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FEDERAL REGISTER

Vol. 87 Wednesday
No. 91 May 11, 2022

Pages 28751–29024

OFFICE OF THE FEDERAL REGISTER

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Contents

Federal Register

Vol. 87, No. 91

Wednesday, May 11, 2022

Agency for International Development
NOTICES
Privacy Act; Systems of Records, 28786–28800

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 28830–28832

Coast Guard
RULES
Safety Zone:
Potomac River, between Charles County, MD, and King George County, VA, 28776–28779

Commerce Department
See Economic Development Administration
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Community Living Administration
NOTICES
Single-Source Supplement:
Expanding the National Capacity for Person-Centered, Trauma-Informed Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers Program, 28832–28833
National Center for Benefits Outreach and Enrollment, 28833

Consumer Product Safety Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Flammability Standards for Children's Sleepwear, 28817–28818
Safety Standard for Omnidirectional Citizens Band Base Station Antennas, 28816–28817

Defense Department
RULES
Privacy Act; Implementation, 28774–28776
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
Reserve Forces Policy Board, 28818–28819

Economic Development Administration
NOTICES
Trade or Worker Adjustment Assistance Eligibility; Petitions, Determinations, etc., 28800

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
HEERF Quarterly Budget and Expenditure Reporting, 28819–28820
Rural Education Achievement Program: Small, Rural School Achievement Program and Rural and Low-Income School Program Application, 28820

Energy Department
See Federal Energy Regulatory Commission
RULES
Energy Conservation Program:
Test Procedure for Uninterruptible Power Supplies; Correction, 28755–28756
PROPOSED RULES
Energy Conservation Program:
Energy Conservation Standards for Small Electric Motors, 28782–28783

Environmental Protection Agency
PROPOSED RULES
Air Quality State Implementation Plans; Approvals and Promulgations:
Oregon; Vehicle Inspection Program and Medford-Ashland Particulate Matter 10 Maintenance Plan; Technical Correction, 28783–28785
NOTICES
Cancellation Order for Certain Pesticide Registrations and Amendments to Terminate Uses, 28824–28827
Requests for Nominations:
Mobile Sources Technical Review Subcommittee, 28827–28828

Federal Communications Commission
NOTICES
Meetings:
North American Numbering Council, 28828–28829

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 28822–28824
Environmental Assessments; Availability, etc.:
Northern Natural Gas Co., Des Moines A-Line Replacement Project, 28821–28822
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorizations:
Green USA, LLC, 28820–28821
Settlement Agreement:
KEI (Maine) Power Management (III), LLC, 28822–28823

Federal Highway Administration
NOTICES
Final Federal Agency Action:
Proposed Highway in California, 28858–28859

Federal Maritime Commission
NOTICES
Agreement Filed, 28829

Federal Motor Carrier Safety Administration
NOTICES
Exemption Application:
Hours of Service of Drivers; Cleveland-Cliffs Steel, LLC, 28860–28862
National Hazardous Materials Route Registry, 28859–28860

Federal Railroad Administration
NOTICES
Petition for Extension of Waiver of Compliance, 28862–28863

Petition for Waiver of Compliance, 28863–28864

Food and Drug Administration
NOTICES
Charter Amendments, Establishments, Renewals and Terminations:
Gastrointestinal Drugs Advisory Committee, 28834
Final Debarment Order:
Marwan Massouh, 28834–28836

Foreign Assets Control Office
NOTICES
Sanctions Actions, 28865–28868

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Acquisition Regulation; Federal Supply Schedule Solicitation Information, 28829–28830

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Community Living Administration
See Food and Drug Administration
See National Institutes of Health

Homeland Security Department
See Coast Guard
See U.S. Citizenship and Immigration Services

Industry and Security Bureau
RULES
Export Administration Regulations:
Expansion of Sanctions Against Russian Industry Sectors, 28758–28774

Interior Department
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions, 28868–28869

International Trade Administration
NOTICES
Antidumping or Countervailing Duty Investigations, Orders, or Reviews:
Steel Concrete Reinforcing Bar from Taiwan, 28807–28808
Meetings:
Renewable Energy and Energy Efficiency Advisory Committee, 28800–28801
Sales at Less Than Fair Value; Determinations, Investigations, etc.:
Emulsion Styrene-Butadiene Rubber from Italy, 28807
Oil Country Tubular Goods from Argentina, 28801–28804
Oil Country Tubular Goods from Mexico, 28808–28811
Oil Country Tubular Goods from the Russian Federation, 28804–28807

International Trade Commission
NOTICES
Investigations; Determinations, Modifications, and Rulings, etc.:
Organic Soybean Meal from India, 28841–28842

Labor Department
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Public Land Order:
No. 7907; Extension of Public Land Order No. 6244, as Extended by Public Land Order No. 7514; Davis Range Tract M, AK, 28841

Mine Safety and Health Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Fire Protection (Underground Coal Mines), 28845–28846
Petition:
Modification of Application of Existing Mandatory Safety Standards, 28842–28847

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 28836–28838
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 28838–28839
National Human Genome Research Institute, 28837
National Institute of Diabetes and Digestive and Kidney Diseases, 28837–28840
National Institute on Aging, 28837
Office of the Director, 28839

National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Highly Migratory Species Tournament Registration and Reporting, 28815–28816
Permits; Applications, Issuances, etc.:
Endangered and Threatened Species; Commercial Fishing Operations, 28811–28815

Pipeline and Hazardous Materials Safety Administration
RULES
Administrative Rulemaking:
Criminal Referrals, 28779–28781
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Pipeline Safety, 28864–28865

Postal Regulatory Commission
NOTICES
New Postal Products, 28847

Postal Service
NOTICES
Product Change:
Priority Mail Express and Priority Mail Negotiated Service Agreement, 28848
Priority Mail Negotiated Service Agreement, 28847

Presidential Documents

PROCLAMATIONS

Special Observances:
- Mother's Day (Proc. 10393), 28753–28754
- National Women's Health Week (Proc. 10392), 28751–28752

ADMINISTRATIVE ORDERS

Central African Republic; Continuation of National Emergency (Notice of May 9, 2022), 29017–29019

Iraq; Continuation of National Emergency With Respect to Stabilization (Notice of May 9, 2022), 29021

Yemen; Continuation of National Emergency (Notice of May 9, 2022), 29023

Securities and Exchange Commission

PROPOSED RULES

Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities, 28872–29016

NOTICES

Self-Regulatory Organizations; Proposed Rule Changes:
- The Nasdaq Stock Market, LLC, 28848–28855

Small Business Administration

RULES

Civil Monetary Penalty Inflation Adjustment, 28756–28758

State Department

NOTICES

Determination Pursuant to Section 451 of the Foreign Assistance Act:
- Use of Funds to Support South Sudan Peace Agreement Monitoring Mechanisms, 28855

Surface Transportation Board

NOTICES

Exemption:
- Lease and Operation, Georgia Central Railway, LP, City of Vidalia, GA, 28856

Trade Representative, Office of United States

NOTICES

Annual Review of Country Eligibility for Benefits under the African Growth and Opportunity Act, 28856–28858

Transportation Department

See Federal Highway Administration

See Federal Motor Carrier Safety Administration

See Federal Railroad Administration

See Pipeline and Hazardous Materials Safety Administration

Treasury Department

See Foreign Assets Control Office

See Internal Revenue Service

U.S. Citizenship and Immigration Services

NOTICES

Agency Information Collection Activities; Proposals, Submissions, and Approvals:
- National Interest Waiver; Supplemental Evidence, 28840–28841

Separate Parts In This Issue

Part II

Securities and Exchange Commission, 28872–29016

Part III

Presidential Documents, 29017–29019, 29021, 29023

Reader Aids

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:

10392.....28751
10393.....28753

Administrative Orders:

Notices
Notice of May 9, 2022.....29019, 29021, 29023

10 CFR

430.....28755

Proposed Rules:

431.....28782

13 CFR

107.....28756
120.....28756
142.....28756
146.....28756

15 CFR

746.....28758

17 CFR

Proposed Rules:

201.....28872
232.....28872
240.....28872
242.....28872
249.....28872

32 CFR

310.....28774

33 CFR

165.....28776

40 CFR

Proposed Rules:

52.....28783

49 CFR

107.....28779
190.....28779

Federal Register
Vol. 87, No. 91
Wednesday, May 11, 2022

Presidential Documents

Title 3—

The President

Proclamation 10392 of May 6, 2022

National Women's Health Week, 2022

By the President of the United States of America

A Proclamation

During National Women's Health Week, we recommit to ensuring the health and well-being of women and girls across our Nation. Central to this mission is protecting women's fundamental rights to make their own choices and build their own future. I am committed to defending women's rights, including their access to reproductive health care. Roe has been the law of the land for almost 50 years; basic fairness and the stability of our law demand that it not be overturned. In response to the continued attack on abortion and reproductive rights across the country, my Administration is exploring all the tools at our disposal to strengthen and protect women's access to critical reproductive health care. We will continue to work with the Congress to pass the Women's Health Protection Act, which will ensure that all women have access to critical reproductive health care, no matter where they live.

For every American, health care is a right, not a privilege, and gender equity in health care is a top priority for my Administration. That is why we are building upon the Affordable Care Act (ACA) to improve the health of all Americans—especially women. Through the ACA, millions of people are able to access health care. In addition, women with preexisting conditions cannot be denied coverage, and women can no longer be charged more for health insurance simply because they are women. Last month, my Administration proposed the most significant administrative action to improve the ACA by eliminating the ''family glitch,'' which will save families hundreds of dollars a month and help them afford family coverage.

I am committed to ensuring that women also have access to the life-saving preventive care screenings that so many Americans have skipped or delayed because of the pandemic—including cholesterol, blood pressure, and cancer screenings.

Advancing health equity also requires improving maternal health care. America's maternal mortality rates are among the highest in the developed world, especially among Black and Native American women. That is why, through the American Rescue Plan, we have given States the opportunity to provide 12 months of extended postpartum coverage to pregnant women who are enrolled in Medicaid and the Children's Health Insurance Program. By expanding access to maternal care and lowering health care costs, we can drive down mortality rates and ensure women can live full and healthy lives.

As I mentioned in my State of the Union Address, it is also time for America to make bolder investments to address our national mental health crisis—a crisis that disproportionately impacts young women and girls, who are twice as likely to be diagnosed with mental health conditions like depression and anxiety. My vision will broaden the pipeline of behavioral health providers, integrate mental health and substance use treatment into primary care, and expand access through more virtual care options.

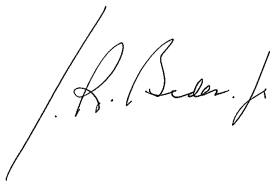
As President, Vice President, and Senator, I have long been committed to ending gender-based violence and trauma, which have lasting effects on health outcomes for women, girls, and their families. That is why I

first wrote the Violence Against Women Act in 1990 and worked with the Congress to reauthorize it through 2027 to increase support, funding, and resources for survivors and improve the health care system's response to domestic violence and sexual assault.

We have achieved great progress, but there is still more work to do—including to defend reproductive rights, which are under unprecedented attack, and to ensure we do not go backwards on women's equality. As we celebrate National Women's Health Week, let us recommit to ensuring equal access to high-quality, affordable care for all women and girls and to improving the health of our Nation.

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 May 8 through May 14, 2022, as National Women's Health Week. During this week, I encourage all Americans to join us in a collective effort to improve the health of women and girls and promote health equity for all. I encourage all women and girls—especially those with underlying health conditions—to prioritize their health and catch up on any missed screenings, routine care, and vaccines.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, 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.



[FR Doc. 2022–10191
Filed 5–10–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10393 of May 6, 2022

Mother's Day, 2022

By the President of the United States of America

A Proclamation

Every Mother's Day, we give special thanks to honor and celebrate the mothers in our lives. Mothers across America provide unconditional love and extraordinary strength. They are our rocks in moments of crisis and our guiding lights when we need it most. Our Nation would not be where we are today without their enduring foundation of love and support.

This Mother's Day and every day, I celebrate the mothers who have anchored my life. I honor my wife, Jill—the love of my life and my north star. After profound loss, Jill gave me back my life, and she made me believe that our family could be whole again. She brings us joy and laughter every day. And I remember my own mother—Catherine Eugenia ''Jean'' Finnegan Biden—who has been gone since 2010 and whom I miss every day. She taught me that character and integrity matter. When I succeeded, she was also quick to remind me it was because of the support and prayer of others. And if I did not succeed the first time, she made sure I picked myself up and kept at it. To this day, I live by her words.

In a year of extraordinary challenges, mothers have done what they always have—carried their families, communities, and our Nation with selflessness and courage, despite the barriers that they so often face. Americans must always care for our mothers in turn: mothers who have worked to make ends meet for their families, even in workplaces where they face discrimination and disparities; mothers who serve simultaneously as frontline workers and caregivers; mothers who are grieving the loss of a child; and all mothers across the Nation, who sacrifice every day.

My Administration is working to build our economy from the bottom up and the middle out to give America's hardworking mothers some much needed breathing room. Through the American Rescue Plan, we delivered a historic expansion of the Child Tax Credit, which helped us reduce child poverty last year by an estimated 40 percent. We also delivered increased Federal subsidies for child care providers, along with critical utility assistance for low-income families. My Administration is also committed to ensuring that pregnancy and childbirth are safe and dignified experiences for all families. That is why we are working hard to address our maternal health crisis. America's maternal mortality rates are among the highest in the developed world, and they are especially high among Black women and Native American women, regardless of their income or education levels. We must continue working to improve health outcomes for pregnant women and mothers across the board.

The progress we are making for mothers is undeniable, but we are not done yet. We are still fighting hard to pass paid family and medical leave for American workers, to address the barriers and discrimination women continue to face in the workplace, and to strengthen and invest in our country's care infrastructure. As we work to build a better America, I will continue to use every tool at my disposal to ensure that all mothers and families have the opportunities they need to thrive.

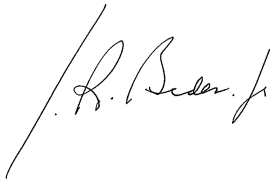
My mom used to always say, ''The greatest virtue of all is courage, because without courage, you couldn't love with abandon.'' Every day, mothers

summon the courage to love us with abandon. On Mother's Day, we honor all of the mothers who continue to build, shape, and sustain our Nation.

The Congress, by joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May each year as ''Mother's Day'' and requested the President to call for its appropriate observance.

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 May 8, 2022, as Mother's Day. I urge all Americans to express their love, respect, and gratitude to mothers everywhere. I call upon all citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, 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.



[FR Doc. 2022–10192
Filed 5–10–22; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

Federal Register
Vol. 87, No. 91
Wednesday, May 11, 2022

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DEPARTMENT OF ENERGY

10 CFR Part 430

[EERE–2016–BT–TP–0018]

RIN 1904–AD68

Energy Conservation Program: Test Procedure for Uninterruptible Power Supplies; Correction

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

ACTION: Correcting amendment.

SUMMARY: On December 12, 2016, the U.S. Department of Energy (''DOE'') published a final rule that added a test procedure for uninterruptible power supplies (UPSs) to the existing DOE test procedure for battery chargers. This document corrects an error in the amended regulatory text as it appeared in the December 2016 final rule. Neither the error nor the correction in this document affect the substance of the rulemaking or any conclusions reached in support of the final rule.

DATES: Effective May 11, 2022.

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. 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.*

SUPPLEMENTARY INFORMATION:

I. Background

DOE published a final rule in the **Federal Register** on December 12, 2016, establishing a test procedure for UPSs as an addition to the existing test procedure for battery chargers at title 10 of the Code of Federal Regulations (''CFR''), part 430, subpart B, appendix Y (''appendix Y''). 81 FR 89806. Since publication of the final rule, DOE identified an error in the regulatory text for the UPS test procedure. The regulatory text in section 4.2.1 ''General Setup'' of appendix Y requires the tester to ''configure the UPS according to Annex J.2 of IEC 62040–3 Ed. 2.0,'' then states in paragraph (a) of that section: ''If the UPS can operate in two or more distinct normal modes as more than one UPS architecture, conduct the test in its lowest input dependency as well as in its highest input dependency mode where VFD represents the lowest possible input dependency, followed by VI and then VFI.'' However, the text in paragraph (a) erroneously identifies VFD as the lowest input dependency, whereas it is in fact the highest input dependency as identified in the referenced Annex J.2 of IEC 62040–3.

