists regarding the costs to investors of conflicts of interest in connection with adviser-led secondary transactions where an adviser offers fund investors the option to sell their interests in the private fund, or to exchange them for new interests in another vehicle advised by the adviser? How do costs vary according to the presence or absence of the disclosure that would be required under the proposed rule?

• From what sources do investors receive information about fund performance: (a) When comparing alternative prospective fund investments and (b) for evaluating the performance of an ongoing und investment? For example, do investors obtain this information directly from the advisers or from a third party? If from a third party, from what source does the third party obtain the fund performance information, and what is the cost of this information? How does the source vary with the fund type or third party, if at all?

• How frequently and under what conditions are private fund investors (current and prospective) unable to obtain information from fund advisers or third parties on the fund performance?

• Do investors rely on IRR and MOIC for evaluating the performance of funds determined to be illiquid funds? What additional information do investors use to evaluate illiquid fund performance? How frequently do they rely on this information? From what sources do they currently obtain this information?

• How do investors who do not have access to this information evaluate illiquid fund performance? What alternative sources of information do they rely upon?

• Do investors rely on annual total returns for evaluating the performance of funds determined to be liquid funds? When evaluating performance partway through a current year, do investors rely on cumulative total return for the current calendar year? What additional information do investors use to evaluate liquid fund performance? How frequently do they rely on this information? From what sources do they currently obtain this information?

• How do investors who do not have access to this information evaluate liquid fund performance? What alternative sources of information do they rely upon?

VI. Paperwork Reduction Act

A. Introduction

Certain provisions of our proposal would result in new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[400] The proposed amendments would also have an impact on the current collection of information burdens of rules 206(4)–7 and 204–2 under the Advisers Act. The title of the new collection of information

[400] 44 U.S.C. 3501 *et seq.*

requirements we are proposing are ''Rule 211(h)(1)–2 under the Advisers Act,'' ''Rule 206(4)–10 under the Advisers Act,'' ''Rule 211(h)(2)–2 under the Advisers Act,'' and ''Rule 211(h)(2)–3 under the Advisers Act.'' The Office of Management and Budget (''OMB'') has not yet assigned control numbers for these new collections of information. The titles for the existing collections of information that we are proposing to amend are: (i) ''Rule 206(4)–7 under the Advisers Act (17 CFR 275.206(4)–7)'' (OMB control number 3235–0585) and (ii) ''Rule 204–2 under the Advisers Act (17 CFR 275.204–2)'' (OMB control number 3235–0278). The Commission is submitting these collections of information to OMB for review and approval in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. 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.

We discuss below the new collection of information burdens associated with new rules 211(h)(1)–2, 206(4)–10, 211(h)(2)–2, and 211(h)(2)–3 as well as the revised existing collection of information burdens associated with the proposed amendments to rules 206(4)–7 and 204–2. Responses provided to the Commission in the context of amendments to rules 206(4)–7 and 204–2 would be kept confidential subject to the provisions of applicable law. Because the information collected pursuant to new rules 211(h)(1)–2, 211(h)(2)–2, and 211(h)(2)–3 requires disclosures to existing investors and in some cases potential investors, these disclosures would not be kept confidential. Proposed new rule 206(4)–10 requires the collection of two types of information: one type (the audited financial statements) would be distributed only to investors in the private fund, and the other (notifications to the Commission) would be kept confidential subject to the provisions of applicable law.

B. Quarterly Statements

Proposed rule 211(h)(1)–2 would require an investment adviser registered or required to be registered with the Commission to prepare a quarterly statement that includes certain standardized disclosures regarding the cost of investing in the private fund and the private fund's performance for any private fund that it advises, directly or indirectly, that has at least two full calendar quarters of operating results, and distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless such a quarterly statement is prepared and distributed by another person.[401] The quarterly statement would provide investors with fee and expense disclosure for the prior quarterly period or, in the case of a newly formed private fund initial account statement, its first two full calendar quarters of operating results. It would also provide investors with certain performance information depending on whether the fund is categorized as a liquid fund or an illiquid fund.[402]

The collection of information is necessary to provide private fund investors with information about their private fund investments. The quarterly statement would allow a private fund investor to compare standardized cost and performance information across its private fund investments. We believe this information would help inform investment decisions, including whether to remain invested in certain private funds or to invest in other private funds managed by the adviser or its related persons. More broadly, this disclosure would help inform investors about the cost and performance dynamics of this marketplace and potentially improve efficiency for future investments.

Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the PRA. This collection of information is found at 17 CFR 275.211(h)(1)–2 and is mandatory. The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered with the Commission that advise one or more private funds.

Based on Investment Adviser Registration Depository (IARD) data, as of November 30, 2021, there were 14,832 investment advisers registered with the Commission. According to this data, 5,037 registered advisers provide advice to private funds.[403] We estimate that these advisers would, on average, each provide advice to 9 private funds.[404] We further estimate that these private funds would, on average, each have a total of 67 investors.[405] As a result, an average private fund adviser would have, on average, a total of 603 investors across all private funds it advises. As noted above, because the information collected pursuant to proposed rule 211(h)(1)–2 requires disclosures to private fund investors, these disclosures would not be kept confidential.

We have made certain estimates of this data solely for the purpose of this PRA analysis. The table below summarizes the initial and ongoing annual burden estimates associated with the proposed account statement rule.

TABLE 1—RULE 211(h)(1)–2 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate [1]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES					
Preparation of account statements.	9	11 hours [2]	$382 (blended rate for compliance attorney ($373), assistant general counsel ($476), and financial reporting manager ($297)).	$4,202	$4,030.[3]
Distribution of account statements to existing investors.	1.5	3.5 hours [4]	$64 (rate for general clerk)	$224	$930.[5]

[401] *See* proposed rule 211(h)(1)–2.

[402] *See* proposed rule 211(h)(1)–2(d).

[403] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[404] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[405] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).A., #13.

TABLE 1—RULE 211(h)(1)–2 PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual burden hours	Wage rate [1]	Internal time cost	Annual external cost burden
Total new annual burden per private fund.		14.5 hours		$4,426	$4,960.
Avg. number of private funds per adviser.		9 private funds		9 private funds	9 private funds.
Number of PF advisers.		5,037 advisers		5,037 advisers	2,518.[6]
Total new annual burden.		657,328.5 hours		$200,643,858	$112,403,250.

Notes:

[1] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (''SIFMA Report'').

[2] This includes the internal initial burden estimate annualized over a three-year period, plus 8 hours of ongoing annual burden hours and takes into account that there would be four statements prepared each year. The estimate of 11 hours is based on the following calculation: ((9 initial hours/3 years) + 8 hours of additional ongoing burden hours) = 11 hours.

[3] This estimated burden is based on the sum of the estimated wage rate of $496/hour, for 5 hours, ($2,480) for outside legal services and the estimated wage rate of $310/hour, for 5 hours, ($1,550) for outside accountant assistance, and it assumes that there would be four statements prepared each year. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[4] This includes the internal initial burden estimate annualized over a three-year period, plus 3 hours of ongoing annual burden hours that takes into account that there would be four statements prepared each year. The estimate of 3.5 hours is based on the following calculation: ((1.5 initial hours/3 years) + 3 hours of additional ongoing burden hours) = 3.5 hours.

[5] This estimated burden is based on the estimated wage rate of $310/hour, for 3 hours, for outside accounting services, and it assumes that there would be four statements distributed each year. *See supra* footnote 409 (regarding wage rates with respect to external cost estimates).

[6] We estimate that 50% of advisers will use outside legal and accounting services for these collections of information. This estimate takes into account that advisers may elect to use outside these services (along with in-house counsel), based on factors such as adviser budget and the adviser's standard practices for using such outside services, as well as personnel availability and expertise.

C. Mandatory Private Fund Adviser Audits

Proposed rule 206(4)–10 would require investment advisers that are registered or required to be registered to cause each private fund they advise, directly or indirectly, to undergo a financial statement audit at least annually and upon liquidation that complies with the proposed rule, unless the fund otherwise undergoes such an audit.[406] We believe that proposed new rule 206(4)–10 would protect the fund and its investors against the misappropriation of fund assets and that an audit performed by an independent public accountant would provide an important check on the adviser's valuation of private fund assets, which often serve as the basis for the calculation of the adviser's fees. The collection of information is necessary to provide private fund investors with information about their private fund investments and the Commission uses this information in the context of its examination and oversight program.

Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the PRA. This collection of information is found at 17 CFR 275.206(4)–10 and is mandatory to the extent the adviser provides investment advice to a private fund. The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered with the Commission that advise one or more private funds. All responses required by the proposed audit rule would be mandatory. One response type (the audited financial statements) would be distributed only to investors in the private fund and would not be confidential, and the other (notifications to the Commission) would be kept confidential subject to the provisions of applicable law.

Based on IARD data, as of November 30, 2021, there were 14,832 investment advisers registered with the Commission. According to this data, 5,037 registered advisers provide advice to private funds.[407] We estimate that these advisers would, on average, each provide advice to 9 private funds.[408] We further estimate that these private funds would, on average, each have a total of 67 investors.[409] As a result, an average private fund adviser would have, on average, a total of 603 investors across all private funds it advises.

We have made certain estimates of this data, as discussed below, solely for the purpose of this PRA analysis. The table below summarizes the initial and ongoing annual burden estimates associated with the proposed rule's reporting requirement.

[406] *See* proposed rule 206(4)–10.