II. Need for Correction

As published, the regulatory text in the December 2016 final rule may result in confusion as to the identified input dependency modes for the purposes of product testing in accordance with appendix Y and certifications of compliance with energy conservation standards for UPSs in accordance with 10 CFR 429.39. The current regulatory text is also in conflict with the referenced industry test procedure. Because this final rule would simply correct an error in the text without making substantive changes in the December 2016 final rule, the changes addressed in this document are technical in nature.

III. Procedural Issues and Regulatory Review

DOE has concluded that the determinations made pursuant to the various procedural requirements applicable to the December 2016 final rule remain unchanged for this final rule technical correction. These determinations are set forth in the December 2020 final rule. 81 FR 89806, 89818.

Pursuant to the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), DOE finds that there is good cause to not issue a separate notice to solicit public comment on the changes contained in this document. Issuing a separate notice to solicit public comment would be impracticable, unnecessary, and contrary to the public interest. Neither the errors nor the corrections in this document affect the substance of the December 2016 final rule or any of the conclusions reached in support of the final rule. Providing prior notice and an opportunity for public comment on correcting objective, typographical errors that do not change the substance of the test procedure serves no useful purpose.

Further, this rule correcting a regulatory text error makes non-substantive changes to the test procedure. As such, this rule is not subject to the 30-day delay in effective date requirement of 5 U.S.C. 553(d) otherwise applicable to rules that make substantive changes.

List of Subjects in 10 CFR Part 430

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

Signing Authority

This document of the Department of Energy was signed on May 5, 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 May 6, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE corrects part 430 of chapter II, subchapter D, of title 10 of the Code of Federal Regulations by making the following correcting amendment:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

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

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

■ 2. Appendix Y to subpart B of part 430 is amended by revising section 4.2.1(a) to read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

* * * * *

4.2. * * *

4.2.1. * * *

* * * * *

(a) *UPS Operating Mode Conditions.* If the UPS can operate in two or more distinct normal modes as more than one UPS architecture, conduct the test in its lowest input dependency as well as in its highest input dependency mode where VFD represents the highest possible input dependency, followed by VI and then VFI.

* * * * *

[FR Doc. 2022–10083 Filed 5–10–22; 8:45 am]

BILLING CODE 6450–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107, 120, 142, and 146

RIN 3245–AH81

Civil Monetary Penalties Inflation Adjustments

AGENCY: U.S. Small Business Administration.

ACTION: Final rule.

SUMMARY: The Small Business Administration (SBA) is amending its regulations to adjust for inflation the amount of certain civil monetary penalties that are within the jurisdiction of the agency. These adjustments comply with the requirement in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, to make annual adjustments to the penalties.

DATES: This rule is effective May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Arlene Embrey, 202–205–6976 or at *arlene.embrey@sba.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act), Public Law 114–74, 129 Stat. 584, was enacted. This act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, 104 Stat. 890 (the 1990 Inflation Adjustment Act), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Inflation Adjustment Act required agencies to issue a final rule by August 1, 2016, to adjust the level of civil monetary penalties with an initial ''catch-up'' adjustment and to annually adjust these monetary penalties for inflation by January 15 of each subsequent year.

Based on the definition of a ''civil monetary penalty'' in the 1990 Inflation Adjustment Act, agencies are to make adjustments only to the civil penalties that (i) are for a specific monetary amount as provided by federal law or have a maximum amount provided for by federal law; (ii) are assessed or enforced by an agency; and (iii) are enforced or assessed in an administrative proceeding or a civil action in the Federal courts. Therefore, penalties that are stated as a percentage of an indeterminate amount or as a function of a violation (penalties that encompass actual damages incurred) are not to be adjusted.

SBA published in the **Federal Register** an interim final rule with its initial adjustments to the civil monetary penalties, including an initial ''catch-up'' adjustment, on May 19, 2016, (81 FR 31489) with an effective date of August 1, 2016. SBA published its first annual adjustments to the monetary penalties on February 9, 2017 (82 FR 9967), with an immediate effective date. SBA published its subsequent annual adjustments for 2018 on February 21, 2018 (83 FR 7361), for 2019 on April 1, 2019 (84 FR 12059), for 2020 on March 10, 2020 (85 FR 13725), and for 2021 on September 24, 2021 (86 FR 52955), all with immediate effective dates. This rule will establish the adjusted penalty amounts for 2022 with an immediate effective date upon publication.

On December 15, 2021, the Office of Management and Budget (OMB) published its annual guidance memorandum for 2022 civil monetary penalties inflation adjustments (M–22–07, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015). The memorandum provides the formula for calculating the annual adjustments based on the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October preceding the adjustment, and specifically on the change between the October CPI–U preceding the date of adjustment and the prior year's CPI–U. Based on this methodology, the 2022 civil monetary penalty inflation adjustment factor is 1.06222 (October 2021 CPI–U (276.589)/October 2020 CPI–U (260.388). The annual adjustment amounts identified in this rule were obtained by applying this multiplier of 1.06222 to those penalty amounts that were published in SBA's 2021 adjustments to civil monetary penalties at 86 FR 52955 (September 24, 2021).

II. Civil Money Penalties Adjusted by This Rule

This rule adjusts civil monetary penalties authorized by the Small Business Act, the Small Business Investment Act of 1958 (SBIAct), the Program Fraud Civil Remedies Act, and the Byrd Amendment to the Federal Regulation of Lobbying Act. These penalties and the implementing regulations are discussed below.

1. 13 CFR 107.665—Civil Penalties

SBA licenses, regulates, and provides financial assistance to financial entities called small business investment companies (SBICs). Pursuant to section 315 of the SBIAct, 15 U.S.C. 687g, SBA may impose a penalty on any SBIC for each day that it fails to comply with SBA's regulations or directives governing the filing of regular or special reports. The penalty for non-compliance is incorporated in § 107.665 of the SBIC program regulations.

This rule amends § 107.665 to adjust the current civil penalty from $274 to $291 per day of failure to file. The current civil penalty of $274 was multiplied by the multiplier of 1.06222 to reach a product of $291, rounded to the nearest dollar.

2. 13 CFR 120.465—Civil Penalty for Late Submission of Required Reports

According to the regulations at § 120.465, any SBA Supervised Lender, as defined in 13 CFR 120.10, that violates a regulation or written directive issued by the SBA Administrator regarding the filing of any regular or special report is subject to the civil penalty amount stated in § 120.465(b) for each day the company fails to file the report, unless the SBA Supervised Lender can show that there is reasonable cause for its failure to file. This penalty is authorized by section 23(j)(1) of the Small Business Act, 15 U.S.C. 650(j)(1).

This rule amends § 120.465(b) to adjust the current civil penalty to $7,244 per day of failure to file from $6,820 per day of failure to file. The current civil

penalty of $6,820 was multiplied by the multiplier of 1.06222 to reach a product of $7,244, rounded to the nearest dollar.

3. 13 CFR 120.1500—Types of Formal Enforcement Actions—SBA Lenders

According to the regulations at § 120.1500(b), SBA may assess a civil monetary penalty against a 7(a) Lender. In determining whether to assess a civil monetary penalty and, if so, in what amount, SBA may consider: The gravity (*e.g.,* severity and frequency) of the violation; the history of previous violations; the financial resources and good faith of the 7(a) Lender; and any other matters as justice may require. This penalty is authorized by the Small Business Act, 15 U.S.C. 657t(e)(2)(B).

This rule amends § 120.1500(b)(2) to adjust the current civil penalty from $252,955 to $268,694. The current civil penalty of $252,955 was multiplied by the multiplier of 1.06222 to reach a product of $268,694, rounded to the nearest dollar.

4. 13 CFR 142.1—Overview of Regulations

SBA has promulgated regulations at 13 CFR part 142 to implement the civil penalties authorized by the Program Fraud Civil Remedies Act of 1986 (PFCRA), 31 U.S.C. 3801–3812. Under the current regulation at 13 CFR 142.1(b), a person who submits, or causes to be submitted, a false claim or a false statement to SBA is subject to a civil penalty of not more than $11,803, for each statement or claim.

This rule amends § 142.1(b) to adjust the current civil penalty from $11,803 to $12,537. The adjusted civil penalty amount was calculated by multiplying the current civil penalty of $11,803 by the multiplier of 1.06222 to reach a product of $12,537, rounded to the nearest dollar.

5. 13 CFR 146.400—Penalties

SBA's regulations at 13 CFR part 146 govern lobbying activities by recipients of federal financial assistance. These regulations implement the authority in 31 U.S.C. 1352 and impose penalties on any recipient that fails to comply with certain requirements in the part. Specifically, under § 146.400(a) and (b), penalties may be imposed on those who make prohibited expenditures or fail to file the required disclosure forms or to amend such forms, if necessary.

This rule amends § 146.400(a) and (b) to adjust the current civil penalty amounts to ''not less than $22,021 and not more than $220,209.'' The current civil penalty amounts of $20,731 and $207,314 were multiplied by the multiplier of 1.06222 to reach a product of $22,021 and $220,213, respectively, rounded to the nearest dollar.

This rule also amends § 146.400(e) to adjust the civil penalty that may be imposed for a first-time violation of § 146.400(a) and (b) to $22,021 and to adjust the civil penalty that may be imposed for second and subsequent offenses to ''not less than $22,021 and not more than $220,213.'' The current civil penalty amounts of $20,731 and $207,314 were multiplied by the multiplier of 1.06222 to reach a product of $22,021 and $220,213 respectively, rounded to the nearest dollar.

Compliance With Executive Orders 12866, 12988, 13132, and the Administrative Procedure Act (5 U.S.C. 553), the Congressional Review Act (5 U.S.C. 801–808), the Paperwork Reduction Act (44 U.S.C. Ch. 35) and the Regulatory Flexibility Act (5 U.S.C. 601–612)

Executive Order 12866

The Office of Management and Budget has determined that this final rule is not a significant regulatory action under Executive Order 12866.

Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have retroactive or preemptive effect.

Executive Order 13132

For the purpose of Executive Order 13132, SBA determined that the rule 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, this final rule has no federalism implications warranting preparation of a federalism assessment.

The Administrative Procedure Act (APA)

The APA requires agencies generally to provide notice and an opportunity for public comment before adopting a rule unless the agency for good cause finds that notice and comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b). The APA also requires agencies to allow at least 30-days after publication for a final rule to become effective ''except as otherwise provided by the agency for good cause found and published with the rule.'' 5 U.S.C. 553(d). For the following reasons prior public notice, an opportunity for public comment, and a delayed effective date are not required for this rule. The 2015 Inflation Adjustment Act directs agencies to adjust their civil penalties annually notwithstanding section 553 of the APA. 28 U.S.C. 2461 note, sec. 4(b)(2).

This exemption from the notice and comment, and delayed effective date requirements of the APA, in effect provides SBA with the good cause justification to promulgate this as a final rule that will become effective immediately on the date it is published in the **Federal Register**. Additionally, the 2015 Inflation Adjustment Act provides a non-discretionary cost-of-living formula for making the annual adjustment to the civil monetary penalties; SBA merely performs the ministerial task of calculating the amount of the adjustments. Therefore, even without the statutory exemption from the APA, notice and comment would be unnecessary.

The Congressional Review Act (CRA)

The Office of Management and Budget determined that this rule is not a major rule under 5 U.S.C. 804(2).

Paperwork Reduction Act

SBA has determined that this rule does not impose additional reporting or recordkeeping requirements.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies to consider the effect of their regulatory actions on small entities, including small non-profit businesses, and small local governments. Pursuant to the RFA, when an agency issues a rule, the agency must prepare an analysis that describes whether the impact of the rule will have a significant economic impact on a substantial number of such small entities. However, the RFA requires such analysis only where notice and comment rulemaking are required. As stated above, SBA has express statutory authority to issue this rule without regard to the notice and comment requirement of the APA. Since notice and comment is not required before this rule is issued, SBA is not required to prepare a regulatory analysis.

List of Subjects

13 CFR Part 107

Investment companies, Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 120

Loan programs-business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 142

Administrative practice and procedure, Claims, Fraud, Penalties.

13 CFR Part 146

Government contracts, Grant programs, Loan programs, Lobbying, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, SBA amends 13 CFR parts 107, 120, 142, and 146 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 15 U.S.C. 681, 683, 687(c), 687b, 687d, 687g, 687m.

§ 107.665 [Amended]

■ 2. Amend § 107.665 by removing ''$274'' and add in its place ''$291''.

PART 120—BUSINESS LOANS

■ 3. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), (b)(7), (b)(14), (h), and note, 636(a), (h), and (m), 636m, 650, 687(f), 696(3), 697, 697a, and 697e; Public Law 111–5, 123 Stat. 115; Public Law 111–240, 124 Stat. 2504; Public Law 116–260, 134 Stat. 1182.

§ 120.465 [Amended]

■ 4. In § 120.465, amend paragraph (b) by removing ''$6,820'' and adding in its place ''$7,244''.

§ 120.1500 [Amended]

■ 5. In § 120.1500, amend paragraph (b)(2) by removing ''$252,955'' and adding in its place ''268,694''.

PART 142—PROGRAM FRAUD CIVIL REMEDIES ACT REGULATIONS

■ 6. The authority citation for part 142 continues to read as follows:

Authority: 15 U.S.C. 634(b); 31 U.S.C. 3803(g)(2).

§ 142.1 [Amended]

■ 7. In § 142.1, amend paragraph (b) by removing ''$11,803'' and adding in its place ''$12,537''.

PART 146—NEW RESTRICTIONS ON LOBBYING

■ 8. The authority citation for part 146 is revised to read as follows:

Authority: 31 U.S.C. 1352 and 15 U.S.C. 634(b)(6).

§ 146.400 [Amended]

■ 9. Amend § 146.400 by removing ''$20,731'' wherever it appears and adding in its place ''$22,021'' and by removing ''$207,314'' wherever it appears and adding in its place ''$220,213''.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–10080 Filed 5–10–22; 8:45 am]

BILLING CODE 8026–03–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 746

[Docket No. 220505–0111]

RIN 0694–AI87

Expansion of Sanctions Against Russian Industry Sectors Under the Export Administration Regulations (EAR)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Final rule.

SUMMARY: In response to the Russian Federation's (Russia's) ongoing aggression against Ukraine, the Department of Commerce is expanding the existing sanctions against Russian industry sectors by imposing a license requirement for exports, reexports, or transfers (in-country) to and within Russia for additional items subject to the Export Administration Regulations (EAR) identified under specific Schedule B numbers or Harmonized Tariff Schedule codes. The Bureau of Industry and Security (BIS) is taking these actions to further restrict Russia's ability to withstand the economic impact of the multilateral sanctions, further limit sources of revenue that could support Russia's military capabilities, and to better align with the European Union's controls.

DATES: This rule is effective on May 9, 2022.

FOR FURTHER INFORMATION CONTACT: For questions on this final rule, contact Eileen Albanese, Director, Office of National Security and Technology Transfer Controls, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–0092, Fax: (202) 482–482–3355, Email: *rpd2@bis.doc.gov.* For emails, include ''Russia Industry Sector Sanctions Expansion'' in the subject line.

SUPPLEMENTARY INFORMATION:

I. Background

In response to Russia's February 2022 invasion of Ukraine, BIS imposed extensive sanctions on Russia under the Export Administration Regulations (15 CFR parts 730–774) (EAR) as part of the final rule *Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)* (the Russia Sanctions rule), effective on February 24, 2022, and published on March 3, 2022 (87 FR 12226). Since the publication of the Russia Sanctions rule, BIS has published a number of final rules imposing additional stringent export controls on Russia. These actions reflect the U.S. Government's position that Russia's invasion of Ukraine flagrantly violated international law, was contrary to U.S. national security and foreign policy interests, and undermined global order, peace, and security, all of which necessitated the imposition of stringent and expansive sanctions.