[407] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[408] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[409] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).A., #13.

TABLE 2—RULE 206(4)–10 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate[1]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES					
Distribution of audited financial statements[2].	0	1.12 hours[3]	$153.33 (blended rate for intermediate accountant ($175), general accounting supervisor ($221), and general clerk ($64)).	$171.73	$60,000.[4]
Preparation of the written agreement[5].	[6] 1.25	0.92 hours[7]	$476 (rate for assistant general counsel)	$437.92	$0.
Total new annual burden per private fund.		2.04 hours		$609.65	$60,000.[8]
Avg. number of private funds per adviser.		9 private funds		9 private funds	9 private funds.
Number of advisers		5,037 advisers		5,037 advisers	5,037 advisers.
Total new annual burden.		92,479.32 hours		$27,637,263.40	$2,719,980,000.

Notes:

1. *See* SIFMA Report *supra* Note 1 to Table 1 Rule 211(h)(1)–2 PRA Estimates.
2. The proposed audit provision would require an adviser to obtain an audit at least annually and upon an entity's liquidation. To the extent not prohibited, we anticipate that, in some cases, the fund will bear the audit expense, in other cases the adviser will bear it, and in other instances both the adviser and fund will share the expense. The liquidation audit would serve as the annual audit for the fiscal year in which it occurs. *See* proposed rule 206(4)–10.
3. This estimate takes into account that the financial statements must be distributed once annually under the proposed audit rule and that a liquidation audit would replace a final audit in a year. Based on our experience with similar requirements under the custody rule, we estimate the hour burden imposed on the adviser relating to the distribution of the audited financial statements with respect to the investors in each fund should be minimal, approximately one minute per investor. *See Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2968 (Dec. 30, 2009) [75 FR 1455 (Jan. 11, 2010)] (''Custody Rule 2009 Adopting Release''), at 59–60. We estimate that the average private fund has 67 investors.
4. Based on our experience, we estimate that the party (or parties) that bears the audit expense would pay an average audit fee of $60,000 per fund. We estimate that individual fund audit fees would tend to vary over an estimated range from $15,000 to $300,000, and that some fund audit fees would be higher or lower than this range. We understand that the price of the audit has many variables, such as whether it is a liquid fund or illiquid fund, the number of its holdings, availability of a PCAOB-registered and -inspected auditor, economies of scale, and the location and size of the auditor.
5. The proposed rule would require the adviser or the private fund to enter into an agreement with the independent public accountant. The agreement would require the independent public accountant that completes the audit to notify the Commission by electronic means directed to the Division of Examinations promptly upon certain events. *See* proposed rule 206(4)–10(e).
6. For purposes of this PRA we assume that, regardless of whether the adviser or the fund enters into the written agreement, the accountant would incur the hour burden of preparing the agreement. We also assume that, if the fund was party to the agreement, the fund would delegate the task of reviewing the agreement to the adviser. This estimate also assumes that the adviser would enter into a separate agreement for each private fund, even if multiple funds use the same auditor. We believe that written agreements are commonplace and reflect industry practice when a person retains the services of a professional such as an accountant, and they are typically prepared by the accountant in advance. We therefore estimate that each adviser would spend 1.25 hours to add the required provisions to, or confirm that the required provisions are in, the written agreement.
7. This includes the internal initial burden estimate annualized over a three-year period, plus 0.5 hours of ongoing annual burden hours, and it assumes annual reassessment and execution: ((1.25 initial hours/3 years) + 0.5 hours of additional ongoing burden hours) = 0.92 hours.
8. We assume the same frequency of these cost estimates as for the internal annual burden hours estimate.

D. Adviser-Led Secondaries

Proposed rule 211(h)(2)–2 would prohibit an adviser registered or required to be registered from completing an adviser-led secondary transaction with respect to any private fund, unless the adviser, prior to the closing of the transaction, distributes to investors in the private fund a fairness opinion from an independent opinion provider and a summary of any material business relationships the adviser or any of its related persons has, or has had within the past two years, with the independent opinion provider.[410] We believe that this proposed requirement would provide an important check against an adviser's conflicts of interest in structuring and leading a transaction from which it may stand to profit at the expense of private fund investors and would help ensure that private fund investors are offered a fair price for their private fund interests. Specifically, this requirement is designed to help ensure that investors receive the benefit of an independent price assessment, which we believe will improve their decision-making ability and their overall confidence in the transaction. The collection of information is necessary to provide investors with information about securities transactions in which they may engage.

Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the PRA. This collection of information is found at 17 CFR 275.211(h)(2)–2 and is mandatory. The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered with the Commission that advise one or more private funds. Based on IARD data, as of November 30, 2021, there were 14,832 investment advisers registered with the Commission. According to this data, 5,037 registered advisers provide advice to private

[410] *See* proposed rule 211(h)(2)–2.

funds.[411] Of these 5,037 advisers, we estimate that 10%, or approximately 504 advisers, conduct an adviser-led secondary transaction each year. Of these advisers, we further estimate that each conducts one adviser-led secondary transaction each year. As a result, an adviser would have obligations under the proposed rule with regard to 67 investors.[412] As noted above, because the information collected pursuant to proposed rule 211(h)(2)–2 requires disclosures to private fund investors, these disclosures would not be kept confidential.

We have made certain estimates of this data solely for the purpose of this PRA analysis. The table below summarizes the annual burden estimates associated with the proposed rule's requirements.

TABLE 3—RULE 211(h)(2)–2 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate [1]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES					
Preparation/Procurement of fairness opinion.	0	4 hours [2]	$376.66 (blended rate for compliance attorney ($373), assistant general counsel ($476), and senior business analyst ($281)).	$1,506.64	$40,000.[3]
Preparation of material business relationship summary.	0	2 hours	$424.50 (blended rate for compliance attorney ($373) and assistant general counsel ($476)).	$849	$496.[4]
Distribution of fairness opinion and material business relationship summary.	0	1 hour	$64 (rate for general clerk)	$64	$0.
Total new annual burden per private fund.		7 hours		$2,419.64	$40,849.
Number of advisers		504 advisers [5]		504 advisers	504 advisers.
Total new annual burden		3,528 hours		$1,219,498.56	$20,587,896.

Notes:
[1] *See* SIFMA Report *supra* Note 1 to Table 1 Rule 211(h)(1)–2 PRA Estimates.
[2] Includes the time an adviser would spend gathering materials to provide to the independent opinion provider so that the latter can prepare the fairness opinion.
[3] This estimated burden is based on our understanding of the general cost of a fairness opinion in the current market. The cost will vary based on, among other things, the complexity, terms, and size of the adviser-led secondary transaction, as well as the nature of the assets of the fund.
[4] This estimated burden is based on the estimated wage rate of $496/hour, for 1 hours, for outside legal services at the same frequency as the internal burden hours estimate. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.
[5] We estimate that 10% of all registered private fund advisers conduct in an adviser-led secondary transaction each year.

E. Disclosure of Preferential Treatment

Proposed rule 211(h)(2)–3 would prohibit all private fund advisers from providing preferential terms to certain investors regarding redemption or information about portfolio holdings or exposures.[413] The proposed rule would also prohibit these advisers from providing any other preferential treatment to any investor in the private fund unless the adviser provides written disclosures to prospective and current investors in a private fund regarding all preferential treatment the adviser or its related persons are providing to other investors in the same fund. For prospective investors, the proposed new rule would require advisers to provide the written notice prior to the investor's investment in the fund.[414] For current investors, the proposed new rule would require advisers to distribute an annual update regarding any preferential treatment provided since the last notice, if any.[415]

The proposed new rule is designed to protect investors and serve the public interest by requiring disclosure of preferential treatment afforded to certain investors. The proposed new rule would increase transparency in order to better inform investors regarding the breadth of preferential terms, the potential for those terms to affect their investment in the private fund, and the potential costs (including compliance costs) associated with these preferential terms. Also, this disclosure would help investors shape the terms of their relationship with the adviser of the private fund. The collection of information is necessary to provide private fund investors with information about their private fund investments.

Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a ''collection of information'' requirement under the PRA. This collection of information is found at 17 CFR 275.211(h)(2)–3 and is mandatory. The respondents to these collections of information requirements would be all investment advisers that advise one or more private funds. Based on IARD data, as of November 30, 2021, there were 12,500 investment advisers that provide advice to private funds.[416] We estimate that these advisers would, on average, each provide advice to 7 private funds. We further estimate that these private funds would, on average, each have a total of 63 investors. As a result, an average private fund adviser would have a total of 441 investors across all private funds it advises. As noted above, because the information collected pursuant to proposed rule 211(h)(2)–3 requires disclosures to private fund investors and prospective investors, these disclosures would not be kept confidential.

We have made certain estimates of this data solely for the purpose of this PRA analysis. The table below summarizes the initial and ongoing annual burden estimates associated with

[411] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[412] *See supra* section V.B.

[413] *See* proposed rule 211(h)(2)–3(b).

[414] *See* proposed rule 211(h)(2)–3(b)(1).

[415] *See* proposed rule 211(h)(2)–3(b)(2).

[416] The following types of private fund advisers, among others, would be subject to the proposed rule: Unregistered advisers (*i.e.,* advisers that are not SEC registered but have a registration obligation, and those that may be prohibited from registering with us), foreign private advisers, and advisers that rely on the intrastate exemption from SEC registration and/or the *de minimis* exemption from SEC registration. However, we are unable to estimate the number of advisers in each of these categories because these advisers do not file reports or other information with the SEC and we are unable to find reliable, public information. As a result, the above estimate is based on information from SEC-registered advisers to private funds, exempt reporting advisers (at the state and Federal levels), and state-registered advisers to private funds. These figures are approximate.

the proposed rule's policies and procedures and annual review requirements.

TABLE 4—RULE 211(h)(2)–3 PRA ESTIMATES

	Internal initial burden hours	Internal annual burden hours	Wage rate [1]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES					
Preparation of written notice	4	3.3 hours [2]	$424.50 (blended rate for compliance attorney ($373) and assistant general counsel ($476)).	$1,400.85	$496.[3]
Provision/distribution of written notice	0.25	1.13 hours [4]	$64 (rate for general clerk)	$72.32..	
Total new annual burden per private fund.		4.43 hours		$1,473.17	$496.
Avg. number of private funds per adviser.		7 private funds		7 private funds	7 private funds.
Number of advisers		12,500 advisers		12,500 advisers	9,375 advisers.[5]
Total new annual burden		387,625 hours		$128,902,375	$32,550,000.

Notes:

[1] *See* SIFMA Report, *supra* Note 1 to Table 1 Rule 211(h)(1)–2 PRA Estimates.

[2] This includes the internal initial burden estimate annualized over a three-year period, plus 2 hours of ongoing annual burden hours and assumes notices would be issued once annually to existing investors and once quarterly for prospective investors. The estimate of 3.3 hours is based on the following calculation: ((4 initial hours/3 years) + 2 hours of additional ongoing burden hours) = 3.3 hours. The burden hours associated with reviewing preferential treatment provided to other investors in the same fund and updating the written notice takes into account that (i) most closed-end funds would only raise new capital for a finite period of time and thus the burden hours would likely decrease after the fundraising period terminates for such funds since they would not continue to seek new investors and would not continue to agree to new preferential treatment for new investors and (ii) most open-end private funds continuously raise capital and thus the burden hours would likely remain the same year over year since they would continue to seek new investors and would continue to agree to preferential treatment for new investors.

[3] This estimated burden is based on the estimated wage rate of $496/hour, for 1 hours, for outside legal services at the same frequency as the internal burden hours estimate. The Commission's estimates of the relevant wage rates for external time costs, such as outside legal services, takes into account staff experience, a variety of sources including general information websites, and adjustments for inflation.

[4] This includes the internal initial burden estimate annualized over a three-year period, plus 1.05 hours of ongoing annual burden hours. The estimate of 1.13 hours is based on the following calculation: ((0.25 initial hours/3 years) + 1.05 hours of additional ongoing burden hours) = 1.13 hours.

[5] We estimate that 75% of advisers will use outside legal services for these collections of information. This estimate takes into account that advisers may elect to use outside legal services (along with in-house counsel), based on factors such as adviser budget and the adviser's standard practices for using outside legal services, as well as personnel availability and expertise.

F. Written Documentation of Adviser's Annual Review of Compliance Program

The proposed amendment to rule 206(4)–7 would require investment advisers that are registered or required to be registered to document the annual review of their compliance policies and procedures in writing.[417] We believe that such a requirement would focus renewed attention on the importance of the annual compliance review process and would help ensure that advisers maintain records regarding their annual compliance review that will allow our staff to determine whether an adviser has complied with the compliance rule.

This collection of information is found at 17 CFR 275.206(4)–7 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. As noted above, responses provided to the Commission in the context of its examination and oversight program concerning the proposed amendments to rule 206(4)–7 would be kept confidential subject to the provisions of applicable law.

Based on IARD data, as of November 30, 2021, there were 14,832 investment advisers registered with the Commission. In our most recent PRA submission for rule 206(4)–7, we estimated a total hour burden of 1,152,663 hours, and the total annual external cost burden is $0.

The table below summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule 204–2.

TABLE 5—RULE 206(4)–7 PRA ESTIMATES

	Internal annual burden hours	Wage rate [1]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES				
Written documentation of annual review.	3 hours [2]	$424.50 (blended rate for compliance attorney ($373) and assistant general counsel ($476)).	$1,273.50	$551.[3]
Number of advisers	14,832 advisers		14,832 advisers	7,416 advisers.[4]
Total new annual burden	44,496 hours		$18,888,552	$4,086,216.

Notes:

[1] *See* SIFMA Report, *supra* Note 1 to Table 1 Rule 211(h)(1)–2 PRA Estimates.

[2] We estimate that these proposed amendments would increase each registered investment adviser's average annual collection burden under rule 206(4)–7 by 3 hours.

[3] This estimated burden is based on the sum of the estimated wage rate of $496/hour, for 0.5 hours, ($248) for outside legal services and the estimated wage rate of $310/hour, for 0.5 hours, ($155) for outside accountant assistance.

[4] We estimate that 50% of advisers will use outside legal services for these collections of information. This estimate takes into account that advisers may elect to use outside legal services (along with in-house counsel), based on factors such as adviser budget and the adviser's standard practices for using outside legal services, as well as personnel availability and expertise.

[417] *See* proposed rule 206(4)–7(b).

G. Recordkeeping

The proposed amendments to rule 204–2 would require advisers to private funds to retain books and records related to the proposed quarterly statement rule, the proposed audit rule, the proposed adviser-led secondaries rule, and the proposed preferential treatment rule.[418] These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities.

Specifically, the proposed books and records amendments related to the quarterly statement rule would require advisers to (i) retain a copy of any quarterly statement distributed to fund investors as well as a record of each addressee, the date(s) the statement was sent, address(es), and delivery method(s); (ii) retain all records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any statement delivered pursuant to the proposed quarterly statement rule; and (iii) make and keep books and records substantiating the adviser's determination that the private fund it manages is a liquid fund or an illiquid fund pursuant to the proposed quarterly statement rule.[419]

The proposed books and records amendments related to the proposed audit rule would require advisers to keep a copy of any audited financial statements along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.[420] Additionally, the proposed rule would require the adviser to keep a record documenting steps it took to cause a private fund client with which it is not in a control relationship to undergo a financial statement audit that would comply with the rule.[421]

The proposed books and records amendments related to the proposed adviser-led secondaries rule would require advisers to retain a copy of any fairness opinion and summary of material business relationships distributed pursuant to the proposed rule along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.[422]

The proposed books and records amendments related to the proposed preferential treatment rule would require advisers to retain copies of all written notices sent to current and prospective investors in a private fund pursuant to rule 211(h)(2)–3.[423] In addition, advisers would be required to retain copies of a record of each addressee and the corresponding dates sent, addresses, and delivery method for each addressee.[424]

The respondents to these collections of information requirements would be investment advisers that are registered or required to be registered with the Commission that advise one or more private funds. Based on IARD data, as of November 30, 2021, there were 14,832 investment advisers registered with the Commission. According to this data, 5,037 registered advisers provide advice to private funds.[425] We estimate that these advisers would, on average, each provide advice to 9 private funds.[426] We further estimate that these private funds would, on average, each have a total of 67 investors.[427] As a result, an average private fund adviser would have, on average, a total of 603 investors across all private funds it advises.

In our most recent PRA submission for rule 204–2,[428] we estimated for rule 204–2 a total hour burden of 2,764,563 hours, and the total annual external cost burden is $175,980,426. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. As noted above, responses provided to the Commission in the context of its examination and oversight program concerning the proposed amendments to rule 204–2 would be kept confidential subject to the provisions of applicable law.

The table below summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule 204–2.

TABLE 6—RULE 204–2 PRA ESTIMATES

	Internal annual burden hours [1]	Wage rate [2]	Internal time cost	Annual external cost burden
PROPOSED ESTIMATES				
Retention of account statement and calculation information; making and keeping records re liquid/illiquid fund determination.	0.25 hours	$68 (blended rate for general clerk ($64) and compliance clerk ($72)).	$17	$0
Avg. number of private funds per adviser.	9 private funds		9 private funds	0
Number of advisers	5,037 advisers		5,037 advisers	0
Sub-total burden	11,333.25 hours		$770,661	0
Retention of written notices re preferential treatment.	0.5 hours	$68 (blended rate for general clerk ($64) and compliance clerk ($72)).	$34	0
Avg. number of private funds per adviser.	7 private funds		7 private funds	0
Number of advisers	5,037 advisers		5,037 advisers	0
Sub-total burden	17,629.5 hours		$1,198,806	0
Retention and distribution of audited financial statements.	0.25 hours	$68 (blended rate for general clerk ($64) and compliance clerk ($72)).	$17	0

[418] *See* proposed rule 204–2.

[419] *See* proposed rule 204–2(a)(20)(i) and (ii) and (a)(22).

[420] *See* proposed rule 204–2(a)(21)(i).

[421] *See* proposed rule 204–2(a)(21)(ii).

[422] *See* proposed rule 204–2(a)(23).

[423] *See* proposed rule 204–2(a)(7)(v).

[424] *Id.*

[425] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[426] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).

[427] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).A., #13.

[428] Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204–2, OMB Report, OMB 3235–0278 (Aug. 2021).