The export control measures in this final rule build upon the policy objectives set forth in one of the subsequent rules, a final rule effective on March 3, 2022, and published on March 8, 2022 (87 FR 12856), *Expansion of Sanctions Against the Russian Industry Sector Under the Export Administration Regulations (EAR)* (Russian Industry Sector Sanctions rule). Among other things, the Russian Industry Sector Sanctions rule revised part 746 of the EAR (Embargoes and Other Special Controls) by adding a new paragraph (a)(1)(ii) which imposed an additional license requirement for exports, reexports, and transfers (in-country) to or within Russia of any items subject to the EAR if identified under certain Schedule B or Harmonized Tariff Schedule 6 (HTS) codes. The Russian Industry Sector Sanctions rule also added supplement no. 4 to part 746—HTS Codes and Schedule B Numbers that Require a License for Export, Reexport, and Transfer (in-country) to or within Russia pursuant to § 746.5(a)(1)(ii)—which identifies HTS codes and Schedule B numbers that are subject to the license requirement set forth in paragraph (a)(1)(ii). The four columns added in supplement no. 4 to part 746 consisted of: The Harmonized Tariff Schedule (HTS)–6 Code, HTS Description, Schedule B and Schedule B Description to assist exporters, reexporters, and transferors in identifying the items subject to this license requirement.

This final rule builds upon the policy objectives set forth in the Russian Sanctions rule and the Russian Industry Sector Sanctions rule by expanding upon the latter to further restrict Russia's access to items that it needs to support its military capabilities. The expansion of these export controls under the EAR, implemented in parallel

with similarly stringent measures by partner and ally countries, further limits sources of revenue that could support Russia's military capabilities, as well as Russia's ability to withstand the economic impact of the multilateral sanctions.

II. Revisions to the Export Administration Regulations (EAR)

1. Expansion of Russian Industry Sector Sanctions

This final rule amends part 746 of the EAR (Embargoes and Other Special Controls) to further expand the scope of the Russian industry sector sanctions by adding additional HTS codes and Schedule B numbers to supplement no. 4 to part 746 of the EAR, thereby imposing a license requirement for all exports, reexports, and transfers (in-country) to or within Russia for such items. In this final rule, BIS is adding 205 HTS codes at the 6-digit level and 478 corresponding 10-digit Schedule B numbers to better align with the European Union's controls.

2. Clarifications to Supplement No. 4 to Part 746 Controls

This final rule revises supplement no. 4 to part 746 by re-organizing the list of items subject to a license requirement under § 746.5(a)(1)(ii) in order to make it easier for exporters to determine whether a particular item is described in this supplement. Specifically, the columns in supplement no. 4 were previously listed in the following order: Harmonized Tariff Schedule (HTS)–6 Code, HTS Description, Schedule B, Schedule B Description. This final rule re-organizes the columns to list them in the following order: Schedule B, Schedule B Description, HTS Code, and HTS Description. In addition, this final rule is individually listing the existing Schedule B numbers so each number corresponds with a single HTS Code; previously, some of these Schedule B numbers were listed with multiple HTS Codes. It also reorganizes the list of items by ordering them numerically by Schedule B number; previously they had been organized alphabetically by HTS Description.

This final rule revises the existing language in the introductory text in supplement no. 4 to part 746 to reflect the reorganization of the list. In addition, this final rule adds Schedule B number 8705200000 to the introductory text to indicate it is also listed in both supplements no. 2 and 4 and adds a sentence to indicate that Schedule B number 8412294000 is listed in both supplements no. 4 and 5 to this part.

This final rule also adds a second paragraph to the introductory text in supplement no. 4 to part 746 to clarify the relationship between the four columns included in supplement no. 4 to part 746 by further explaining the scope of the items controlled under § 746.5(a)(1)(ii). The first sentence being added clarifies that under the Foreign Trade Regulations (15 CFR 30.6(a)(12)), exporters can use either the referenced HTS Code or Schedule B number from supplement no. 4 to part 746 when filing Electronic Export Information (EEI) in the Automated Export System (AES). The Russian Industry Sector Sanctions Rule included the applicable HTS–6 Code and Schedule B number and descriptions of items listed in supplement no. 4 to part 746 to assist exporters, reexporters, and transferors who may be more familiar with one or the other of the HTS Code or Schedule B number identification systems. The second sentence being added clarifies that only the items identified in the HTS Description column are subject to the license requirement under § 746.5(a)(1)(ii), which is consistent with how the European Union (EU) applies its comparable controls. Lastly, the third sentence being added clarifies that the other three columns—HTS Code, Schedule B, and Schedule B Description—are only intended to assist exporters with their AES filing responsibilities and does not indicate that all items classified under those HTS Codes or Schedule B numbers are subject to § 746.5(a)(1)(ii)'s restrictions.

3. Conforming Changes

This final rule revises the last sentence of the introductory text of supplement no. 2 to part 746—Russian Industry Sector Sanction List—to provide guidance on certain Schedule B numbers that are identified in both supplement no. 2 and supplement no. 4 to part 746. It now clarifies that in addition to Schedule B number 8479899850, Schedule B number 8705200000 is also listed in both supplements no. 2 and 4, and that exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii), as applicable, for these Schedule B numbers.

In addition, this final rule adds one sentence at the end of the introductory text of supplement no. 5 to part 746—'Luxury Goods' That Require a License For Export, Reexport, and Transfer (In-Country) to or Within Russia or Belarus Pursuant to § 746.10(a)(1) and (2)—to provide guidance on one Schedule B number that is identified in both supplements no. 4 and no. 5 to part 746. This sentence clarifies that exporters, reexporters, and transferors must comply with the license requirements under both §§ 746.5(a)(ii) and 746.10 as applicable, for Schedule B number 8412294000.

In § 746.5 (Russian industry sector sanctions), this final rule revises the license review policy in paragraph (b)(2) to specify that applications involving items that meet humanitarian needs will be reviewed under a case-by case license review policy. This case-by-case license review policy will allow for discretion in approving licenses for items that meet humanitarian needs while also providing discretion to deny licenses for items that could generate revenue to support Russia's military capabilities.

Savings Clause

For the changes being made in this final rule, shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on May 9, 2022, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (codified, as amended, at 50 U.S.C. Sections 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. This final rule is not a ''significant regulatory action'' because it ''pertain[s]'' to a ''military or foreign affairs function of the United States'' under sec. 3(d)(2) of Executive Order 12866.

2. Notwithstanding any other provision of 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 Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid

Office of Management and Budget (OMB) Control Number.

This rule involves three collections of information. BIS believes there will be minimal burden changes to two of these collections—Five-Year Records Retention Requirement for Export Transactions and Boycott Actions (OMB control number 0694–0096) and Automated Export System (AES) Program (OMB control number 0607–0152).

However, Multi-Purpose Application (OMB control number 0694–0088) will exceed existing estimates currently associated with this collection as BIS believes the respondent burden could increase the estimated number of submissions by 670 for license applications submitted annually to BIS. BIS estimates the burden hours associated with this collection would increase by 331 hours (*i.e.,* 670 applications × 30.6 minutes per response) for a total estimated cost increase of $9,930 (*i.e.,* 331 hours × $30 per hour). The $30 per hour cost estimate for OMB control number 0694–0088 is consistent with the salary data for export compliance specialists currently available through glassdoor.com (glassdoor.com estimates that an export compliance specialist makes $55,280 annually, which computes to roughly $26.58 per hour). BIS is in the process of updating this information collection to account for the increase in burden hours and costs posed by this rule. Comments on the methodology associated with calculating the cost or burden increases or any other aspect of this collection can be submitted via *www.regulations.gov* by searching for OMB Control Number 0694–0088.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of the Export Control Reform Act of 2018 (50 U.S.C. 4821) (ECRA), this action is exempt from the Administrative Procedure Act (APA) (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date. While section 1762 of ECRA provides sufficient authority for such an exemption, this action is also independently exempt from these APA requirements because it involves a military or foreign affairs function of the United States (5 U.S.C. 553(a)(1)).

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 746 of the Export Administration Regulations (15 CFR parts 730 through 774) is amended as follows:

PART 746—EMBARGOES AND OTHER SPECIAL CONTROLS

■ 1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11, 117 Stat. 559; 22 U.S.C. 2151 note; 22 U.S.C. 6004; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p 168; Presidential Determination 2003–23, 68 FR 26459, 3 CFR, 2004 Comp., p. 320; Presidential Determination 2007–7, 72 FR 1899, 3 CFR, 2006 Comp., p. 325; Notice of May 6, 2021, 86 FR 26793 (May 10, 2021).

■ 2. Section 746.5 is amended by revising paragraph (b)(2) to read as follows:

§ 746.5 Russian industry sector sanctions.

* * * * *

(b) * * *

(2) Applications for the export, reexport, or transfer (in-country) of any item pursuant to paragraph (a)(1)(ii) of this section that requires a license for Russia will be reviewed under a policy of denial, except that applications for export, reexport, or transfer (in-country) of items that may be necessary for health and safety reasons or for items that meet humanitarian needs will be reviewed under a case-by case license review policy.

* * * * *

■ 3. Supplement no. 2 to part 746 is amended by revising the last sentence of the introductory text to read as follows:

Supplement No. 2 to Part 746—Russian Industry Sector Sanction List

* * * Schedule B numbers 8479899850 and 8705200000 are listed in both this supplement and supplement no. 4 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii) as applicable.

* * * * *

■ 4. Supplement no. 4 to part 746 is revised to read as follows:

Supplement No. 4 to Part 746—HTS Codes and Schedule B Numbers That Require a License for Export, Reexport, and Transfer (In-Country) to or Within Russia Pursuant to § 746.5(a)(1)(ii)

(a) The source for the Schedule B numbers and descriptions and Harmonized Tariff Schedule (HTS)-6 codes and descriptions in this list comes from the Bureau of the Census's Schedule B concordance of exports 2022. Census's Schedule B List 2022 can be found at *www.census.gov/foreign-trade/aes/documentlibrary/#concordance.* The Introduction Chapter of the Schedule B provides important information about classifying products and interpretations of the Schedule B, *e.g.,* NESOI means Not Elsewhere Specified or Included. In addition, important information about products within a particular chapter may be found at the beginning of chapters. This supplement includes four columns consisting of the Schedule B, Schedule B Description, HTS Code, and HTS Description to assist exporters, reexporters, and transferors in identifying the products in this supplement. For information on HTS codes in general, you may contact a local import specialist at U.S. Customs and Border Protection at the nearest port. Schedule B numbers 8479899850 and 8705200000 are listed in both this supplement and supplement no. 2 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both § 746.5(a)(1)(i) and (ii) as applicable. Schedule B number 8412294000 is listed in both this supplement and supplement no. 5 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both §§ 746.5(a)(ii) and 746.10 as applicable.

(b) Under the Foreign Trade Regulations (FTR) (15 CFR part 30), exporters can use either the HTS Code or Schedule B number when filing Electronic Export Information (EEI) in the Automated Export System (AES), therefore the applicable HTS Codes and Schedule B numbers and descriptions are included in this supplement to assist exporters, reexporters, and transferors who may be more familiar with one or the other of the HTS–6 Code or Schedule B number identification systems. Only the items identified in the HTS Description column of this supplement are subject to the license requirement under § 746.5(a)(1)(ii). The other 3 columns—HTS Code, Schedule B and Schedule B Description—are

intended to assist exporters with their AES filing responsibilities. If an item is classified under one of these HTS Codes or Schedule B numbers, but it is not described by the relevant entry in the HTS Description column, it is not subject to the license requirement set forth in § 746.5(a)(1)(ii).

Schedule B	Schedule B description	HTS code	HTS description
3815190000 ...	Supported Catalysts, Nesoi	381519	Supported Catalysts, Nesoi.
4408100100 ...	Veneer Sheets And Sheets For Plywood And Other Wood Sawn Lengthwise, Sliced Or Peeled, Thickness Not Over 6 Mm, Coniferous.	440810	Veneer Sheet Etc, Not Over 6mm Thick, Coniferous.
4408900105 ...	Ash Veneer Sheets And Sheets For Plywood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900110 ...	Birch Veneer Sheets And Sheets For Plywood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900115 ...	Cherry Wood Veneer Sheets & Sheets For Plywood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900121 ...	Maple Veneer Sheets And Sheets For Plywood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900131 ...	Red Oak Veneer Sheets And Sheets For Plywood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900137 ...	Oak, Except Red, Veneer Sheets & Sheets For Plywood & Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Over 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900145 ...	Walnut Veneer Sheets And Sheets For Plywood And Other Wood, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900151 ...	Veneer Sheets And Sheets For Plywood And Other Wood, Nesoi, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Exceeding 6 Mm, Spliced Or End-jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4408900189 ...	Veneer Sheets, Sheets For Plywood & Other Laminated Wood, Nesoi, Sawn Lengthwise, Sliced Or Peeled, Thickness Not Over 6 Mm, Not Spliced Or End Jointed.	440890	Veneer Sheet Etc, Not Ov 6mm, Nonconiferous Nesoi.
4416003010 ...	Casks, Barrels And Hogsheads, New, Of Wood	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416003020 ...	Casks, Barrels And Hogsheads, Used, Assembled (Set Up), Of Wood	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416003030 ...	Casks, Barrels And Hogsheads, Used, Unassembled (Knocked Down), Of Wood.	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416006010 ...	Staves, New, Of Wood	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416006020 ...	Hoops, New, Of Wood	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416006030 ...	Tight Barrelheads, New, Of Softwood	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416006040 ...	Staves, Used, Of Wood	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416006050 ...	Hoops, Of Wood, Tight Barrelheads Of Softwood, Used	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416009020 ...	Vats, Tubs And Other Coopers' Products And Parts Thereof, Of Wood, New, Nesoi.	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
4416009040 ...	Vats, Tubs And Other Coopers' Products And Parts Thereof, Of Wood, Used, Nesoi.	441600	Casks, Barrels, Vats, Etc. And Parts, Of Wood.
7309000030 ...	Tanks, Of Iron Or Steel, Of A Capacity Exceeding 300 Liters, Whether Or Not Lined Or Heat Insulated, Not Fitted W Mechan Or Thermal Equip Not F Gases.	730900	Tanks Etc, Over 300 Liter Capacity, Iron Or Steel.
7309000090 ...	Reservoirs, Vats And Similar Containers Of Iron Or Steel, Capacity Over 300 Liters, Not Fitted With Mechanical Or Thermal Equip, Not For Liq O Cmp Gas.	730900	Tanks Etc, Over 300 Liter Capacity, Iron Or Steel.
7310100010 ...	Empty Steel Drums And Barrels, Of A Capacity Of 50 To 300 Liters, Not For Liq Gas, Not Fitted With Mechanical Or Thermal Equipment.	731010	Tanks Etc, Capacity Notun50notov300 Liter, Ir & St.
7310100050 ...	Tanks, Casks, Cans, Boxes And Similar Containers Nesoi, Capacity 50–300 Liters, Iron Or Steel, Not Fitted With Mechanical Or Thermal Equipnot F Gases.	731010	Tanks Etc, Capacity Notun50notov300 Liter, Ir & St.
8207600030 ...	Broaches	820760	Tools For Boring Or Broaching, And Pts, Base Mtl.
8207600060 ...	Othr Boring Tools Nesoi And Parts Throf	820760	Tools For Boring Or Broaching, And Pts, Base Mtl.
8208100000 ...	Knives And Cutting Blades For Metal Working And Parts Thereof	820810	Knvs A Cttng Blds F Mtl Wrkng A Prts.
8208200000 ...	Knives And Cutting Blades For Wood Working And Parts Thereof	820820	Knvs A Cttng Blds F Wood Wrkng A Prts.