TABLE 6—RULE 204–2 PRA ESTIMATES—Continued

	Internal annual burden hours [1]	Wage rate [2]	Internal time cost	Annual external cost burden
Avg. number of private funds per adviser.	9 private funds		9 private funds	0
Number of advisers	5,037 advisers		5,037 advisers	0
Sub-total burden	11,333.25 hours		$770,661	0
Retention and distribution of fairness opinion and summary of material business relationships.	1 hour	$68 (blended rate for general clerk ($64) and compliance clerk ($72)).	$68	0
Avg. number of private funds per adviser that conduct an adviser-led transaction.	1 private fund		1 private fund	0
Number of advisers	504 advisers [3]		504 advisers [4]	0
Sub-total burden	504 hours		$34,272	0
Total burden	40,800 hours		$ 2,774,400	0

Notes:

[1] Hour burden and cost estimates for these proposed rule amendments assume the frequency of each collection of information for the substantive rule with which they are associated. For example, the hour burden estimate for recordkeeping obligations associated with the amendments to proposed rule 204–2(a)(20) and (22) would assume the same frequency of collection of information as under proposed rule 211(h)(1)–2.

[2] *See* SIFMA Report, *supra* Note 1 to Table 1 Rule 211(h)(1)–2 PRA Estimates.

[3] *See supra* section V.D.

[4] Id.

H. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov*, and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–03–22. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–03–22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

VII. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[429] It relates to the following proposed rules and rule amendments under the Advisers Act: (i) Proposed rule 211(h)(1)–1; (ii) proposed rule 211(h)(1)–2; (iii) proposed rule 206(4)–10; (iv) proposed rule 211(h)(2)–1; (v) proposed rule 211(h)(2)–2; (vi) proposed rule 211(h)(2)–3; (vii) proposed amendments to rule 204–2; and (viii) proposed amendments to rule 206(4)–7.

A. Reasons for and Objectives of the Proposed Action

1. Proposed Rule 211(h)(1)–1

We are proposing new rule 211(h)(1)–1 under the Advises Act (the ''definitions rule''), which would contain numerous definitions for purposes of proposed rules 211(h)(1)–2, 206(4)–10, 211(h)(2)–1, 211(h)(2)–2, and 211(h)(2)–3.[430] We chose to include these definitions in a single rule for ease of reference, consistency, and brevity.

2. Proposed Rule 211(h)(1)–2

We are proposing new rule 211(h)(1)–2 under the Advisers Act, which requires any investment adviser registered or required to be registered with the Commission that provides investment advice to a private fund that has at least two full calendar quarters of operating results to prepare and distribute a quarterly statement to private fund investors that includes certain standardized disclosures regarding the cost of investing in the private fund and the private fund's performance.[431] We believe that providing this information to private fund investors in a simple and clear format is appropriate and in the public interest and will improve investor protection and investor decision making. The reasons for, and objectives of, proposed rule 211(h)(1)–2 are discussed in more detail in section II.A, above. The burdens of this requirement on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are also discussed in section VI.

[429] 5 U.S.C. 603(a).

[430] *See* proposed rule 211(h)(1)–1.

[431] *See* proposed rule 211(h)(1)–2.

3. Proposed Rule 206(4)–10

We are proposing new rule 206(4)-10 under the Advisers Act, which would generally require all investment advisers that are registered or required to be registered with the Commission to have their private fund clients undergo a financial statement audit at least annually and upon liquidation containing certain prescribed elements, which are described above in section II.B. The proposed rule is designed to provide protection for the fund and its investors against the misappropriation of fund assets and to provide an important check on the adviser's valuation of private fund assets, which often serve as the basis for the calculation of the adviser's fees. The reasons for, and objectives of, the proposed audit rule are discussed in more detail in section II.B, above. The burdens of these requirements on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are discussed in section VI.

4. Proposed Rule 211(h)(2)–1

Proposed rule 211(h)(2)-1 would prohibit all private fund advisers from, directly or indirectly, engaging in certain sales practices, conflicts of interest, and compensation schemes that are contrary to the public interest and the protection of investors. Specifically, the rule would prohibit an adviser from: (1) Charging certain fees and expenses to a private fund or portfolio investment (including accelerated monitoring fees, fees or expenses associated with an examination or investigation of the adviser or its related persons by governmental or regulatory authorities, regulatory or compliance expenses or fees of the adviser or its related persons, or fees and expenses related to a portfolio investment (or potential portfolio investment) on a non-pro rata basis when multiple private funds and other clients advised by the adviser or its related persons have invested (or propose to invest) in the same portfolio investment); (2) reducing the amount of any adviser clawback by the amount of certain taxes; (3) seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund; and (4) borrowing money, securities, or other fund assets, or receiving a loan or an extension of credit, from a private fund client.[432] Each of these prohibitions is described in more detail above in section II.D. As discussed above, we believe that these sales practices, conflicts of interest, and compensation schemes must be prohibited. The proposed rule would prohibit these activities regardless of whether the private fund documents permit such activities or the adviser otherwise discloses the practices and regardless of whether the private fund investors have consented to the activities. Also, the proposed rule would prohibit these activities even if they are performed indirectly, for example by an adviser's related persons, because the activities have an equal potential to harm investors regardless of whether the adviser engages in the activity directly or indirectly. The reasons for, and objectives of, the proposed rule are discussed in more detail in section II.D, above. The burdens of these requirements on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are discussed in section VI.

5. Proposed Rule 211(h)(2)–2

We are proposing new rule 211(h)(2)–2 under the Advisers Act, which generally would make it unlawful for an adviser that is registered or required to be registered with the Commission to complete an adviser-led secondary transaction with respect to any private fund, where an adviser (or its related persons) offers fund investors the option to sell their interests in the private fund, or to convert or exchange them for new interests in another vehicle advised by the adviser or its related persons, unless the adviser, prior to the closing of the transaction, distributes to investors in the private fund a fairness opinion from an independent opinion provider and a summary of any material business relationships the adviser or any of its related persons has, or has had within the past two years, with the independent opinion provider. The specific requirements of the proposed rule are described above in section II.C. The proposed rule is designed to provide an important check against an adviser's conflicts of interest in structuring and leading a transaction from which it may stand to profit at the expense of private fund investors. The reasons for, and objectives of, the proposed rule are discussed in more detail in section II.C above. The burdens of these requirements on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are discussed in section VI.

6. Proposed Rule 211(h)(2)–3

Proposed rule 211(h)(2)–3 would prohibit a private fund adviser, directly or indirectly, from (1) granting an investor in a private fund or in a substantially similar pool of assets the ability to redeem its interest on terms that the adviser reasonably expects to have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets; or (2) providing information regarding the portfolio holdings or exposures of the private fund, or of a substantially similar pool of assets, to any investor if the adviser reasonably expects that providing the information would have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets.[433] The proposed rule would also prohibit these advisers from providing any other preferential treatment to any investor in a private fund unless the adviser provides written disclosures to prospective and current investors in the private fund regarding all preferential treatment the adviser or its related persons provided to other investors in the same fund.[434] These requirements are described above in section II.E. The proposed rule is designed to eliminate sales practices that present a conflict of interest between the adviser and the private fund client that are contrary to the public interest and protection of investors. The disclosure elements of the proposed rule are designed to also help investors shape the terms of their relationship with the adviser of the private fund. The reasons for, and objectives of, the proposed rule are discussed in more detail in section II.E, above. The burdens of these requirements on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are discussed in section VI.

7. Proposed Amendments to Rule 204–2

We are also proposing related amendments to rule 204–2, the books and records rule, which sets forth various recordkeeping requirements for registered investment advisers. We are

[432] *See* proposed rule 211(h)(2)–1(a).

[433] *See* proposed rule 211(h)(2)–3.

[434] *See* proposed rule 211(h)(2)–3(b).

proposing to amend the current rule to require investment advisers to private funds to make and keep records relating to the quarterly statements required under proposed rule 211(h)(1)–2, the financial statement audits performed under proposed rule 206(4)–10, fairness opinions required under proposed rule 211(h)(2)–2, and disclosure of certain types of preferential treatment required under proposed rule 211(h)(2)–3. The reasons for, and objectives of, the proposed amendments to the books and records rule are discussed in more detail in sections II.A, II.B, II.C, II.E, V, above. The burdens of these requirements on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are discussed in section VI.

8. Proposed Amendments to Rule 206(4)–(7)

We are proposing amendments to rule 206(4)–7 to require all SEC-registered advisers to document the annual review of their compliance policies and procedures in writing, as described above in section III. The proposed amendments are designed to focus renewed attention on the importance of the annual compliance review process and would better enable our staff to determine whether an adviser has complied with the review requirement of the compliance rule. The reasons for, and objectives of, the proposed rule are discussed in more detail in section III, above. The burdens of these requirements on small advisers are discussed below as well as above in sections V and VI, which discuss the burdens on all advisers. The professional skills required to meet these specific burdens also are discussed in section VI.

B. Legal Basis

The Commission is proposing new rules 211(h)(1)–2, 211(h)(2)–1, 211(h)(2)–2, 211(h)(2)–3, and 206(4)–10 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a), and 211(h) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(d), 80b–6(4) and 80b–11(a) and (h)). The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–4 and 80b–11). The Commission is proposing amendments to rule 206(4)–7 under the Advisers Act under the authority set forth in sections 203(d), 206(4), and 211(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(d), 80b–6(4), and 80b–11(a)).

C. Small Entities Subject to Rules

In developing these proposals, we have considered their potential impact on small entities that would be subject to the proposed rules and amendments. Some of the proposed rules and amendments would affect many, but not all, investment advisers registered with the Commission, including some small entities, the proposed amendments to rule 206(4)–7 would affect all investment advisers that are registered, or required to be registered, with the Commission, including some small entities, and proposed rules 211(h)(2)–1 and 211(h)(2)–3 would apply to all advisers to private funds (even if not registered), including some small entities. Proposed rule 211(h)(1)–1 would affect all advisers, including all that are small entities, regardless of whether they are registered or advise private funds. Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[435]

Other than the proposed definitions rule, prohibitions rule and preferential treatment rule, our proposed rules and amendments would not affect most investment advisers that are small entities (''small advisers'') because those rules apply only to registered advisers, and small registered advisers are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of November 30, 2021, approximately 594 SEC-registered advisers are small entities under the RFA.[436] All of these advisers would be affected by the proposed amendments to the compliance rule, and we estimate that approximately 29 advise one or more private funds and would, therefore, be affected by the proposed quarterly statement rule, audit rule, and secondaries rule.

The proposed prohibited activities rule and the proposed preferential treatment rule, however, would have an impact on *all* investment advisers to private funds, regardless of whether they are registered with the Commission, one or more state securities authorities, or are unregistered. It is difficult for us to estimate the number of advisers not registered with us that have private fund clients. However, we are able to provide the following estimates based on IARD data. As of November 30, 2021, there are 5,022 ERAs, all of whom advise private funds, by definition.[437] All ERAs would, therefore, be subject to the rules that would apply to all private fund advisers. We estimate that there are no ERAs that would meet the definition of ''small entity.''[438] We do not have a method for estimating the number of state-registered advisers to private funds that would meet the definition of ''small entity.''

Additionally, the proposed prohibited activities rule and the proposed preferential treatment rule would apply to other advisers that are not registered with the SEC or with the states and that do not make filings with either the SEC or states. This includes foreign private advisers,[439] advisers that are entirely unregistered, and advisers that rely on the intrastate exemption from SEC registration and/or the de minimis exemption from SEC registration. We are unable to estimate the number of advisers in each of these categories because these advisers do not file reports or other information with the SEC and we are unable to find reliable, public information. As a result, our estimates are based on information from SEC-registered advisers to private funds, exempt reporting advisers (at the state and Federal levels), and state-registered advisers to private funds.

The proposed definitions rule would affect all advisers, but not unless the adviser is also affected by one of the rules discussed above. It has no independent substantive requirements or economic impacts. Therefore, the number of small advisers affected by this rule is accounted for in those

[435] 17 CFR 275.0–7(a) (Advisers Act rule 0–7(a)).

[436] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

[437] *See* section 203(l) of the Advisers Act and 17 CFR 275.203(m)–1 (rule 203(m)–1 thereunder).

[438] In order for an adviser to be an SEC ERA it would first need to have an SEC registration obligation, and an adviser with that little in assets under management (*i.e.,* assets under management that is low enough to allow the adviser to qualify as a small entity) would not have an SEC registration obligation.

[439] *See* section 202(a)(30) of the Advisers Act (defining ''foreign private adviser'').

discussions and not separately and additionally delineated.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

1. Proposed Rule 211(h)(1)–1

Proposed rule 211(h)(1)–1 would not impose any reporting, recordkeeping, or other compliance requirements on investment advisers because it has no independent substantive requirements or economic impacts. The rule would not affect an adviser unless it was complying with proposed rule 211(h)(1)–2, 206(4)–10, 211(h)(2)–1, 211(h)(2)–2, or 211(h)(2)–3, each of which is discussed below.

2. Proposed Rule 211(h)(1)–2

Proposed rule 211(h)(1)–2 would impose certain compliance requirements on investment advisers, including those that are small entities. It would require any investment adviser registered or required to be registered with the Commission that provides investment advice to a private fund that has at least two full calendar quarters of operating results to prepare and distribute quarterly statements with certain fee and expense and performance disclosure to private fund investors. The proposed requirements, including compliance and related recordkeeping requirements that would be required under the proposed amendments to rule 204–2 and rule 206(4)–7, are summarized in this IRFA (section VII above). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections V and VI (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section VI.

As discussed above, there are approximately 29 small advisers to private funds currently registered with us, and we estimate that 100 percent of these advisers would be subject to the proposed rule 211(h)(1)–2. As discussed in our Paperwork Reduction Act Analysis in section V above, the proposed rule 211(h)(1)–2 under the Advisers Act, which would require advisers to prepare and distribute quarterly statements, would create a new annual burden of approximately 130.5 hours per adviser, or 3,784.5 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $1,802,466.[440]

3. Proposed Rule 206(4)–10

Proposed rule 206(4)–10 would impose certain compliance requirements on investment advisers, including those that are small entities. All registered investment advisers that provide investment advice, including small entity advisers, would be required to comply with the proposed rule's requirements to have their private fund clients undergo a financial statement audit (at least annually and upon liquidation) and distribute audited financial statements to private fund investors. The proposed requirements, including compliance and related recordkeeping requirements that would be imposed under proposed amendments to rule 204–2 and rule 206(4)–7, are summarized in this IRFA (section VII.A. above). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections V and VI (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in section VI.

As discussed above, there are approximately 29 small advisers to private funds currently registered with us, and we estimate that 100 percent of these advisers would be subject to the proposed rule 206(4)–10. As discussed above in our Paperwork Reduction Act Analysis in section V above, proposed rule 206(4)–10 under the Advisers Act would create a new annual burden of approximately 18.36 hours per adviser, or 532.44 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $15,819,118.65.[441]

4. Proposed Rule 211(h)(2)–1

Proposed rule 211(h)(2)–1 would impose certain compliance requirements on investment advisers, including those that are small entities. Proposed rule 211(h)(2)–1 would prohibit all private fund advisers from engaging in certain sales practices, conflicts of interest, and compensation schemes that are contrary to the public interest and the protection of investors. Specifically, the rule would prohibit an adviser from: (1) Charging certain fees and expenses to a private fund or portfolio investment (including accelerated monitoring fees, fees or expenses associated with an examination or investigation of the adviser or its related persons by governmental or regulatory authorities, regulatory or compliance expenses or fees of the adviser or its related persons, or fees and expenses related to a portfolio investment (or potential portfolio investment) on a non-pro rata basis when multiple private funds and other clients advised by the adviser or its related persons have invested (or propose to invest) in the same portfolio investment); (2) reducing the amount of any adviser clawback by the amount of certain taxes; (3) seeking reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund; and (4) borrowing money, securities, or other fund assets, or receiving a loan or an extension of credit from a private fund client. All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in section V (the Economic Analysis) and below.

As discussed above, there are approximately 29 small advisers to private funds currently registered with us, and we estimate that 100 percent of these advisers would be subject to the proposed rule 211(h)(2)–1. As discussed above, we estimate that there are no ERAs that would meet the definition of ''small entity'' and we do not have a method for estimating the number of state-registered advisers to private funds that would meet the definition of ''small entity.''[442]

5. Proposed Rule 211(h)(2)–2

Proposed rule 211(h)(2)–2 would impose certain compliance requirements on investment advisers, including those that are small entities. The rule generally would make it unlawful for an adviser that is registered or required to be registered with the Commission to complete an adviser-led secondary transaction with respect to any private fund, where an adviser (or its related persons) offers fund investors

[440] This includes the internal time cost and the annual external cost burden and assumes that, for purposes of the annual external cost burden, 50% of small advisers will use outside legal services, as set forth in the PRA estimates table.

[441] This includes the internal time cost and the annual external cost burden, as set forth in the PRA estimates table.

[442] *See supra* section VI.C.

the option to sell their interests in the private fund, or to convert or exchange them for new interests in another vehicle advised by the adviser or its related persons, unless the adviser, prior to the closing of the transaction, distributes to investors in the private fund a fairness opinion from an independent opinion provider and a summary of any material business relationships the adviser or any of its related persons has, or has had within the past two years, with the independent opinion provider . The proposed requirements, including compliance and related recordkeeping requirements that would be imposed under proposed amendments to rule 204–2 and 206(4)–7, are summarized in this IRFA (section VII above). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections V and VI (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens also are discussed in section VI.

As discussed above, there are approximately 29 small advisers to private funds currently registered with us, and we estimate that 100 percent of these advisers would be subject to proposed rule 211(h)(2)–2. As discussed above in our Paperwork Reduction Act Analysis in section V above, proposed rule 211(h)(2)–2 under the Advisers Act would create a new annual burden of approximately 7 hours per adviser, or 21 hours in aggregate for small advisers.[443] We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $129,805.92.[444]

6. Proposed Rule 211(h)(2)–3

Proposed rule 211(h)(2)–3 would impose certain compliance requirements on investment advisers, including those that are small entities. Proposed rule 211(h)(2)–3 would prohibit a private fund adviser, including indirectly through its related persons, from (1) granting an investor in the private fund or in a substantially similar pool of assets the ability to redeem its interest on terms that the adviser reasonably expects to have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets; and (2) providing information regarding the private fund's portfolio holdings or exposures of the private fund or of a substantially similar pool of assets to any investor if the adviser reasonably expects that providing the information would have a material, negative effect on other investors in that private fund or in a substantially similar pool of assets. The rule would also prohibit these advisers from providing any other preferential treatment to any investor in the private fund unless the adviser provides written disclosures to prospective and current investors in the private fund regarding all preferential treatment the adviser or its related persons provided to other investors in the same fund. The proposed requirements, including compliance and related recordkeeping requirements that would be imposed under proposed amendments to rule 204–2 and 206(4)–7, are summarized in this IRFA (section VII above). All of these proposed requirements are also discussed in detail, above, in section II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections V and VI (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens also are discussed in section VI.