Schedule B	Schedule B description	HTS code	HTS description
8208300000 ...	Knives And Cutting Blades For Kitchen Appliances Or For Machines Used By The Food Industry, And Parts.	820830	Kns A Cttng Blds F Ktchn Appln O Fd Ind Mach A Pts.
8208400000 ...	Knives And Cutting Blades For Agricultural Or Forestry Machines, And Parts.	820840	Knvs A Cttng Blds F Agric O Frstry Mach, A Pts.
8208900000 ...	Other Knives And Cutting Blades For Machines Or Mechanical Appliances, And Parts Thereof, Of Base Metal.	820890	Oth Knvs A Cttng Blds F Mach Or Mech Eqp, Pts B Mt.
8402120000 ...	Watertube Boilers With A Steam Production Not Exceeding 45 T Per Hour.	840212	Watertube Boilers Steam Prod Not Exc 45 T Per Hour.
8402190000 ...	Vapor Generating Boilers, Nesoi, Including Hybrid Boilers	840219	Vapor Generating Boilers, Nesoi, Inc Hybrid.
8402200000 ...	Super-heated Water Boilers	840220	Super-heated Water Boilers.
8402900010 ...	Heat Exchangers	840290	Super-heated Water Boilers & Steam Genrtn Boil Pts.
8402900090 ...	Parts For Steam Or Other Vapor Generating Boilers And Super-heated Water Boilers, Except Heat Exchangers.	840290	Super-heated Water Boilers & Steam Genrtn Boil Pts.
8405900000 ...	Parts For Producer Gas, Water Gas, Acetylene Gas And Similar Water Process Gas Generators, With Or Without Their Purifiers.	840590	Pts, prod Gas, wtr Gas, acetylene Gas, wtr Pro Gas Gen.
8406900040 ...	Parts For Steam Turbines	840690	Parts For Steam And Other Vapor Turbines.
8406900080 ...	Parts For Other Than Steam Vapor Turbines	840690	Parts For Steam And Other Vapor Turbines.
8412100010 ...	Missile And Rocket Reaction Engines	841210	Reaction Engines Other Than Turbojets.
8412100090 ...	Reaction Engines Except Missile And Rocket Engines	841210	Reaction Engines Other Than Turbojets.
8412210015 ...	Linear Acting Hydraulic Motors With Tie-rod Type Cylinders	841221	Hydraulic Power Engines And Motors, Linear Acting.
8412210030 ...	Linear Acting Hydraulic Motors With Weld Fused Type Cylinders	841221	Hydraulic Power Engines And Motors, Linear Acting.
8412210045 ...	Linear Acting Hydraulic Motors With Telescoping Type Cylinders	841221	Hydraulic Power Engines And Motors, Linear Acting.
8412210060 ...	Linear Acting Hydraulic Motors With Rodless Type Cylinders	841221	Hydraulic Power Engines And Motors, Linear Acting.
8412210075 ...	Linear Acting Hydraulic Motors (Cylinders), Nesoi	841221	Hydraulic Power Engines And Motors, Linear Acting.
8412298015 ...	Hydraulic Power Engines, Unlimited Rotary Acting, Gear Type	841229	Hydraulic Power Engines & Motors Ex Linear Acting.
8412298030 ...	Hydraulic Power Engines, Unlimited Rotary Acting, Radial Piston Type	841229	Hydraulic Power Engines & Motors Ex Linear Acting.
8412298045 ...	Hydraulic Power Engines, Unlimited Rotary Acting, Axial Piston Type	841229	Hydraulic Power Engines & Motors Ex Linear Acting.
8412298060 ...	Hydraulic Power Engines, Unlimited Rotary Acting, Nesoi	841229	Hydraulic Power Engines & Motors Ex Linear Acting.
8412298075 ...	Hydraulic Power Engines And Motors, Nesoi	841229	Hydraulic Power Engines & Motors Ex Linear Acting.
8412390040 ...	Pneumatic Power Engines And Motors, Unlimited Rotary Acting	841239	Pneumatic Power Engines & Motors Ex Linear Acting.
8412390080 ...	Pneumatic Power Engines And Motors, Nesoi	841239	Pneumatic Power Engines & Motors Ex Linear Acting.
8412801000 ...	Spring-operated And Weight-operated Motors	841280	Engines And Motors, Nesoi.
8412809000 ...	Engines And Motors, Nesoi	841280	Engines And Motors, Nesoi.
8414901040 ...	Parts Of Fans (Including Blowers) And Ventilating Or Recycling Hoods For Permanent Installation (Of Subheading 8414.51.00).	841490	Air/gas Pump, Compressor And Fan Etc Parts, Nesoi.
8414901080 ...	Parts Of Other Fans (Including Blowers) And Ventilating Or Recycling Hoods Not Permanently Installed, Nesoi.	841490	Air/gas Pump, Compressor And Fan Etc Parts, Nesoi.
8414902015 ...	Parts Nesoi, Of Refrigerating And Air Conditioning Compressors	841490	Air/gas Pump, Compressor And Fan Etc Parts, Nesoi.
8414902095 ...	Parts Nesoi, Of Compressors Other Than Refrigerating And Air Conditioning Compressors.	841490	Air/gas Pump, Compressor And Fan Etc Parts, Nesoi.
8414909100 ...	Parts Of Air Or Vacuum Pumps, Nesoi	841490	Air/gas Pump, Compressor And Fan Etc Parts, Nesoi.
8415200000 ...	Automotive Air Conditioners	841520	Automotive Air Conditioners.
8415830050 ...	Condensing Units Not Exceeding 17.58 Kw/Hr, Not Incorporating A Refrigerating Unit.	841583	Air Conditioning Machines Etc Not Incl Refrig Unit.
8415830060 ...	Condensing Units Exceeding 17.58 Kw/Hr (60,000 Btu/Hr), Not Incorporating A Refrigerating Unit.	841583	Air Conditioning Machines Etc Not Incl Refrig Unit.
8415830070 ...	Heat Exchangers, Not Incorporating A Refrigerating Unit, Nesoi	841583	Air Conditioning Machines Etc Not Incl Refrig Unit.
8415830090 ...	Air Conditioning Machines Not Incorporating A Refrigerating Unit, Nesoi	841583	Air Conditioning Machines Etc Not Incl Refrig Unit.
8418690110 ...	Icemaking Machines	841869	Refrigerating/freezing Equipment, Nesoi.
8418690120 ...	Drinking Water Coolers, Refrigerated, Self-contained	841869	Refrigerating/freezing Equipment, Nesoi.

Schedule B	Schedule B description	HTS code	HTS description
8418690130 ...	Soda Fountain And Beer Dispensing Equipment, Refrigerated	841869	Refrigerating/freezing Equipment, Nesoi.
8418690140 ...	Centrifugal Liquid Chilling Refrigerating Units	841869	Refrigerating/freezing Equipment, Nesoi.
8418690150 ...	Reciprocating Liquid Chilling Refrigerating Units	841869	Refrigerating/freezing Equipment, Nesoi.
8418690160 ...	Absorption Liquid Chilling Units	841869	Refrigerating/freezing Equipment, Nesoi.
8418690180 ...	Refrigerating Or Freezing Equipment, Nesoi	841869	Refrigerating/freezing Equipment, Nesoi.
8419400080 ...	Distilling Or Rectifying Plant, For The Treatment Of Materials By A Process Involving A Change In Temperature, Nesoi.	841940	Distilling or rectifying plant.
8419899585 ...	Industrial Machinery, Plant Or Equipment For The Treatment Of Materials, Involving A Change In Temperature, Nesoi.	841989	Machine Etc For Mat'l Treatment By Temp Cont Nesoi.
8420910000 ...	Cylinders For Calendering Or Other Rolling Machines, Other Than For Metals Or Glass.	842091	Cylinders F Rolling Mach, Exc F Metals Or Glass.
8420990000 ...	Parts, Except Cylinders, For Calendering Or Other Rolling Machines, Other Than For Metals Or Glass.	842099	Parts,nesoi,f Folling Mach, Exc F Metals Or Glass.
8421190000 ...	Centrifuges, Including Centrifugal Dryers, Nesoi	842119	Centrifuges, Nesoi.
8421230000 ...	Oil Or Fuel Filters For Internal Combustion Engines	842123	Oil Or Fuel Filters For Internal Combustion Engine.
8421290005 ...	Refrigerant Recovery And Recycling Units For Filtering Or Purifying Liquids.	842129	Filter/purify Machine & Apparatus For Liquid Nesoi.
8421290015 ...	Oil-separation Equipment For Filtering Or Purifying Liquid	842129	Filter/purify Machine & Apparatus For Liquid Nesoi.
8421290040 ...	Hydraulic Fluid Power Filters, Rated At 1,000 Kpa Or Greater	842129	Filter/purify Machine & Apparatus For Liquid Nesoi.
8421290065 ...	Filtering Or Purifying Machinery And Apparatus For Liquids, Nesoi	842129	Filter/purify Machine & Apparatus For Liquid Nesoi.
8421310000 ...	Intake Air Filters For Internal Combustion Engines	842131	Intake Air Filters For Internal Combustion Engines.
8421390140 ...	Gas Separation Equipment	842131	Intake Air Filters For Internal Combustion Engines.
8421390190 ...	Filtering Or Purifying Machinery And Apparatus For Gases, Nesoi	842131	Intake Air Filters For Internal Combustion Engines.
8421910000 ...	Parts Of Centrifuges, Including Centrifugal Dryers	842191	Parts Of Centrifuges, Including Centrifugal Dryers.
8421990140 ...	Parts Of Machinery And Apparatus For Filtering Or Purifying Water	842199	Filter/purify Machine & Apparatus Parts.
8421990180 ...	Parts Of Machinery And Apparatus For Filtering Or Purifying Liquids And Gases, Nesoi.	842199	Filter/purify Machine & Apparatus Parts.
8424100000 ...	Fire Extinguishers, Whether Or Not Charged	842410	Fire Extinguishers, Whether Or Not Charged.
8424890000 ...	Mechanical Appliances (Whether Or Not Hand Operated) For Projecting, Dispersing Or Spraying Liquids Or Powders, Nesoi.	842489	Mechanical Appliance For Projecting Liquids Nesoi.
8424902000 ...	Parts Of Sand Blasting Machines	842490	Pts For Mechanical Appliance Project Liquid Etc.
8424909040 ...	Parts Of Steam And Similar Jet Projecting Machines	842490	Pts For Mechanical Appliance Project Liquid Etc.
8424909500 ...	Parts, Nesoi, Of Mechanical Appliances For Projecting, Dispersing Or Spraying Liquids Or Powders; Of Fire Extinguishers; Of Spray Guns.	842490	Pts For Mechanical Appliance Project Liquid Etc.
8425110000 ...	Pulley Tackle And Hoists, Other Than Skip Hoists Or Hoists Of A Kind Used For Raising Vehicles, Powered By Electric Motor.	842511	Puly Tac & host, exc Skip, host Fr Rais Veh, Pow El Mt.
8425310100 ...	Winches And Capstans Powered By Electric Motors	842531	Winches And Capstans Powered By Electric Motors.
8426120000 ...	Mobile Lifting Frames On Tires And Straddle Carriers	842612	Mobile Lifting Frames On Tires & Straddle Carriers.
8426990000 ...	Lifting Machinery, Nesoi	842699	Lifting Or Handling Machinery, Nesoi.
8428200010 ...	Conveyors, Pneumatic, Nesoi	842820	Pneumatic Elevators And Conveyors.
8428200050 ...	Elevators, Pneumatic, Nesoi	842820	Pneumatic Elevators And Conveyors.
8428320000 ...	Continuous-action Elevators And Conveyors, For Goods Or Materials, Bucket Type.	842832	Cont-act Elev & Convey, fr Goods Or Matl,bucket Typ.
8428330000 ...	Belt Type Continuous-action Elevators And Conveyors, For Goods Or Materials, Nesoi.	842833	Cont-act Elev & Convey, fr Goods Or Matl,belt Type.
8428390000 ...	Continuous-action Elevators And Conveyors, For Goods Or Materials, Nesoi.	842839	Cont-act Elev & Convey, fr Goods Or Materls, Nesoi.
8428900310 ...	Woodland Log Handling Equipment (Other Than Skidders)	842890	Lifting, Handling, Loading & Unloading Machy Nesoi.
8428900390 ...	Machinery For Lifting, Handling, Loading Or Unloading, Nesoi	842890	Lifting, Handling, Loading & Unloading Machy Nesoi.

Schedule B	Schedule B description	HTS code	HTS description
8429190010 ...	Bulldozers And Angledozers, Self-propelled, New, Except Track Laying	842919	Bulldozers And Angledozers, Self-prop Nesoi.
8429190090 ...	Bulldozers And Angledozers, Self-propelled, Used Or Rebult, Except Track Laying.	842919	Bulldozers And Angledozers, Self-prop Nesoi.
8429591030 ...	Backhoes, New, Except 360 Degree Revolving Superstructure	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8429591060 ...	Shovels, Clamshells And Draglines, New, Except 360 Degree Revolving Superstructures.	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8429591090 ...	Backhoes, Shovels, Clamshells, Draglines, Used Or Rebuilt	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8429595020 ...	Ladder Type Ditchers And Trenchers, New	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8429595040 ...	Ditchers And Trenchers, Except Ladder Type, New	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8429595060 ...	Mechanical Shovels, Excavators And Shovel Loaders, Except 360 Degree Revoling Superstructures, New, Nesoi.	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8429595080 ...	Mechanical Shovels, Excavators And Shovel Loaders, Except 360 Degree Revoling Superstructures Used Or Rebuilt, Nesoi.	842959	Mech Shovels, Excavators And Shovel Loaders Nesoi.
8430100000 ...	Pile-drivers And Pile-extractors	843010	Pile-drivers And Pile-extractors.
8430390000 ...	Coal Or Rock Cutters And Tunneling Machinery, Other Than Self-propelled.	843039	Coal Or Rock Cutters & Tunnel Mach, Nesoi.
8430500000 ...	Moving, Grading, Leveling, Scraping, Excavating, Extracting Machinery For Earth, Minerals Or Ores, Self-propelled, Nesoi.	843050	Moving, Grading Etc Machines Etc Nesoi, Self-prop.
8430690100 ...	Moving, Grading, Leveling, Scraping, Excavating, Extracting Machinery For Earth,Minerals Or Ores, Not Self-propelled, Nesoi.	843069	Moving, Grading Etc Machines Etc Nesoi, No Self-pr.
8439100010 ...	Machinery For Making Pulp Of Fibrous Cellulosic Material, New	843910	Machy For Mkg Pulp Of Fibrous Cellulosic Material.
8439100090 ...	Machinery For Making Pulp Of Fibrous Cellulosic Material, Used Or Rebilt.	843910	Machy For Mkg Pulp Of Fibrous Cellulosic Material.
8439300000 ...	Machinery For Finishing Paper Or Paperboard	843930	Machinery For Finishing Paper Or Paperboard.
8440900000 ...	Parts For Bookbinding Machinery, Including Book-sewing Machines	844090	Parts For Bookbind Mach, Inc Book-sew Machines.
8441300000 ...	Machines For Making Cartons, Boxes, Cases, Tubes, Drums Or Similar Containers, Other Than By Molding.	844130	Mac Fr Mak Cart, box, case, tube, drum Or Cont Ex Mold.
8442400000 ...	Parts Of Machinery, Apparatus And Equipment, Nesoi, For Preparing Or Making Printing Blocks, Plates, Cylinders Or Other Printing Components.	844240	Parts Of Mach & Equip F Make Print Blocks, Etc.
8443130000 ...	Offset Printing Machinery, Nesoi	844313	Offset Printing Machinery, Nesoi.
8443150000 ...	Letterpress Printing Machinery, Except Reel-fed (Excluding Flexograph	844315	Letterpress Printing Mach, Exc Flexographic, Nesoi.
8443160000 ...	Flexographic Printing Machinery	844316	Flexographic Printing Machinery.
8443170000 ...	Gravure Printing Machinery	844317	Gravure Printing Machinery.
8443911000 ...	Machines For Uses Ancillary To Printing	844391	Pts & Acc Print Mach By Means Of Plate, Cylndr Etc.
8443912000 ...	Parts Of Textile Printing Machinery	844391	Pts & Acc Print Mach By Means Of Plate, Cylndr Etc.
8443913000 ...	Parts Of Printing Machinery, Except Textile, And Machines For Uses Ancillary To Printing.	844391	Pts & Acc Print Mach By Means Of Plate, Cylndr Etc.
8444000010 ...	Texturing Machines For Man-made Textile Materials	844400	Machines Extruding, Drawing Etc Manmade Textiles.
8444000090 ...	Machines For Extruding, Drawing Or Cutting Man-made Textile Materials.	844400	Machines Extruding, Drawing Etc Manmade Textiles.
8446210000 ...	Power Looms For Weaving Fabrics Of A Width Exceeding 30 Cm, Shuttle Type.	844621	Power Looms For Weaving Fab, width Exc 30 cm, shuttle.
8446290000 ...	Weaving Machines (Looms) For Weaving Fabrics Of A Width Exceeding 30 Cm, Shuttle Type, Nesoi.	844629	Weaving Mach, fabric Exceed 30 cm, shuttle Type, Nesoi.
8448110000 ...	Dobbies And Jacquard; Card Reducing, Copying, Punching Or Assembling Machines For Use As Auxiliary Machines Of Heading 8444, 8445, 8446 Or 8447.	844811	Dob & Jac; card Reduc, copy, punch, assm Mac As Aux Mc.
8448190000 ...	Auxiliary Machinery, Nesoi, For Machines Of Heading 8444, 8445, 8446 Or 8447.	844819	Auxiliary Mac For Text Machines (head 8444–8447).
8448201000 ...	Parts Of Machines For Extruding Or Drawing Man-made Textile Filaments.	844820	Pt & Access For Mach For Extruding mm Text Mtl Etc.
8448205010 ...	Parts Of Texturing Machines	844820	Pt & Access For Mach For Extruding mm Text Mtl Etc.
8448205090 ...	Parts And Accessories Of Machines Of Heading 8444 Or Of Their Auxiliary Machinery.	844820	Pt & Access For Mach For Extruding mm Text Mtl Etc.
8448330000 ...	Spindles, Spindle Flyers, Spinning Rings And Ring Travellers	844833	Spindles, spin Flyers, spin Rings & Ring Travellers.
8448391000 ...	Parts Of Spinning, Doubling Or Twisting Machines	844839	Pts & Access For Spinning, Winding Mach Etc Nesoi.
8448395000 ...	Parts Of Winding Or Reeling Machines	844839	Pts & Access For Spinning, Winding Mach Etc Nesoi.