As discussed above, there are approximately 29 small advisers to private funds currently registered with us, and we estimate that 100 percent of these advisers would be subject to the proposed rule 211(h)(2)–3. As discussed above, we estimate that there are no ERAs that would meet the definition of ''small entity'' and we do not have a method for estimating the number of state-registered advisers to private funds that would meet the definition of ''small entity.''[445] As discussed above in our Paperwork Reduction Act Analysis in section VI above, proposed rule 211(h)(2)–3 under the Advisers Act would create a new annual burden of approximately 31.01 hours per adviser, or 899.29 hours in aggregate for small advisers.[446] We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $374,569.51.[447]

7. Proposed Amendments to Rule 204–2

The proposed amendments to rule 204–2 would impose certain recordkeeping requirements on investment advisers to private funds, including those that are small entities. All registered investment advisers to private funds, including small entity advisers, would be required to comply with recordkeeping amendments. While all SEC-registered investment advisers, and advisers that are required to be registered, are subject to rule 204–2 under the Advisers Act, our proposed amendments to rule 204–2 would only impact private fund advisers that are SEC registered. The proposed amendments are summarized in this IRFA (section VII above). The proposed amendments are also discussed in detail, above, in section II, and the requirements and the burdens on respondents, including those that are small entities, are discussed above in sections V and VI (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens also are discussed in section VI.

As discussed above, there are approximately 29 small advisers to private funds currently registered with us, and we estimate that 100 percent of advisers registered with us would be subject to the proposed amendments to rule 204–2. As discussed above in our Paperwork Reduction Act Analysis in section VI above, the proposed amendments to rule 204–2 under the Advisers Act, which would require advisers to retain certain copies of documents required under proposed rules 206(4)–10, 211(h)(1)–2, 211(h)(2)–2, and 211(h)(2)–3 would create a new annual burden of approximately 9 hours per adviser, or 261 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our

[443] Similar to the PRA analysis, we assume that 10% (~3) of all small advisers will conduct an adviser-led secondary transaction on an annual basis.

[444] This includes the internal time cost and the annual external cost burden, as set forth in the PRA estimates table.

[445] *See supra* section VI.C.

[446] The following types of private fund advisers, among others, would be subject to the proposed rule: Unregistered advisers (*i.e.,* advisers that are not SEC registered but have a registration obligation), foreign private advisers, and advisers that rely on the intrastate exemption from SEC registration and/or the *de minimis* exemption from SEC registration. However, we are unable to estimate the number of advisers in each of these categories because these advisers do not file reports or other information with the SEC and we are unable to find reliable, public information. As a result, the above estimate is based on information from SEC-registered advisers to private funds, exempt reporting advisers (at the state and Federal levels), and state-registered advisers to private funds. These figures are approximate.

[447] This includes the internal time cost and the annual external cost burden and assumes that, for purposes of the annual external cost burden, 75% of small advisers will use outside legal services, as set forth in the PRA estimates table.

proposed amendments would be $17,748.[448]

8. Proposed Amendments to Rule 206(4)–7

Proposed amendments to rule 206(4)–7 would impose certain compliance requirements on investment advisers, including those that are small entities. All registered investment advisers, and advisers that are required to be registered, would be required to document the annual review of their compliance policies and procedures in writing. The proposed requirements are summarized in this IRFA (section VII above). All of these proposed requirements are also discussed in detail, above, in section III, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections V and VI (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens also are discussed in section VI.

As discussed above, there are approximately 29 small advisers currently registered with us, and we estimate that 100 percent of these advisers would be subject to the proposed amendments to rule 206(4)–7. As discussed above in our Paperwork Reduction Act Analysis in section VI above, these amendments would create a new annual burden of approximately 3 hour per adviser, or 87 hours in aggregate for small advisers. We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be $44,921.[449]

E. Duplicative, Overlapping, or Conflicting Federal Rules

There are no duplicative, overlapping, or conflicting Federal rules with respect to the specific requirements of proposed rule 211(h)(1)–1, 211(h)(1)–2, 211(h)(2)–1, 211(h)(2)–2, 211(h)(2)–3, or the proposed amendments to rule 204–2 or rule 206(4)–7. We recognize that private fund advisers are prohibited from making misstatements or materially misleading statements to investors under rule 206(4)–8. To the extent there is any overlap between the proposed rules and rule 206(4)–8, we believe that any additional costs to advisers to private funds would be minimal, as they can assume that conduct that would raise issues under any of the specific provisions of the proposed rules would also be prohibited under rule 206(4)–8. To the extent there is any overlap between the requirements of proposed rule 211(h)(1)–2 and Form ADV Part 2, it is minimal, and it is complementary, not contradictory. For example, Form ADV Part 2 requires advisers to disclose what fees the adviser charges, such as a 2% management fee based on its clients' assets that it manages. The proposed rule would require advisers to disclose what amount was actually charged to a private fund client (*e.g.,* $200,000).

There is significant duplication and overlap of the requirements of proposed rule 206(4)–10 and rule 206(4)–2 because proposed rule 206(4)–10 is drawn from the option to comply with rule 206(4)–2's account statement and surprise examination requirements by having pooled investment vehicle clients undergo a financial statement audit and distribute the financial statements to the investors in the pools. Similarities between these rules should result in minimal new compliance burdens for private fund advisers that have chosen to comply with the audit provision of rule 206(4)–2, however. For private fund advisers that have not chosen to comply with the audit provision of rule 206(4)–2, proposed rule 206(4)–10 will result in new compliance burdens, but not ones that contradict rule 206(4)–2. These advisers can choose to mitigate, as much as possible, their compliance burdens by electing to comply with rule 206(4)–2's audit provision in lieu of the account statement and surprise examination requirements, though this option may be limited for some advisers if they also have clients for which the adviser is unable to choose to rely on the audit provision of the custody rule. We believe these additional compliance burdens are justified because an audit by an independent public accountant would provide an important check on the adviser's valuation of private fund assets, which often serve as the basis for calculating the adviser's fees.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rules and rule amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rules and rule amendments for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed rules and rule amendments, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, we do not believe that differing compliance or reporting requirements or an exemption from coverage of the proposed rules and rule amendments, or any part thereof, for small entities, would be appropriate or consistent with investor protection. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities under the proposed rules and rule amendments.

Regarding the second alternative, the proposed prohibited activities rule and the proposed preferential treatment rule are particularly intended to provide clarification to *all* private fund advisers, not just small advisers, as to what the Commission considers to be conduct that would be prohibited under section 206 of the Act and contrary to the public interest and protection of investors under section 211 of the Act. Despite our examination and enforcement efforts, this type of inappropriate conduct persists; these proposed rules will provide clarity of our views of this conduct to *all* private fund advisers. Similarly, we also have endeavored to consolidate and simplify the compliance with both proposed rules, as well as disclosure requirements under the proposed preferential treatment rule, for *all* private fund advisers.

Regarding the third alternative, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection with respect to preventing fraudulent, deceptive, or manipulative acts, or inappropriate sales practices, conflicts of interest or compensation schemes, by investment advisers.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on:

- The number of small entities that would be affected by the proposed rule; and

[448] This includes the internal time cost and the annual external cost burden, as set forth in the PRA estimates table.

[449] This includes the internal time cost and the annual external cost burden and assumes that, for purposes of the annual external cost burden, 50% of small advisers will use outside legal services, as set forth in the PRA estimates table.

• whether the effect of the proposed rule on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [450] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed rules and amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

The Commission is proposing new rules 211(h)(1)–1, 211(h)(1)–2, 211(h)(2)–1, 211(h)(2)–2, 211(h)(2)–3, and 206(4)–10 under the Advisers Act under the authority set forth in sections 203(d), 206(4), 211(a), and 211(h) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(d), 80b–6(4) and 80b–11(a) and (h)]. The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Investment Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing amendments to rule 206(4)–7 under the Advisers Act under the authority set forth in sections 203(d), 206(4), and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(d), 80b–6(4), and 80b–11(a)].

List of Subjects in 17 CFR Part 275

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules

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:

[450] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

■ 2. Amend § 275.204–2 by:

■ a. Removing the period at the end of paragraph (a)(7)(iv)(B) and adding ''; and'' in its place; and

■ b. Adding paragraphs (a)(7)(v) and (a)(20) through (23).

The additions read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(7) * * *

(v) Any notice required pursuant to § 275.211(h)(2)–3 as well as a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.

* * * * *

(20)(i) A copy of any quarterly statement *distributed* pursuant to § 275.211(h)(1)–2, along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee; and

(ii) All records evidencing the calculation method for all expenses, payments, allocations, rebates, offsets, waivers, and performance listed on any statement delivered pursuant to § 275. 211(h)(1)–2.

(21) For each private fund client:

(i) A copy of any audited financial statements prepared and *distributed* pursuant to § 275.206(4)–10, along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee; or

(ii) A record documenting steps taken by the adviser to cause a private fund client that the adviser does not control, is not controlled by, and with which it is not under common control to undergo a financial statement audit pursuant to § 275.206(4)–10.

(22) Documentation substantiating the adviser's determination that a private fund client is a *liquid fund* or an *illiquid fund* pursuant to § 275. 211(h)(1)–2.