Schedule B	Schedule B description	HTS code	HTS description
8448399000 ...	Parts And Accessories Of Machines Of Heading 8445 Or Of Their Auxiliary Machinery, Nesoi.	844839	Pts & Access For Spinning, Winding Mach Etc Nesoi.
8448420000 ...	Reeds For Looms, Healds And Heald-frames	844842	Reeds For Looms, Healds And Heald-frames.
8448491000 ...	Shuttles	844849	Parts & Acces Of Weav Mach Or Their Aux Mach, Nesoi.
8448492000 ...	Parts And Accessories Of Weaving Machines (Looms) Or Of Their Auxiliary Machinery, Nesoi.	844849	Parts & Acces Of Weav Mach Or Their Aux Mach, Nesoi.
8448514000 ...	Needles For Knitting Machines	844851	Sinkers Needles & Oth Arts Used In Formng Stitches.
8448515000 ...	Sinkers, Needles And Other Articles Used In Forming Stitches, Nesoi	844851	Sinkers Needles & Oth Arts Used In Formng Stitches.
8451100000 ...	Dry-cleaning Machines	845110	Dry-cleaning Machines For Yarn, Fabric Or Articles.
8451290010 ...	Drying Machines, For Drying Made Up Articles, Nesoi	845129	Drying Machines With Dry Linen Capacity Over 10 Kg.
8451290090 ...	Drying Machines, Nesoi	845129	Drying Machines With Dry Linen Capacity Over 10 Kg.
8451300000 ...	Ironing Machines And Presses (Including Fusing Presses)	845130	Ironing Mach And Presses (includ Fusing Presses).
8451900010 ...	Parts Of Machines For Washing, Dry-cleaning, Ironing, Pressing Or Drying Made Up Textiles Articles Or Of Other Household Or Laundry Type Machines.	845190	Pts For Wash/clean, Pasting Floor Covers Etc.
8451900020 ...	Parts Of Machines For Bleaching, Dyeing, Washing Or Cleaning Textile Yarns, Fabrics Or Made Up Textile Articles.	845190	Pts For Wash/clean, Pasting Floor Covers Etc.
8451900090 ...	Parts Of Machinery Of Heading 8451, Nesoi	845190	Pts For Wash/clean, Pasting Floor Covers Etc.
8452300000 ...	Sewing Machine Needles	845230	Sewing Machine Needles.
8453100000 ...	Machines For Preparing, Tanning Or Working Hides, Skins Or Leather	845310	Mach For Prepar, tann Or Work Hids, skins Or Leather.
8453800000 ...	Machinery For Making Or Repairing Articles Of Hides, Skins, Or Leather, Except Sewing Machines, Nesoi.	845380	Mach For Make, repair Art Of Hide, skin, lether, nesoi.
8453900000 ...	Parts Of Machinery Preparing, Tanning Or Working Hides, Skins Or Leather Or For Making Footwear Or Other Articles Of Hides, Skins, Etc, Except Sew Mch.	845390	Parts Of Mach F Prep Or Make Art Of Hides, leather.
8454100000 ...	Converters Used In Metallurgy Or Foundries	845410	Converters Used In Metallurgy Or Foundries.
8456907100 ...	Machine Tools For Working Any Material Except Metal, By Removal Of Material By Electron-Beam, Ionic-Beam Or Plasma Arc Processes, Nesoi.	845690	Other.
8459100000 ...	Way-type Unit Head Machines	845910	Way-type Unit Head Machines For Removing Metal.
8459490010 ...	Other Boring Machines, Not Numerically Controlled, Metal Removing, Used Or Rebuilt.	845949	Other Boring Machines, Nesoi.
8459490020 ...	Other Boring Machines, Not Numerically Controlled, Metal Removing, Valued Under $3,025 Each, New.	845949	Other Boring Machines, Nesoi.
8459490030 ...	Boring Machines, Vertical, Metal Removing, Except Numerically Controlled, Valued $3,025 And Over Each, New.	845949	Other Boring Machines, Nesoi.
8459490090 ...	Boring Machines, Except Vertical, Metal Removing, Exc Numerically Controlled, Valued $3,025 And Over, New.	845949	Other Boring Machines, Nesoi.
8459704000 ...	Threading Or Tapping Machines, Metal Removing, Numerically Controlled.	845970	Threading Or Tapping Machines, For Removing Metal.
8459708040 ...	Threading Or Tapping Machines, Metal Removing, Except Numerically Controlled, Used Or Rebuilt.	845970	Threading Or Tapping Machines, For Removing Metal.
8459708060 ...	Threading Or Tapping Machines, Metal Removing, Except Numerically Controlled, Valued Under $3,025 Each, New.	845970	Threading Or Tapping Machines, For Removing Metal.
8459708080 ...	Threading Or Tapping Machines, Metal Removing, Except Numerically Controlled, Valued $3,025 And Over Each, New, Nesoi.	845970	Threading Or Tapping Machines, For Removing Metal.
8460900010 ...	Machine Tools For Finishing Metal By Removing Metal Using Grinding Stones, Abrasives Or Polishing Products, Nesoi, Used Or Rebuilt.	846090	Mach Tools For Deburring, Polishing Metal Etc.
8460900020 ...	Machine Tools For Finishing Metal By Removing Metal Using Grinding Stones, Abrasives Or Polishing Products, Nesoi, Valued Under $3,025 Each, New.	846090	Mach Tools For Deburring, Polishing Metal Etc.
8460900060 ...	Machine Tools For Finishing Metal By Removing Metal Using Grinding Stones, Abrasives Or Polishing Products, Nesoi, N/C, Valued $2,500 & Over Each, New.	846090	Mach Tools For Deburring, Polishing Metal Etc.
8460900080 ...	Machine Tools For Finishing Metal By Removing Metal Using Grinding Stones, Abrasives Or Polishing Products, Nesoi, Except N/C, Valued $3,025 And.	846090	Mach Tools For Deburring, Polishing Metal Etc.
8461204000 ...	Shaping Or Slotting Machines, Metal Removing, Numerically Controlled	846120	Shaping Or Slotting Machines For Removing Metal.
8461208030 ...	Shaping Or Slotting Machines, Metal Removing, Except Numerically Controlled, Used Or Rebuilt.	846120	Shaping Or Slotting Machines For Removing Metal.

Schedule B	Schedule B description	HTS code	HTS description
8461208070 ...	Shaping Or Slotting Machines, Metal Removing, Except Numerically Controlled, Valued Under $3,025 Each, New.	846120	Shaping Or Slotting Machines For Removing Metal.
8461208090 ...	Shaping Or Slotting Machines, Metal Removing, Except Numerically Controlled, Valued $3,025 And Over Each, New.	846120	Shaping Or Slotting Machines For Removing Metal.
8461300020 ...	Broaching Machines, Metal Removing, Used Or Rebuilt	846130	Broaching Machines For Removing Metal.
8461300040 ...	Broaching Machines, Metal Removing, Valued Under $3,025 Each, New.	846130	Broaching Machines For Removing Metal.
8461300060 ...	Broaching Machines, Metal Removing, Numerically Controlled, Valued $2,500 And Over Each, New.	846130	Broaching Machines For Removing Metal.
8461300080 ...	Broaching Machines, Metal Removing, Except Numerically Controlled, Valued $2,500 And Over Each, New.	846130	Broaching Machines For Removing Metal.
8461401010 ...	Gear Cutting Machines, Metal Removing, Used Or Rebuilt	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461401050 ...	Gear Hobbers, Metal Removing By Cutting, New	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461401070 ...	Gear Shapers, Metal Removing By Cutting, New	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461401090 ...	Gear Cutting Machines, Metal Removing, Except Gear Hobbers Or Shapers, New.	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461405020 ...	Gear Grinding Or Finishing Machines, Metal Removing, Used Or Rebuilt.	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461405040 ...	Gear Grinding Or Finishing Machines, Metal Removing, Valued Under $3,025 Each, New.	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461405060 ...	Gear Grinding Or Finishing Machines, Metal Removing, Valued $2,500 And Over, New.	846140	Gear Cutting, Gear Grinding Or Gear Finish Machine.
8461903020 ...	Planing Machines, Numerically Controlled, Metal Removing, Used Or Rebuilt.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461903040 ...	Planing Machines, Metal Removing, Numerically Controlled, Valued $3,025 And Over Each, New.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461903060 ...	Machine Tools Working By Removing Metal, Numerically Controlled, Used Or Rebuilt, Nesoi.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461903080 ...	Machine Tools Working By Removing Metal, Numerically Controlled, Valued $3,025 And Over, New, Nesoi.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461906010 ...	Planing Machines, Other Than Numerically Controlled, Metal Removing, Used Or Rebuilt.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461906020 ...	Planing Machines, Not Numerically Controlled, Metal Removing, Valued Under $3,025 Each, New.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461906030 ...	Planing Machines, Metal Removing, Except Numerically Controlled, Valued $3,025 And Over Each, New.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461906040 ...	Machine Tools Working By Removing Metal, Not Numerically Controlled, Used Or Rebuilt, Nesoi.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461906050 ...	Machine Tools Working By Removing Metal, Not Numerically Controlled, Valued Under $3,025 Each, New, Nesoi.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8461906090 ...	Machine Tools Working By Removing Metal, Nesoi, Except Numerically Controlled, Valued $3,025 And Over, New.	846190	Mach Tools Workng By Removng Metal, Etc Nesoi.
8462110010 ...	Closed Die Forging Machines, Used Or Rebuilt	846211	Closed Die Forging Machines, Hot Forming.
8462110050 ...	Closed Die Forging Machines, Nesoi	846211	Closed Die Forging Machines, Hot Forming.
8462190010 ...	Forging Or Die-stamping Machines (Including Presses) And Hammers, Metal Forming, Used Or Rebuilt, Nesoi.	846219	Hot Forming Mach For Forging And Hot Hammers Nesoi.
8462190030 ...	Headers And Upsetters, Including Cold Headers, Metal Forming, New ..	846219	Hot Forming Mach For Forging And Hot Hammers Nesoi.
8462190035 ...	Mechanical Transfer Presses, New	846219	Hot Forming Mach For Forging And Hot Hammers Nesoi.
8462190055 ...	Forging Or Die-stamping Machines (Including Presses) And Hammers, Except Headers And Upsetters, Metal Forming, New, Nesoi.	846219	Hot Forming Mach For Forging And Hot Hammers Nesoi.
8465200000 ...	Machining Centers For Cork, Bone, Hard Rubber, Hard Plastics Or Similar Hard Materials, Nesoi.	846520	Machining Centers For Mach Working Hard Materials.
8465930004 ...	Belt Sanders For Woodworking, For A Belt Width 60 Cm Or Wider, Used Or Rebuilt.	846593	Grind Sand Etc Mach For Work Wood Cork Bone Etc.
8465930012 ...	Grinding, Sanding Or Polishing Machines, Except Wide Belt Sanders, Woodworking, Used Or Rebuilt.	846593	Grind Sand Etc Mach For Work Wood Cork Bone Etc.
8465930027 ...	Edge Belt Sanders, Woodworking, New	846593	Grind Sand Etc Mach For Work Wood Cork Bone Etc.
8465930065 ...	Belt Sanders, (Except Edge Belt Sanders), For Woodworking, For A Belt Width 60 Cm Or Wider, New.	846593	Grind Sand Etc Mach For Work Wood Cork Bone Etc.
8465930075 ...	Grinding, Sanding Or Polishing Machines, Woodworking, New, Nesoi ...	846593	Grind Sand Etc Mach For Work Wood Cork Bone Etc.
8465930091 ...	Grinding, Sanding Or Polishing Machines For Cork, Bone, Hard Rubber, Hard Plastics Or Similar Hard Materials, Nesoi.	846593	Grind Sand Etc Mach For Work Wood Cork Bone Etc.
8465940005 ...	Bending Or Assembling Machines, Woodworking, Used Or Rebuilt	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.

Schedule B	Schedule B description	HTS code	HTS description
8465940015 ...	Doweling Machines, Woodworking, New	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465940025 ...	Edgebanding Machines, Woodworking, New	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465940035 ...	Laminating Machines, Woodworking, New	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465940045 ...	Cold Presses, Woodworking, New	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465940055 ...	Presses, (Except Cold), Woodworking, New	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465940065 ...	Bending Or Assembling Machines, Woodworking, Nesoi, New	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465940091 ...	Bending Or Assembling Machines For Cork, Bone, Hard Rubber, Hard Plastics Or Similar Hard Materials, Nesoi.	846594	Bend Assmblng Mach For Working Wood Cork Bone Etc.
8465960015 ...	Log Splitters, Woodworking Machinery	846596	Split Slice Etc Mach For Workng Wood Cork Bone Etc.
8465960025 ...	Chippers, Woodworking Machinery	846596	Split Slice Etc Mach For Workng Wood Cork Bone Etc.
8465960030 ...	Hogs, Woodworking Machinery	846596	Split Slice Etc Mach For Workng Wood Cork Bone Etc.
8465960040 ...	Splitting, Slicing Or Paring Machines, Woodworking, Nesoi	846596	Split Slice Etc Mach For Workng Wood Cork Bone Etc.
8465960051 ...	Splitting, Slicing Or Paring Machines For Cork, Bone, Hard Rubber, Hard Plastics Or Similar Hard Materials.	846596	Split Slice Etc Mach For Workng Wood Cork Bone Etc.
8466100110 ...	Tool Holders For Forming-type Or Cutting Type Dies	846610	Tool Holdrs & Self-opening Dieheads For Machines.
8466100130 ...	Holders For Replaceable Cutting Or Drill Inserts	846610	Tool Holdrs & Self-opening Dieheads For Machines.
8466100175 ...	Tool Holders And Self-opening Dieheads, Nesoi	846610	Tool Holdrs & Self-opening Dieheads For Machines.
8466201010 ...	Jigs And Fixtures For Machine Tools Used In Cutting Gears	846620	Work Holders For Machine Tools.
8466201090 ...	Work Holders For Machine Tools Used In Cutting Gears Other Than Jigs And Fixtures.	846620	Work Holders For Machine Tools.
8466208020 ...	Jigs And Fixtures For Metalworking Machine Tools	846620	Work Holders For Machine Tools.
8466208035 ...	Work Holders For Metalworking Machine Tools, Other Than Jigs And Fixtures.	846620	Work Holders For Machine Tools.
8466208040 ...	Jigs And Fixtures, Nesoi, For Machine Tools	846620	Work Holders For Machine Tools.
8466208065 ...	Work Holders For Machine Tools, Nesoi	846620	Work Holders For Machine Tools.
8466920020 ...	Parts For Woodworking Machines	846692	Parts For Machines Of Heading 8465.
8466920080 ...	Other Parts For Machine Tools For Working Wood, Cork, Bone, Hard Rubber, Hard Plastics Or Similar Hard Materials.	846692	Parts For Machines Of Heading 8465.
8468901000 ...	Parts Of Hand-directed Or Controlled Machinery And Apparatus For Soldering, Brazing, Welding Or Surface Tempering, Other Than Those Of Heading 8515.	846890	Machy & Appr Pts For Soldrng Brazng Weldng, Nesoi.
8468905000 ...	Parts Of Machinery And Apparatus, Nesoi, For Soldering, Brazing, Welding Or Surface Tempering, Other Than Those Of Heading 8515.	846890	Machy & Appr Pts For Soldrng Brazng Weldng, Nesoi.
8472100000 ...	Duplicating Machines	847210	Duplicating Machines.
8472300000 ...	Machines For Sorting Or Folding Mail, For Inserting Mail In Envelopes, Postage Affixing Or Canceling Machines, Machines For Opening Or Sealing Mail.	847230	Mail Sorting, Opening, Postage Affixing, etc, Mach.
8473210000 ...	Parts And Accessories Of Electronic Calculators And Calculating Machines.	847321	Parts Of Electronic Calculating Machines.
8474100010 ...	Sorting, Screening, Separating Or Washing Machines For Earth, Stone, Ores, Or Other Mineral Substances In Solid Form, Portable.	847410	Sorting Etc Machines For Earth Stone Mineral Subs.
8474100090 ...	Sorting, Screening, Separating Or Washing Machines For Earth, Stone, Ores, Or Other Mineral Substances In Solid Form, Stationary.	847410	Sorting Etc Machines For Earth Stone Mineral Subs.
8474390000 ...	Mixing Or Kneading Machines, Nesoi, For Earth, Stone, Ores, Or Other Mineral Substances In Solid Form.	847439	Mixing Or Kneading Mach, Nesoi, For Mineral Substn.
8474800010 ...	Machinery, Nesoi, Designed For Use With Ceramic Paste, Unhardened Cements And Plastering Materials.	847480	Mach For Agglmrtng Solid Mnrl Fuel & Form Foun Mld.
8474800020 ...	Machines For Forming Foundry Molds Of Sand	847480	Mach For Agglmrtng Solid Mnrl Fuel & Form Foun Mld.
8474800090 ...	Machines, Nesoi, For Agglomerating, Shaping, Or Molding Solid Mineral Fuels Or Other Mineral Products In Powder Or Paste Form.	847480	Mach For Agglmrtng Solid Mnrl Fuel & Form Foun Mld.
8475210000 ...	Machines For Making Optical Fibers And Preforms Thereof	847521	Mach For Making Optical Fibers & Preforms Thereof.
8475290000 ...	Machines For Manufacturing Or Hot Working Glass Or Glassware, Nesoi.	847529	Machines For Manuf Or Hot Working Glass, Nesoi.
8475901000 ...	Parts Of Machines For Assembling Electric Or Electronic Lamps, Tubes Or Flashbulbs, In Glass Envelopes.	847590	Parts Of Mach For Assmbl Elec Lamp Etc Mfg Glsswre.
8475909000 ...	Parts Of Machines For Manufacturing Or Hot Working Glass Or Glassware.	847590	Parts Of Mach For Assmbl Elec Lamp Etc Mfg Glsswre.

Schedule B	Schedule B description	HTS code	HTS description
8477400100 ...	Vacuum-molding Machines And Other Thermoforming Machines; Nesoi	847740	Vacuum-molding & Oth Therm Mach For Wk Rub Or Plas.
8477510010 ...	Machinery For Molding Or Retreading Pneumatic Tires	847751	Mach For Mold/retrd Pnmtic Tires/form Inner Tubes.
8477510090 ...	Machinery For Molding Or Otherwise Forming Inner Tubes	847751	Mach For Mold/retrd Pnmtic Tires/form Inner Tubes.
8477590100 ...	Machinery For Molding Or Otherwise Forming Rubber Or Plastics, Nesoi.	847759	Mach, Nesoi, F Moldg Or Formg Rubber Or Plastics.
8477900010 ...	Parts Of Injection-molding Machines For Rubber Or Plastics	847790	Pts Mach For Work Rubber/plast/mfg Rbbr/plstc Prod.
8477900020 ...	Parts Of Extruders For Rubber Or Plastics	847790	Pts Mach For Work Rubber/plast/mfg Rbbr/plstc Prod.
8477900030 ...	Parts Of Blow-molding Machines	847790	Pts Mach For Work Rubber/plast/mfg Rbbr/plstc Prod.
8477900040 ...	Parts Of Machines For Forming Pneumatic Tires	847790	Pts Mach For Work Rubber/plast/mfg Rbbr/plstc Prod.
8477900096 ...	Parts Of Machinery For Working Rubber Or Plastics Or For The Manufacture Of Products From These Materials, Nesoi.	847790	Pts Mach For Work Rubber/plast/mfg Rbbr/plstc Prod.
8479100040 ...	Pavers, Finishers And Spreaders For Concrete, For Public Works, Building Or Similar Use.	847910	Machinery For Public Works, Building Or The Like.
8479100060 ...	Pavers, Finishers And Spreaders For Bituminous Material, For Public Works, Building Or Similar Use.	847910	Machinery For Public Works, Building Or The Like.
8479100080 ...	Machinery For Public Works, Building Or The Like, Except Concrete And Bituminous Pavers, Finishers And Spreaders.	847910	Machinery For Public Works, Building Or The Like.
8479300000 ...	Presses For The Manufacture Of Particle Board Or Fiber Building Board Of Wood Or Other Ligneous Materials And Oth Machinery For Treating Wood Or Cork.	847930	Presses F Partcle Bd & Oth Mch F Treat Wood, Cork.
8479500000 ...	Industrial Robots, Nesoi	847950	Industrial Robots For Multiple Uses.
8479899850 ...	Oil And Gas Field Wire Line And Downhole Equipment	847989	Mach & Mechanical Appl W Individual Function Nesoi.
8479899900 ...	Machines And Mechanical Appliances Having Individual Functions, Not Specified Or Included Elsewhere In Chapter 84.	847989	Mach & Mechanical Appl W Individual Function Nesoi.
8479909640 ...	Parts Of Industrial Robots, Nesoi	847990	Pts Of Mach/mechncl Appl W Indvdul Function Nesoi.
8479909650 ...	Machinery For Public Works, Building Or The Like; Parts	847990	Pts Of Mach/mechncl Appl W Indvdul Function Nesoi.
8479909660 ...	Parts Of Presses For Manufacture Of Particle Board Or Fiber Building Board Of Wood Or Oth Ligneous Material & Oth Mach For Treating Wood.	847990	Pts Of Mach/mechncl Appl W Indvdul Function Nesoi.
8479909665 ...	Parts Of Machines Or Mechanical Appliances For Treating Metal, Nesoi	847990	Pts Of Mach/mechncl Appl W Indvdul Function Nesoi.
8479909698 ...	Parts Of Machines And Mechanical Appliances Having Individual Functions, Not Specified Or Included Elsewhere In Chapter 84, Nesoi.	847990	Pts Of Mach/mechncl Appl W Indvdul Function Nesoi.
8480200000 ...	Mold Bases	848020	Mold Bases.
8480300000 ...	Molding Patterns	848030	Molding Patterns.
8480600000 ...	Molds For Mineral Materials	848060	Molds For Mineral Materials.
8481100020 ...	Pressure-reducing Valves, Hydraulic Fluid Power Type	848110	Pressure-reducing Valves.
8481100040 ...	Pressure-reducing Valves, Pneumatic Fluid Power Type, Filter-regulators And Filter-regulator-lubricators.	848110	Pressure-reducing Valves.
8481100060 ...	Pressure-reducing Valves, Pneumatic Fluid Power Type, Nesoi	848110	Pressure-reducing Valves.
8481100090 ...	Pressure-reducing Valves, Nesoi	848110	Pressure-reducing Valves.
8481200010 ...	Hydraulic Valves, Directional Control, Manual Type	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200020 ...	Hydraulic Valves, Directional Control, Solenoid Type	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200030 ...	Hydraulic Valves, Directional Control, Nesoi	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200040 ...	Hydraulic Valves, Flow Control Type	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200050 ...	Hydraulic Valves, Nesoi	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200060 ...	Pneumatic Valves, Directional Control, Solenoid Type	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200070 ...	Pneumatic Valves, Nesoi, Directional Control	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481200080 ...	Pneumatic Valves, Nesoi	848120	Valves F Oleohydraulic Or Pneumatic Transmissions.
8481400000 ...	Safety Or Relief Valves	848140	Safety Or Relief Valves.
8482101000 ...	Ball Bearings With Integral Shafts	848210	Ball Bearings.
8482105004 ...	Unground Bearings	848210	Ball Bearings.
8482105008 ...	Thrust Ball Bearings	848210	Ball Bearings.
8482105012 ...	Linear Ball Bearings	848210	Ball Bearings.
8482105016 ...	Angular Contact Bearings, Wheel Hub Units, Flanged	848210	Ball Bearings.
8482105024 ...	Angular Contact Bearings, Wheel Hub Units, Other Than Flanged	848210	Ball Bearings.

Schedule B	Schedule B description	HTS code	HTS description
8482105028 ...	Angular Contact Ball Bearings, Nesoi	848210	Ball Bearings.
8482105032 ...	Radial Bearings, Single Row, Maximum Or Full Capacity Type	848210	Ball Bearings.
8482105036 ...	Radial Bearings, Single Row, Having An Outside Diameter Of Under 9 Mm.	848210	Ball Bearings.
8482105044 ...	Radial Bearings, Single Row, Having An Outside Diameter Of 9 Mm And Over But Not Over 30 Mm.	848210	Ball Bearings.
8482105048 ...	Radial Bearings, Single Row, Having An Outside Diameter Of Over 30 Mm But Not Over 52 Mm.	848210	Ball Bearings.
8482105052 ...	Radial Bearings, Single Row Having An Outside Diameter Of Over 52 Mm But Not Over 100 Mm.	848210	Ball Bearings.
8482105056 ...	Radial Bearings, Single Row Having An Outside Diameter Of Over 100 Mm.	848210	Ball Bearings.
8482105060 ...	Double Row Ball Bearings, Radial	848210	Ball Bearings.
8482105064 ...	Radial Ball Bearings, Nesoi	848210	Ball Bearings.
8482105068 ...	Ball Bearings, Nesoi	848210	Ball Bearings.
8482200020 ...	Tapered Roller Bearings, Cup And Cone Assemblies Entered As A Set, Wheel Hub Units, Flanged.	848220	Tapered Roll Brg, Incl Cone & Roller Assemblies.
8482200030 ...	Tapered Roller Bearings, Cup And Cone Assemblies Entered As A Set, Wheel Hub Units, Other Than Flanged.	848220	Tapered Roll Brg, Incl Cone & Roller Assemblies.
8482200040 ...	Tapered Roller Bearings, Cup And Cone Assemblies Entered As A Set, With Cup Having Outside Diameter Not Exceeding 102 Mm.	848220	Tapered Roll Brg, Incl Cone & Roller Assemblies.
8482200060 ...	Tapered Roller Bearings, Cup And Cone Assemblies Entered As A Set, With Cup Having Outside Diameter Exceeding 102mm.	848220	Tapered Roll Brg, Incl Cone & Roller Assemblies.
8482200070 ...	Tapered Roller Bearings, Cone Assemblies Entered Separately, For Cups Having Outside Diameter Not Exceeding 102 Mm.	848220	Tapered Roll Brg, Incl Cone & Roller Assemblies.
8482200080 ...	Tapered Roller Bearings, Cone Assemblies Entered Separately, For Cups Having Outside Diameter Exceeding 102 Mm.	848220	Tapered Roll Brg, Incl Cone & Roller Assemblies.
8482300040 ...	Spherical Roller Bearings, Single Row	848230	Spherical Roller Bearings.
8482300080 ...	Spherical Roller Bearings, Other Than Single Row	848230	Spherical Roller Bearings.
8482400000 ...	Needle Roller Bearings	848240	Needle Roller Bearing, incl Cage & Needle Rol Assem.
8482800020 ...	Combined Ball & Spherical Roller Bearings	848280	Oth Ball Or Roll Brg, Inc Combined Ball/roll Brgs.
8482800040 ...	Combined Ball & Needle Roller Bearings	848280	Oth Ball Or Roll Brg, Inc Combined Ball/roll Brgs.
8482800060 ...	Combined Ball & Other Cylindrical Roller Bearings	848280	Oth Ball Or Roll Brg, Inc Combined Ball/roll Brgs.
8482800080 ...	Other Ball Or Roller Bearings, Including Combined Ball/Roller Bearings, Nesoi.	848280	Oth Ball Or Roll Brg, Inc Combined Ball/roll Brgs.
8482910010 ...	Alloy Steel Balls For Ball Bearings	848291	Balls, Needles And Rollers For Bearings.
8482910020 ...	Balls For Ball Bearings, Except Alloy Steel	848291	Balls, Needles And Rollers For Bearings.
8482910040 ...	Needles For Needle Roller Bearings	848291	Balls, Needles And Rollers For Bearings.
8482910050 ...	Tapered Rollers For Roller Bearings	848291	Balls, Needles And Rollers For Bearings.
8482910070 ...	Spherical Rollers For Roller Bearings	848291	Balls, Needles And Rollers For Bearings.
8482910080 ...	Other Cylindrical Rollers For Roller Bearings	848291	Balls, Needles And Rollers For Bearings.
8482910090 ...	Rollers, Nesoi, For Roller Bearings	848291	Balls, Needles And Rollers For Bearings.
8482991010 ...	Inner And Outer Races For Ball Bearings (Including Ball Bearings With Integral Shafts).	848299	Parts Of Bearings, Nesoi.
8482991050 ...	Parts, Except Inner And Outer Races, For Ball Bearings, (Including Ball Bearings With Integral Shafts).	848299	Parts Of Bearings, Nesoi.
8482993010 ...	Cups Entered Separately For Tapered Roller Bearings	848299	Parts Of Bearings, Nesoi.
8482993050 ...	Parts, Except Cups Entered Separately, For Tapered Roller Bearings	848299	Parts Of Bearings, Nesoi.
8482995000 ...	Parts Of Spherical Roller Bearings	848299	Parts Of Bearings, Nesoi.
8482997030 ...	Parts, Nesoi, For Needle Bearings	848299	Parts Of Bearings, Nesoi.
8482997060 ...	Parts, Nesoi, For Cylindrical Roller Bearings, Nesoi	848299	Parts Of Bearings, Nesoi.
8482997090 ...	Parts, Nesoi, For Roller Bearings Or For Combined Ball/Roller Bearings, Nesoi.	848299	Parts Of Bearings, Nesoi.
8484100000 ...	Gaskets And Similar Joints Of Metal Sheeting Combined With Other Material Or Of Two Or More Layers Of Metal.	848410	Gaskets, Metal Layers, Or Other Matl, Mech Seals.
8484200000 ...	Mechanical Seals	848420	Mechanical Seals.
8484900000 ...	Sets Or Assortments Of Gaskets And Similar Joints, Dissimilar In Composition, Put Up In Pouches, Envelopes Or Similar Packings.	848490	Sets Or Assortments Of Gaskets And Similar Joints.
8486900000 ...	Machines Used For The Manufacture Of Boules Or Wafers, Semiconductors, Electronic Integrated Circuits Or Flat Panel Displays; Parts & Accessories.	848690	Parts & Accsesories For Mach To Man. Semicnt, Etc.
8487900040 ...	Oil Seals, Other Than Those Of Chapter 40, Machinery Parts Not Containing Electrical Features.	848790	Machinery Parts, Non-electric, Nesoi.