(23) A copy of any *fairness opinion* and material business relationship summary *distributed* pursuant to § 275.211(h)(2)–2, along with a record of each addressee and the corresponding date(s) sent, address(es), and delivery method(s) for each such addressee.

* * * * *

■ 3. Amend § 275.206(4)–7 by revising paragraph (b) to read as follows:

§ 275.206(4)–7 Compliance procedures and practices.

* * * * *

(b) *Annual review.* Review and document in writing, no less frequently than annually, the adequacy of the policies and procedures established pursuant to this section and the effectiveness of their implementation; and

* * * * *

■ 4. Section 275.206(4)–10 is added to read as follows:

§ 275.206(4)–10 Private fund adviser audits.

As a means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, an investment adviser that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 shall cause each private fund that it advises, directly or indirectly, to undergo a financial statement audit as follows at least annually and upon liquidation, if the private fund does not otherwise undergo such an audit:

(a) The audit is performed by an independent public accountant that meets the standards of independence described in 17 CFR 210.2–01(b) and (c) [Rule 2–01(b) and (c) of Regulation S–X] and that is registered with, and subject to regular inspection as of the commencement of the professional engagement period, and as of each calendar year-end, by, the Public Company Accounting Oversight Board in accordance with its rules;

(b) The audit meets the definition in 17 CFR 210.1–02(d) [Rule 1–02(d) of Regulation S–X], the professional engagement period of which shall begin and end as indicated in Rule 2–01(f)(5) of Regulation S–X;

(c) Audited financial statements are prepared in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP'') or, in the case of financial statements of private funds organized under non-U.S. law or that have a general partner or other manager with a principal place of business outside the United States (''foreign private funds''), contain information substantially similar to statements prepared in accordance with U.S. GAAP and material differences with U.S. GAAP are reconciled;

(d) Promptly after the completion of the audit, the private fund's audited financial statements, which includes any reconciliation to U.S. GAAP prepared for a foreign private fund, including supplementary U.S. GAAP disclosures, as applicable, are *distributed;*

(e) Pursuant to a written agreement between the independent public accountant

and the adviser or the private fund, the independent public accountant that completes the audit notifies the Commission by electronic means directed to the Division of Examinations:

(1) Promptly upon issuing an audit report to the private fund that contains a modified opinion; and

(2) Within four business days of resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed;

(f) For a private fund that the adviser does not *control* and is neither *controlled* by nor under common *control* with, the adviser is prohibited from providing investment advice, directly or indirectly, to the private fund if the adviser fails to take all reasonable steps to cause the private fund to undergo a financial statement audit that meets the requirements of paragraphs (a) through (e) of this section; and

(g) For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)–1.

■ 5. Section 275.211(h)(1)–1 is added to read as follows:

§ 275.211(h)(1)–1 Definitions.

For purposes of §§ 275.206(4)–10, 275.211(h)(1)–2, 275.211(h)(2)–3, 275.211(h)(2)–1, and 275.211(h)(2)–2:

Adviser clawback means any obligation of the adviser, its *related persons,* or their respective owners or interest holders to restore or otherwise return *performance-based compensation* to the private fund pursuant to the private fund's governing agreements.

Adviser-led secondary transaction means any transaction initiated by the investment adviser or any of its *related persons* that offers private fund investors the choice to:

(1) Sell all or a portion of their interests in the private fund; or

(2) Convert or exchange all or a portion of their interests in the private fund for interests in another vehicle advised by the adviser or any of its *related persons.*

Committed capital means any commitment pursuant to which a person is obligated to acquire an interest in, or make capital contributions to, the private fund.

Control means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. For the purposes of this definition, control includes:

(1) Each of an investment adviser's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control the investment adviser;

(2) A person is presumed to control a corporation if the person:

(i) Directly or indirectly has the right to vote 25% or more of a class of the corporation's voting securities; or

(ii) Has the power to sell or direct the sale of 25% or more of a class of the corporation's voting securities;

(3) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the partnership;

(4) A person is presumed to control a limited liability company if the person:

(i) Directly or indirectly has the right to vote 25% or more of a class of the interests of the limited liability company;

(ii) Has the right to receive upon dissolution, or has contributed, 25% or more of the capital of the limited liability company; or

(iii) Is an elected manager of the limited liability company; or

(5) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

Covered portfolio investment means a *portfolio investment* that allocated or paid the investment adviser or its *related persons portfolio investment compensation* during the *reporting period.*

Distribute, distributes, or *distributed* means send or sent to all of the private fund's investors; *provided that,* if an investor is a pooled investment vehicle that is *controlling, controlled* by, or under common *control* with (a ''control relationship'') the adviser or its *related persons,* the adviser must look through that pool (and any pools in a control relationship with the adviser or its *related persons*) in order to send to investors in those pools.

Fairness opinion means a written opinion stating that the price being offered to the private fund for any assets being sold as part of an *adviser-led secondary transaction* is fair.

Fund-level subscription facilities means any subscription facilities, subscription line financing, capital call facilities, capital commitment facilities, bridge lines, or other indebtedness incurred by the private fund that is secured by the *unfunded capital commitments* of the private fund's investors.

Gross IRR means an *internal rate of return* that is calculated gross of all fees, expenses, and *performance-based compensation* borne by the private fund.

Gross MOIC means a *multiple of invested capital* that is calculated gross of all fees, expenses, and *performance-based compensation* borne by the private fund.

Illiquid fund means a private fund that:

(1) Has a limited life;

(2) Does not continuously raise capital;

(3) Is not required to redeem interests upon an investor's request;

(4) Has as a predominant operating strategy the return of the proceeds from disposition of investments to investors;

(5) Has limited opportunities, if any, for investors to withdraw before termination of the fund; and

(6) Does not routinely acquire (directly or indirectly) as part of its investment strategy market-traded securities and derivative instruments.

Independent opinion provider means an entity that:

(1) Provides *fairness opinions* in the ordinary course of its business; and

(2) Is not a *related person* of the adviser.

Internal rate of return means the discount rate that causes the net present value of all cash flows throughout the life of the fund to be equal to zero.

Liquid fund means a private fund that is not an *illiquid fund.*

Multiple of invested capital means, as of the end of the applicable calendar quarter:

(1) The sum of:

(i) The unrealized value of the *illiquid fund;* and

(ii) The value of all distributions made by the *illiquid fund;*

(2) Divided by the total capital contributed to the *illiquid fund* by its investors.

Net IRR means an *internal rate of return* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the private fund.

Net MOIC means a *multiple of invested capital* that is calculated net of all fees, expenses, and *performance-based compensation* borne by the private fund.

Performance-based compensation means allocations, payments, or distributions of capital based on the private fund's (or its *portfolio investments'*) capital gains and/or capital appreciation.

Portfolio investment means any entity or issuer in which the private fund has directly or indirectly invested.

Portfolio investment compensation means any compensation, fees, and other amounts allocated or paid to the investment adviser or any of its *related persons* by the *portfolio investment* attributable to the private fund's interest in such *portfolio investment,* including, but not limited to, origination, management, consulting, monitoring, servicing, transaction, administrative,

advisory, closing, disposition, directors, trustees or similar fees or payments.

Related person means:

(1) All officers, partners, or directors (or any person performing similar functions) of the adviser;

(2) All persons directly or indirectly controlling or controlled by the adviser;

(3) All current employees (other than employees performing only clerical, administrative, support or similar functions) of the adviser; and

(4) Any person under common *control* with the adviser.

Reporting period means the private fund's calendar quarter covered by the quarterly statement or, for the initial quarterly statement of a newly formed private fund, the period covering the private fund's first two full calendar quarters of operating results.

Statement of Contributions and Distributions means a document that presents:

(1) All capital inflows the private fund has received from investors and all capital outflows the private fund has distributed to investors since the private fund's inception, with the value and date of each inflow and outflow; and

(2) The net asset value of the private fund as of the end of the *reporting period.*

Substantially similar pool of assets means a pooled investment vehicle (other than an investment company registered under the Investment Company Act of 1940 or a company that elects to be regulated as such) with substantially similar investment policies, objectives, or strategies to those of the *private fund* managed by the investment adviser or its *related persons.*

Unfunded capital commitments means *committed capital* that has not yet been contributed to the private fund by investors.

■ 6. Section 275.211(h)(1)–2 is added to read as follows:

§ 275. 211(h)(1)–2 Private fund quarterly statements.

(a) *Quarterly statements.* As a means reasonably designed to prevent such acts, practices, and courses of business as are fraudulent, deceptive, or manipulative, an investment adviser that is registered or required to be registered under section 203 of the Investment Advisers Act of 1940 shall prepare a quarterly statement that complies with paragraphs (a) through (g) of this section for any private fund that it advises, directly or indirectly, that has at least two full calendar quarters of operating results, and distribute the quarterly statement to the private fund's investors within 45 days after each calendar quarter end, unless such a quarterly statement is prepared and distributed by another person.