Schedule B	Schedule B description	HTS code	HTS description
8487900080 ...	Machinery Parts Not Containing Electrical Features, And Not Specified Or Included Elsewhere In Chapter 84, Except Ships' Propellers.	848790	Machinery Parts, Non-electric, Nesoi.
8501202000 ...	Universal Ac/Dc Electric Motors Of An Output Exceeding 37.5 W But Not Exceeding 74.6 W.	850120	Universal Ac/dc Motors Of An Output > 37.5 W.
8501203000 ...	Universal Ac/Dc Electric Motors, Of An Output Exceeding 74.6 W (1/10 Hp) But Not Exceeding 746 W (1 Hp).	850120	Universal Ac/dc Motors Of An Output > 37.5 W.
8501206000 ...	Universal Ac/Dc Electric Motors Of An Output Of 746 W And Over	850120	Universal Ac/dc Motors Of An Output > 37.5 W.
8501312000 ...	Dc Motors Of An Output Exceeding 37.5 W But Not Exceeding 74.6 W, Nesoi.	850131	Dc Motors & Generators W Output N Ov 750 W.
8501313000 ...	Dc Motors, Exceeding 74.6 W (1/10 Hp) But Not Exceeding 746 W (1 Hp), Nesoi.	850131	Dc Motors & Generators W Output N Ov 750 W.
8501316000 ...	Dc Motors Of An Output Exceeding 746 W But Not Exceeding 750 W, Nesoi.	850131	Dc Motors & Generators W Output N Ov 750 W.
8501318100 ...	Dc Generators, Not Exceeding 750 W, Nesoi	850131	Dc Motors & Generators W Output N Ov 750 W.
8501332000 ...	Dc Electric Motors, Exceeding 75 Kw (100 Hp) But Not Exceeding 149.2 Kw (200 Hp).	850133	Dc Motors & Generators W Output > 75kw; N Ov 375kw.
8501333000 ...	Dc Motors, 149.2kw Or More But Not Exceeding 150kw	850133	Dc Motors & Generators W Output > 75kw; N Ov 375kw.
8501334040 ...	Dc Motors Of An Output Exceeding 150 Kw But Not Exceeding 373 Kw	850133	Dc Motors & Generators W Output > 75kw; N Ov 375kw.
8501334060 ...	Dc Motors Of An Output Exceeding 373 Kw But Not Exceeding 375 Kw	850133	Dc Motors & Generators W Output > 75kw; N Ov 375kw.
8501336100 ...	Dc Generators Of An Output Exceeding 75kw But Not Exceeding 375kw.	850133	Dc Motors & Generators W Output > 75kw; N Ov 375kw.
8501610100 ...	Ac Generators (Alternators) Of An Output Not Exceeding 75 Kva, Nesoi	850161	Ac Generators (alternators) <=75 Kva Output.
8501620100 ...	Ac Generators (Alternators) Of An Output Not Exceeding 75 Kva	850162	Ac Generators (alternator) > 75 Kva But =< 375kva.
8501630100 ...	Ac Generators (Alternator) Of An Output Exceeding 75 Kva But Not Exceeding 375 Kva.	850163	Ac Generators (alternator) > 375 Kva But =< 750kva.
8501640120 ...	Ac Generators (Alternators), Output Exceeding 750 Kva But Not Exceeding 10,000 Kva.	850164	Ac Generators Of An Output Exceeding 750 Kva.
8501640130 ...	Ac Generators (Alternators), Output Exceeding 10,000 Kva But Not Exceeding 40,000 Kva.	850164	Ac Generators Of An Output Exceeding 750 Kva.
8501640150 ...	Ac Generators (Alternators), Output Exceeding 40,000 Kva	850164	Ac Generators Of An Output Exceeding 750 Kva.
8502200040 ...	Generating Sets With Spark-ignition Internal Combustion Piston Engines Of An Not Exceeding 5 Kva.	850220	Generating Set W Spark-ignition Int Combustion Eng.
8502200080 ...	Generating Sets With Spark Ignition Internal Combustion Piston Engines Of An Output Exceeding 5kw, Electric, Gasoline.	850220	Generating Set W Spark-ignition Int Combustion Eng.
8502310000 ...	Wind-powered Electric Generating Sets, Nesoi	850231	Generating Sets, Electric, Wind-powered.
8502390010 ...	Electric Generating Sets Powered By Gas Turbines, Nesoi	850239	Generating Sets, Electric, Nesoi.
8502390090 ...	Electric Generating Sets, Other Than Powered By Gas Turbines, Nesoi	850239	Generating Sets, Electric, Nesoi.
8502400000 ...	Electric Rotary Converters	850240	Electric Rotary Converters.
8504320000 ...	Transformers, Having A Power Handling Capacity Exceeding 1 Kva But Not Exceeding 16 Kva, Nesoi.	850432	Transformers, Nesoi,> 1 Kva But =< 16 Kva.
8504330020 ...	Transformers, Having A Power Handling Capacity Exceeding 16 Kva But Not Exceeding 50 Kva, Nesoi.	850433	Transf Nesoi, Power Handling Cap >16 Nov 500 Kva.
8504330040 ...	Transformers, Having A Power Handling Capacity Exceeding 50 Kva But Not Exceeding 500 Kva, Nesoi.	850433	Transf Nesoi, Power Handling Cap >16 Nov 500 Kva.
8504340000 ...	Transformers, Having A Power Handling Capacity Exceeding 500 Kva, Nesoi.	850434	Transformers, Nesoi, > 500 Kva.
8505200000 ...	Electromagnetic Couplings, Clutches And Brakes	850520	Electromagnetic Couplings, Clutches And Brakes.
8506900000 ...	Primary Battery And Cell Parts	850690	Primary Battery And Cell Parts.
8507300000 ...	Nickel-cadmium Storage Batteries	850730	Nickel-cadmium Storage Batteries.
8514310000 ...	Electron Beam Furnaces	851431	Electron Beam Furnaces.
8514320000 ...	Plasma And Vacuum Arc Furnaces	851432	Plasma And Vacuum Arc Furnaces.
8514390000 ...	Industrial Or Laboratory Electric Furnaces And Ovens, Nesoi	851439	Industrial/lab Electric Furnaces And Ovens, Nesoi.
8525502010 ...	Television Apparatus For The Reception Of Television Signals Relayed By Television Satellite.	852550	Transmission App For Radio-broadcast Or Television.
8525502050 ...	Television Transmission Apparatus, Nesoi	852550	Transmission App For Radio-broadcast Or Television.
8525506010 ...	Radio Transmitters For Civil Aircraft	852550	Transmission App For Radio-broadcast Or Television.
8525506050 ...	Radio Transmitters Capable Of Transmitting On Frequencies Not Exceeding 30 Mhz, Not For Use In Civil Aircraft.	852550	Transmission App For Radio-broadcast Or Television.
8525508020 ...	Transmission Apparatus For Civil Aircraft, Nesoi	852550	Transmission App For Radio-broadcast Or Television.

Schedule B	Schedule B description	HTS code	HTS description
8525508040 ...	Transmision Apparatus For Radiotelephony, Radiotelegraphy, Radiobroadcasting, Nesoi.	852550	Transmission App For Radio-broadcast Or Television.
8526920000 ...	Radio Remote Control Apparatus	852692	Radio Remote Control Apparatus.
8530100000 ...	Electrical Signaling, Safety Or Traffic Control Equipment For Railways, Streetcar Lines Or Subways.	853010	Electrical Signaling Or Traffic Control Eqpt Rail.
8530900000 ...	Electrical Signaling Parts For Traffic Control, Safety Equipment For Railway, Subways, Roads, Airfields, Waterways And Parking Facilities.	853090	Parts For Elc Signaling, Traffic, Safety Equipmnt.
8532100000 ...	Fixed Capacitors, Designed For Use In 50/60 Hz Circuits, With Reactive Power Capacity Not Less Than 0.5 Kvar.	853210	Fixed Capacitors, 50–60 Hz, Power, Cpcty =>.5 Kvar.
8533290000 ...	Fixed Resistors, For A Power Handling Capacity Exceeding 20 W, Nesoi.	853329	Fixed Resistors Nesoi > 20 W Power Hdlg Cpcy.
8533900000 ...	Electric Resistor Parts	853390	Parts For Resistors, Rheostats, Potetiometers.
8535290020 ...	Automatic Circuit Breakers In Circuits Of 345 Kv Or More	853529	Auto Circt Breaker Voltage 72.5 Kv Or More.
8535290040 ...	Automatic Circuit Breakers In Circuits Of 72.5 Kv But Less Than 345 Kv.	853529	Auto Circt Breaker Voltage 72.5 Kv Or More.
8535300040 ...	Isolating And Make And Break Switches, Knife Type, For A Voltage Exceeding 1,000 V.	853530	Isolating Switch & Make-&-break Swtch Volt > 1,000v.
8535300080 ...	Isolating Switches And Make-and-break Switches, For A Voltage Exceeding 1,000 V, Nesoi.	853530	Isolating Switch & Make-&-break Swtch Volt > 1,000v.
8535400000 ...	Lightning Arrestors, Voltage Limiters And Surge Suppressors, For Voltage Exceeding 1,000 V.	853540	Lightning Arresters,voltage Limiters,surge Suppres.
8535908020 ...	Terminals, Electric Splices & Electric Couplings For A Voltage Exceeding 1,000 V.	853590	Elect Appr F Prtct To Elect Circt >1,000 V Nesoi.
8535908040 ...	Electrical Connectors, For A Voltage Exceeding 1,000 V, Nesoi	853590	Elect Appr F Prtct To Elect Circt >1,000 V Nesoi.
8535908090 ...	Electrical Apparatus For Switching Or Protecting Electrical Circuits, For A Voltage Exceeding 1,000 V, Nesoi.	853590	Elect Appr F Prtct To Elect Circt >1,000 V Nesoi.
8537106000 ...	Motor Control Centers, For A Voltage Not Exceeding 1,000 V	853710	Controls Etc W Elect Appr F Elect Cont Nov 1,000 V.
8537109020 ...	Switchgear Assemblies And Switchboards For A Voltage Not Exceeding 1,000 V.	853710	Controls Etc W Elect Appr F Elect Cont Nov 1,000 V.
8537109030 ...	Numerical Controls For Controlling Machine Tools, For Voltage Not Exceeding 1,000 V.	853710	Controls Etc W Elect Appr F Elect Cont Nov 1,000 V.
8537109050 ...	Panel Boards And Distribution Boards, For Voltages Lt= 1,000 Volts	853710	Controls Etc W Elect Appr F Elect Cont Nov 1,000 V.
8537109060 ...	Programable Controllers For A Voltage Not Exceeding 1,000 Volts	853710	Controls Etc W Elect Appr F Elect Cont Nov 1,000 V.
8537109090 ...	Boards, Panels, Consoles, Desks, Cabinets Etc, Equip W/Two Or More App Of Head 8535/8536, For Elec Ctrl/Distrib Of Electricity, For Lt 1,000 V, Nesoi.	853710	Controls Etc W Elect Appr F Elect Cont Nov 1,000 V.
8538907020 ...	Automatic Circuit Breaker Parts For Headings 8535, 8536 Or 8537	853890	Pt F Elect Appr F Elect Circt; F Elct Contrl Nesoi.
8538907040 ...	Electrical Metal Contacts For Heading 8535, 8536 & 8537	853890	Pt F Elect Appr F Elect Circt; F Elct Contrl Nesoi.
8538907060 ...	Switchgear, Switchboad, Panel Board And Distribution Board Parts For Headings 8535, 8536, & 8537, Nesoi.	853890	Pt F Elect Appr F Elect Circt; F Elct Contrl Nesoi.
8538907080 ...	Parts Suitable For Use Solely Or Principally With The Apparatus For Heading 8535, 8536, 8537, Nesoi.	853890	Pt F Elect Appr F Elect Circt; F Elct Contrl Nesoi.
8539390000 ...	Discharge Lamps, Except For Ultraviolet, Nesoi	853939	Discharge Lamps Ex Ultrvilt Flurscnt Ht Cthde Lamp.
8539410000 ...	Arc Lamps	853941	Arc Lamps.
8540202000 ...	Cathode Ray Television Camera Tubes And Other Photocathode Tubes	854020	Tv Camera Tbs; Image Cnvrtr & Intnsfr; Phtocthd Tb.
8540204000 ...	Tv Camera, Image Intensifier & Converter Tubes, Nesoi	854020	Tv Camera Tbs; Image Cnvrtr & Intnsfr; Phtocthd Tb.
8540600055 ...	Cathode-ray Tubes, Having A Video Display Diagonal Not Exceeding 36 Cm (14 Inches), Nesoi.	854060	Cathode-ray Tubes, N.E.S.O.I.
8540600080 ...	Cathode-ray Tubes, Having A Video Display Diagonal Exceeding 36 Cm, Nesoi.	854060	Cathode-ray Tubes, N.E.S.O.I.
8540791000 ...	Klystron Microwave Tubes	854079	Microwave Tubes, Nesoi.
8540792000 ...	Microwave Tubes, Nesoi	854079	Microwave Tubes, Nesoi.
8540810000 ...	Reciever Or Amplifier Tubes	854081	Receiver Or Amplifier Tubes.
8540890020 ...	Gas And Vapor Electron Tubes, Nesoi	854089	Thermionic And Other Cathode Tubes Nesoi.
8540890040 ...	Diode, Triode, And Tetrode Type Tubes	854089	Thermionic And Other Cathode Tubes Nesoi.
8540890060 ...	Light-sensing Tubes	854089	Thermionic And Other Cathode Tubes Nesoi.
8540890080 ...	Thermionic, Cold Cathode Or Photocathode Tubes, Nesoi	854089	Thermionic And Other Cathode Tubes Nesoi.
8540912000 ...	Deflection Coils For Cathode Ray Tubes	854091	Parts Of Cathode-bay Tubes.