(b) *Fund table.* The quarterly statement must include a table for the private fund that discloses, at a minimum, the following information, presented both before and after the application of any offsets, rebates, or waivers for the information required by paragraphs (b)(1) and (2) of this section:

(1) A detailed accounting of all compensation, fees, and other amounts allocated or paid to the investment adviser or any of its *related persons* by the fund during the *reporting period,* with separate line items for each category of allocation or payment reflecting the total dollar amount, including, but not limited to, management, advisory, sub-advisory, or similar fees or payments, and *performance-based compensation;*

(2) A detailed accounting of all fees and expenses paid by the private fund during the *reporting period* (other than those listed in paragraph (b)(1) of this section), with separate line items for each category of fee or expense reflecting the total dollar amount, including, but not limited to, organizational, accounting, legal, administration, audit, tax, due diligence, and travel fees and expenses; and

(3) The amount of any offsets or rebates carried forward during the *reporting period* to subsequent periods to reduce future payments or allocations to the adviser or its *related persons.*

(c) *Portfolio investment table.* The quarterly statement must include a separate table for the private fund's *covered portfolio investments* that discloses, at a minimum, the following information for each *covered portfolio investment:*

(1) A detailed accounting of all *portfolio investment compensation* allocated or paid to the investment adviser or any of its *related persons* by the *covered portfolio investment* during the *reporting period,* with separate line items for each category of allocation or payment reflecting the total dollar amount, presented both before and after the application of any offsets, rebates, or waivers; and

(2) The fund's ownership percentage of each such *covered portfolio investment* as of the end of the *reporting period,* or zero, if the fund does not have an ownership interest in the *covered portfolio investment,* along with a brief description of the fund's investment.

(d) *Calculations and cross references.* The quarterly statement must include prominent disclosure regarding the manner in which all expenses, payments, allocations, rebates, waivers, and offsets are calculated and include cross references to the sections of the private fund's organizational and offering documents that set forth the applicable calculation methodology.

(e) *Performance.* (1) No later than the time the adviser sends the initial quarterly statement, the adviser must determine that the private fund is an *illiquid fund* or a *liquid fund.*

(2) The quarterly statement must present the following with equal prominence:

(i) *Liquid funds.* For a *liquid fund:*

(A) Annual net total returns for each calendar year since inception;

(B) Average annual net total returns over the one-, five-, and ten- calendar year periods; and

(C) The cumulative net total return for the current calendar year as of the end of the most recent calendar quarter covered by the quarterly statement.

(ii) *Illiquid funds.* For an *illiquid fund:*

(A) The following performance measures, shown since inception of the *illiquid fund* through the end of the quarter covered by the quarterly statement (or, to the extent quarter-end numbers are not available at the time the *adviser* distributes the quarterly statement, through the most recent practicable date) and computed without the impact of any *fund-level subscription facilities:*

(*1*) *Gross IRR* and *gross MOIC* for the *illiquid fund;*

(*2*) *Net IRR* and *net MOIC* for the *illiquid fund;*

(*3*) *Gross IRR* and *gross MOIC* for the realized and unrealized portions of the *illiquid fund's* portfolio, with the realized and unrealized performance shown separately; and

(*4*) A *statement of contributions and distributions* for the *illiquid fund.*

(B) [Reserved]

(iii) The quarterly statement must include the date as of which the performance information is current through and prominent disclosure of the criteria used and assumptions made in calculating the performance.

(f) *Consolidated reporting.* To the extent doing so would provide more meaningful information to the private fund's investors and would not be misleading, the adviser must consolidate the reporting required by paragraphs (a) through (e) of this section to cover *substantially similar pools of assets.*

(g) *Format and content.* The quarterly statement must use clear, concise, plain English and be presented in a format that facilitates review from one quarterly statement to the next.

(h) *Definitions.* For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)–1.

■ 7. Section 275.211(h)(2)–1 is added to read as follows:

§ 275.211(h)(2)–1 Private fund adviser prohibited activities.

(a) An investment adviser to a private fund may not, directly or indirectly, do the following with respect to the private fund, or any investor in that private fund:

(1) Charge a *portfolio investment* for monitoring, servicing, consulting, or other fees in respect of any services that the investment adviser does not, or does not reasonably expect to, provide to the *portfolio investment;*

(2) Charge the private fund for fees or expenses associated with an examination or investigation of the adviser or its *related persons* by any governmental or regulatory authority;

(3) Charge the private fund for any regulatory or compliance fees or expenses of the adviser or its *related persons;*

(4) Reduce the amount of any *adviser clawback* by actual, potential, or hypothetical taxes applicable to the adviser, its *related persons,* or their respective owners or interest holders;

(5) Seek reimbursement, indemnification, exculpation, or limitation of its liability by the private fund or its investors for a breach of fiduciary duty, willful misfeasance, bad faith, negligence, or recklessness in providing services to the private fund;

(6) Charge or allocate fees and expenses related to a *portfolio investment* (or potential *portfolio investment*) on a non-pro rata basis when multiple private funds and other clients advised by the adviser or its *related persons* have invested (or propose to invest) in the same *portfolio investment*; and

(7) Borrow money, securities, or other private fund assets, or receive a loan or an extension of credit, from a private fund client.

(b) For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)–1.

■ 8. Section 275.211(h)(2)–2 is added to read as follows:

§ 275.211(h)(2)–2 Adviser-led secondaries.

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), it is unlawful for any investment adviser that is registered or required to be registered under section 203 of the Act to complete an *adviser-led secondary transaction* with respect to any private fund, unless the adviser:

(1) Obtains, and *distributes* to investors in the private fund, a *fairness opinion* from an *independent opinion provider*; and

(2) Prepares, and *distributes* to investors in the private fund, a written summary of any material business relationships the adviser or any of its *related persons* has, or has had within the past two years, with the *independent opinion provider,* in each case, prior to the closing of the *adviser-led secondary transaction.*

(b) For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)–1.

■ 9. Section 275.211(h)(2)–3 is added to read as follows:

§ 275.211(h)(2)–3 Preferential treatment.

(a) An investment adviser to a private fund may not, directly or indirectly, do the following with respect to the private fund, or any investor in that private fund:

(1) Grant an investor in the private fund or in a *substantially similar pool of assets* the ability to redeem its interest on terms that the adviser reasonably expects to have a material, negative effect on other investors in that private fund or in a *substantially similar pool of assets;* or

(2) Provide information regarding the portfolio holdings or exposures of the private fund, or of a *substantially similar pool of assets,* to any investor if the adviser reasonably expects that providing the information would have a material, negative effect on other investors in that private fund or in a *substantially similar pool of assets.*

(b) An investment adviser to a private fund may not, directly or indirectly, provide any other preferential treatment to any investor in the private fund unless the adviser provides written notices as follows:

(1) *Advance written notice for prospective investors in a private fund.* The investment adviser shall provide to each prospective investor in the private fund, prior to the investor's investment in the private fund, a written notice that provides specific information regarding any preferential treatment the adviser or its related persons provide to other investors in the same private fund.

(2) *Annual written notice for current investors in a private fund.* The investment adviser shall *distribute* to current investors, on at least an annual basis, a written notice that provides specific information regarding any preferential treatment provided by the adviser or its related persons to other investors in the same private fund since the last written notice provided in accordance with this section, if any.

(c) For purposes of this section, defined terms shall have the meanings set forth in § 275.211(h)(1)–1.

By the Commission.

Dated: February 9, 2022.

Vanessa A. Countryman,

Secretary.

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Part IV

The President

Proclamation 10350—National Agriculture Day, 2022

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Presidential Documents

Title 3—

The President

Proclamation 10350 of March 21, 2022

National Agriculture Day, 2022

By the President of the United States of America

A Proclamation

On National Agriculture Day, we recognize the invaluable contributions of American farmers, farmworkers, ranchers, fishers, foresters, and other agricultural workers, who have practiced their craft for generations and touch the lives of Americans every day. Their tireless efforts growing crops, raising livestock, and distributing food, fuel, and fiber sustain America and the entire world. They put meals on our plates, clothes on our backs, and roofs over our heads. Along the way, America's agricultural workers serve as stewards of the land; ensure the safety and health of animals, plants, and people; and strengthen our rural communities with economic opportunities.

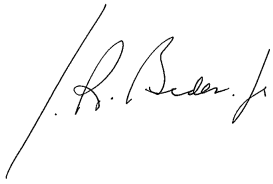
Throughout the COVID–19 pandemic, the country's agricultural workers have stepped up and stayed resilient, adapting their operations to ensure that every family has enough food on the table. To support their efforts and ensure a stable food supply, our pandemic economic recovery assistance supports our agricultural businesses, whose operations were among the hardest hit by market disruptions. We are building a food system that will be more competitive, balanced, and equitable—made possible by expanded and fairer markets, investments that sharpen farmers' competitive edge, and an emphasis on more affordable, healthy food for consumers that is produced closer to home.

My Administration is also committed to protecting farmers—including small family farms that are vital to our food system—by bolstering competition across the industry and around the world. We are taking action to enforce antitrust laws, move agriculture products to market more expeditiously, expand new agriculture processing capacity, and strengthen our supply chain resiliency. We are also eliminating systemic barriers that have denied underserved producers consistent, fair, and equal access to opportunities for far too long. My Administration remains determined to advance an American agriculture sector that works for everyone.

National Agriculture Day also celebrates the farmers, ranchers, fishers, and foresters who adopt agricultural practices that help combat the climate crisis. Extreme weather events, including droughts, floods, wildfires, tornadoes, hurricanes, and other climate-related disasters, have had a devastating impact on American agriculture. My Administration is committed to helping the agriculture sector enhance its resiliency and sustainability while increasing its productivity and profitability. By working together, we can ensure that American agriculture continues to lead the world in production, that our food supply is secure, and that our economy remains strong.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 22, 2022, as National Agriculture Day. I call upon all Americans to join me in recognizing and reaffirming our commitment to and appreciation for our country's farmers, ranchers, foresters, farmworkers, and all those who work in the agriculture sector across the Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-first 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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