Schedule B	Schedule B description	HTS code	HTS description
8540914000 ...	Cathode Ray Tube Parts, Nesoi	854091	Parts Of Cathode-bay Tubes.
8540990000 ...	Thermionic, Cold Cathode Or Photocathode Tube Parts, Nesoi	854099	Parts Of Cathode Tubes, Nesoi.
8543100000 ...	Particle Accelerators, Nesoi	854310	Particle Accelerators.
8543709665 ...	Electrical Machines And Apparatus, Nesoi	854370	Elec Mach And App, Having Indiv Functions, Nesoi.
8544602000 ...	Insulated Electric Conductors With Connectors, For A Voltage Exceeding 1,000 V.	854460	Electric Conductors For Voltage Exceeding 1,000 V.
8544604000 ...	Insulated Electric Conductors Of Copper For A Voltage Exceeding 1,000 V, Nesoi.	854460	Electric Conductors For Voltage Exceeding 1,000 V.
8544606000 ...	Insulated Electric Conductors For A Voltage Exceeding 1,000 V, Nesoi	854460	Electric Conductors For Voltage Exceeding 1,000 V.
8547200000 ...	Insulating Fittings Of Plastic For Machines	854720	Insulating Fittings For Machines Made Of Plastic.
8547900010 ...	Insulating Fittings For Machines Nesoi	854790	Inslt Fit Ex Ceram/plas;elec Cond Tb/jnt,bmtl Etc.
8547900020 ...	Electrical Conduit Tubing Lined With Insulation	854790	Inslt Fit Ex Ceram/plas;elec Cond Tb/jnt,bmtl Etc.
8547900030 ...	Electrical Conduit Lined With Insulation, Joints, Threaded	854790	Inslt Fit Ex Ceram/plas;elec Cond Tb/jnt,bmtl Etc.
8547900040 ...	Electrical Conduit Lined With Insulation, Joints, Nesoi	854790	Inslt Fit Ex Ceram/plas;elec Cond Tb/jnt,bmtl Etc.
8601100000 ...	Rail Locomotives Powered From An External Source Of Electricity	860110	Rail Locomotives Powered From External Source Elec.
8602900000 ...	Rail Locomotives; Locomotive Tenders, Nesoi	860290	Rail Locomotives And Tenders Nesoi.
8604000000 ...	Railway Or Tramway Maintenance Or Service Vehicles, Whether Or Not Self-propelled (For Example, Workshops, Cranes, Ballast Tampers, Trackliners, Etc).	860400	Railway Or Tramway Maintenance Or Service Vehicles.
8606920000 ...	Railway Or Tramway Freight Cars, Open, With Non-removable Sides Of A Height Exceeding 60 Cm, Not Self-propelled, Nesoi.	860692	Railway Or Trmwy Cars, Open, Non-removbl Sides Ne.
8704101000 ...	Cab Chassis, Dumpers Designed For Off-highway Use	870410	Dumpers Designed For Off-highway Use.
8704105020 ...	Motr Vehicles For The Transport Of Goods, Rear Dump, Designed For Off-highway Use, With Capacty Of 40.8 Metric Tons Or Less.	870410	Dumpers Designed For Off-highway Use.
8704105030 ...	Motor Veh For The Transport Of Goods, Rear Dump, Designed For Off-highway Use, With A Capacity Exceeding 40.8 Metric Tons But Not Exced 63.5 Metric T.	870410	Dumpers Designed For Off-highway Use.
8704105040 ...	Motor Veh For Transport Of Goods, Rear Dump, Designed For Off-highway Use, With A Capacity Exceeding 63.5 Metric Tons But Not Exced 90.7 Metric Tons.	870410	Dumpers Designed For Off-highway Use.
8704105050 ...	Motr Veh For Tranport Of Goods, Rear Dump, Off-highway Use, Capacity Exceding 90.7 Metric Tons.	870410	Dumpers Designed For Off-highway Use.
8704105060 ...	Motor Vehicles For Transport Of Goods, Dumpers Designed For Off-highway Use, Except Rear Dump.	870410	Dumpers Designed For Off-highway Use.
8704210100 ...	Motor Vehicles For Transport Of Goods, Nesoi, Diesel Engine, Gvw Not Exceeding 5 Metric Tons.	870421	Trucks, Nesoi, Diesel Eng, Gvw 5 Metric Tons & Und.
8704224120 ...	Motor Vehicles For The Transport Of Goods, Nesoi, Diesel Engine, Gvw Exceeding 5 Metric Tons But Not Exceeding 9 Metric Tons.	870422	Mtr Veh Trans Gds Com-ig Int C P E Gvw > 5 nov 20 Mtn.
8704224140 ...	Motor Vehicles For The Transport Of Goods, Nesoi, Diesel Engine, Gvw Exceeding 9 Metric Tons But Not Exceeding 12 Metric Tons.	870422	Mtr Veh Trans Gds Com-ig Int C P E Gvw & gt; 5 nov 20 Mtn.
8704224160 ...	Motor Vehicles For The Transport Of Goods, Nesoi, Diesel Engine, Gvw Exceeding 12 Metric Tons But Not Exceeding 15 Metric Tons.	870422	Mtr Veh Trans Gds Com-ig Int C P E Gvw & gt; 5 nov 20 Mtn.
8704224180 ...	Motor Vehicles For The Transport Of Goods, Nesoi, Diesel Engine, Gvw Exceeding 15 Metric Tons But Not Exceeding 20 Metric Tons.	870422	Mtr Veh Trans Gds Com-ig Int C P E Gvw & gt; 5 nov 20 Mtn.
8704320110 ...	Motor Vehicles For The Transport Of Goods, Spark-ignition Internal Combustion Piston Engine, Gvw Exceeding 5 M Tons But Not Exceeding 9 M Tons.	870432	Mtr Veh Trans Gds Spk-ig In C P Eng, Gvw > 5 M Tn.
8704320120 ...	Motor Vehicles For The Transport Of Goods, Spark-ignition Internal Combustion Piston Engine, Gvw Exceeding 9 M Tons But Not Exceeding 12 M Tons.	870432	Mtr Veh Trans Gds Spk-ig In C P Eng, Gvw > 5 M Tn.
8704320130 ...	Motor Vehicles For The Transport Of Goods, Spark-ignition Internal Combustion Piston Engine, Gvw Exceeding 12 But Not Exceeding 15 Metric Tons.	870432	Mtr Veh Trans Gds Spk-ig In C P Eng, Gvw > 5 M Tn.
8704320140 ...	Motor Vehicles For The Transport Of Goods, Spark-ignition Internal Combustion Piston Engine, Gvw Exceeding 15 But Not Exceeding 20 Metric Tons.	870432	Mtr Veh Trans Gds Spk-ig In C P Eng, Gvw > 5 M Tn.
8704320150 ...	Motor Vehicles For The Transport Of Goods, Spark-ignition Internal Combustion Piston Engine, Gvw Exceeding 20 Metric Tons.	870432	Mtr Veh Trans Gds Spk-ig In C P Eng, Gvw > 5 M Tn.
8705900000 ...	Special Purpose Vehicles, Nesoi	870590	Special Purpose Vehicles, Nesoi.
8709110030 ...	Works Trucks For Use In Warehouses, Factories, Etc, Electrical, Operator Riding, Not Fitted With Lifting Or Handling Equipment.	870911	Elec Vehicles (fact Etc Works Trucks & Tractors).
8709110060 ...	Self-propelled Works Trucks Without Lifting Or Handling Equipment For Short Distance Transport Of Goods, Electrical, Except Operator Riding.	870911	Elec Vehicles (fact Etc Works Trucks & Tractors).

Schedule B	Schedule B description	HTS code	HTS description
8709900000 ...	Parts For Works Trucks For Use In Warehouses, Factories, Etc, Not Fitted With Lifting Or Handling Equipment.	870990	Parts For Works Trucks W/o Lift Equip.
8716200000 ...	Self-loading Or Self-unloading Trailers And Semi-trailers For Agricultural Purposes.	871620	Self-loading Or Self-unloading Trailers, semi-trail.
8716390010 ...	Trailers And Semi-trailers, Nesoi, For Agricultural Use, Nesoi	871639	Trailers & Semi-trailer F Trans Cds Nesoi.
8716390020 ...	Trailers And Semi-trailers, Nesoi, For Use With Vehicles, Nesoi, Of Heading 8709.	871639	Trailers & Semi-trailer F Trans Cds Nesoi.
8716390030 ...	Trailers And Semi-trailers, Nesoi, For Use With Vehicles, Nesoi, Of Heading 8703.	871639	Trailers & Semi-trailer F Trans Cds Nesoi.
8716390040 ...	Trailers And Semi-trailers, Nesoi, Van Type, Nesoi	871639	Trailers & Semi-trailer F Trans Cds Nesoi.
8716390050 ...	Trailers And Semi-trailers, Nesoi, Platform Type	871639	Trailers & Semi-trailer F Trans Cds Nesoi.
8716390090 ...	Trailers And Semi-trailers, Nesoi, For Transport Of Goods	871639	Trailers & Semi-trailer F Trans Cds Nesoi.
9010100000 ...	Apparatus & Equipment, Automatically Developing Photographic Film/Paper In Rolls, Automatically Exposing Developing Film To Roll Of Photographic Paper.	901010	Apparatus & Equip, Automatic Developing Photo Film.
9015400000 ...	Photogrammetrical Surveying Instruments And Appliances	901540	Photogrammetrical Surveying Instruments & Applnces.
9015802000 ...	Optical Surveying, Hydrographic, Oceanographic, Hydrological, Meteorological Or Geophysical Instruments And Appliances, Exc Rangefinder & Compasses, Nes.	901580	Surveying Instruments And Appliances, Nesoi Etc.
9015806000 ...	Seismographs	901580	Surveying Instruments And Appliances, Nesoi Etc.
9015808040 ...	Geophysical Instruments And Appliances, Nesoi	901580	Surveying Instruments And Appliances, Nesoi Etc.
9015808080 ...	Surveying, Hydrographic, Oceanographic, Hydrological Or Meteorological Instruments And Appliances, Excluding Compasses And Rangefinders, Nesoi.	901580	Surveying Instruments And Appliances, Nesoi Etc.
9015900100 ...	Parts And Accessories For Surveying	901590	Parts And Accessories For Surveying Etc Nesoi.
9029100000 ...	Revolution Counters, Production Counters, Taximeters, Odometers, Pedometers And The Like.	902910	Revolution Counters, Production Counters, Etc.
9031200000 ...	Test Benches	903120	Test Benches.
9031491000 ...	Profile Projectors	903149	Measuring Or Checking Instruments & Machines, Nesoi.
9031494000 ...	Coordinate-measuring Machines For Optical Instruments And Appliances.	903149	Measuring Or Checking Instruments & Machines, Nesoi.
9031498000 ...	Optical Instruments And Appliances Nesoi	903149	Measuring Or Checking Instruments & Machines, Nesoi.
9031808060 ...	Equipment For Testing Electrical Characteristics Of Internal Combustion Engines.	903180	Meas & Checkng Instrument, Appliances & Mach Nesoi.
9031808070 ...	Equipment For Testing The Characteristics Of Internal Combustion Engines, Nesoi.	903180	Meas & Checkng Instrument, Appliances & Mach Nesoi.
9031808080 ...	Measuring Or Checking Instruments, Appliances And Machines, Nesoi	903180	Meas & Checkng Instrument, Appliances & Mach Nesoi.
9032810040 ...	Hydraulic Or Pneumatic Industrial Process Control Instruments And Apparatus.	903281	Hydraulic/pneumatic Auto Regulating/contr Ins/appr.
9032810080 ...	Hydraulic And Pneumatic Instruments And Apparatus Except Industrial Process Control.	903281	Hydraulic/pneumatic Auto Regulating/contr Ins/appr.
9032893000 ...	Automatic Voltage And Voltage-current Regulators	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896020 ...	Control Instruments For Air Conditioning, Refrigeration Or Heating Systems.	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896030 ...	Process Control Instruments And Apparatus For Complete Systems	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896040 ...	Process Control Instruments And Apparatus For Temperature Control ..	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896050 ...	Process Control Instruments And Apparatus For Pressure Draft Control	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896060 ...	Process Control Instruments And Apparatus For Flow And Liquid Level Control.	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896070 ...	Process Control Instruments And Apparatus For Humidity Control	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896075 ...	Process Control Instruments And Apparatus, Nesoi	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.
9032896085 ...	Automatic Regulating Or Controlling Instruments, Nesoi	903289	Auto Regulating Ins & Appr Ex Throstat, mnstat, Etc.

■ 5. Supplement no. 5 to part 746 is amended by adding a sentence to the end of the introductory text to read as follows:

Supplement No. 5 to Part 746—'Luxury Goods' That Require a License For Export, Reexport, and Transfer (In-Country) to or Within Russia or Belarus Pursuant to § 746.10(a)(1) and (2)

* * * Schedule B number 8412294000 is listed in both this supplement and supplement no. 4 to this part, so exporters, reexporters, and transferors must comply with the license requirements under both §§ 746.5(a)(ii) and 746.10 as applicable.

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Thea D. Rozman Kendler,

Assistant Secretary for Export Administration.

[FR Doc. 2022–10099 Filed 5–9–22; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 310

[Docket ID: DoD–2021–OS–0004]

RIN 0790–AL20

Privacy Act of 1974; Implementation

AGENCY: Office of the Secretary of Defense (OSD), Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Department of Defense (Department or DoD) is issuing a final rule to amend its regulations to exempt portions of the system of records titled DoD–0006, ''Military Justice and Civilian Criminal Case Records,'' from certain provisions of the Privacy Act of 1974.

DATES: This rule is effective on June 10, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Rahwa Keleta, Privacy and Civil Liberties Division, Directorate for Privacy, Civil Liberties and Freedom of Information, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Department of Defense, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700; *OSD.DPCLTD@mail.mil;* (703) 571–0070.

SUPPLEMENTARY INFORMATION:

Discussion of Comments and Changes

The proposed rule published in the **Federal Register** on May 25, 2021 (86 FR 28047–28049). Comments were accepted for 60 days until July 26, 2021. A total of one comment regarding the proposed rule was received. Please see a summary of the comment and the Department's response as follows:

DoD received one substantive comment on the notice of proposed rulemaking (NPRM). The substantive comment on the NPRM objected to the exemptions as undermining the goal of ensuring records are kept and preserved for access at any time. The Privacy Act (5 U.S.C. 552a) generally provides that any person has a right (enforceable in court) of access to federal agency records about themselves that are maintained in a system of records, except to the extent that the information is *protected from disclosure* by one of ten exemptions. Exempting a system of records does not cause information to be destroyed or deleted but allows the agency to withhold records from first-party access for particular reasons as articulated by the exemption rule. Records, even those with applicable exemption rules, are retained in accordance with the requirements of the Federal Records Act and records schedules approved by the National Archives and Records Administration. Having considered the public comment, the Department will implement the rulemaking as proposed.

Background

In finalizing this rule, DoD will exempt portions of the system of records titled, DoD–0006, ''Military Justice and Civilian Criminal Case Records,'' from certain provisions of the Privacy Act. This system of records describes DoD's collection, use, and maintenance of records for the handling of Uniform Code of Military Justice (UCMJ) and disciplinary cases within the authority of the DoD. This system of records also includes records created when DoD legal practitioners, in support of the U.S. Department of Justice, prosecute in U.S. District Courts crimes that occurred on military installations or property. Individuals covered by this system of records include armed forces members and others identified in Article 2 of the UCMJ, as well as civilians who are alleged to have engaged in criminal acts on DoD installations and properties.

The purpose of this system of records is to support the collection, maintenance, use, and sharing of records compiled by the DoD for the adjudication and litigation of cases conducted under the UCMJ, as well as criminal proceedings brought in U.S. District Courts for offenses occurring on DoD installations or property. This system contains information, records, and filings publicly accessible on the Department's court docket. It also supports the compilation of internal statistics and reports related to these activities. The collection and maintenance of this information by the DoD is necessary to meet its statutory obligations and ensure good order and discipline.

The DoD is amending 32 CFR part 310 to add a new Privacy Act exemption rule for DoD–0006, ''Military Justice and Civilian Criminal Case Records.'' Some of the records that are part of this system of records may contain classified national security information, and the disclosure of those records to an individual may cause damage to national security. The Privacy Act, pursuant to 5 U.S.C. 552a(k)(1), authorizes agencies to claim an exemption for systems of records that contain information properly classified pursuant to executive order. The DoD is claiming an exemption from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements pursuant to 5 U.S.C. 552a(k)(1), to prevent disclosure of any information properly classified pursuant to executive order, as implemented by DoD Instruction 5200.01 and DoD Manual 5200.01, Volumes 1 and 3.

The DoD also is exempting this system of records because these records support the conduct of criminal law enforcement activities, and certain requirements of the Privacy Act may interfere with the effective execution of these activities, and undermine good order and discipline. The Privacy Act, pursuant to 5 U.S.C. 552a(j)(2), authorizes agencies with a principal law enforcement function pertaining to the enforcement of criminal laws (including activities of prosecutors, courts, etc.) to claim an exemption for systems of records that contain information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Additionally, the Privacy Act, pursuant to 5 U.S.C. 552a(k)(2), authorizes agencies to compile investigatory material for law enforcement purposes, other than materials within the scope of 5 U.S.C. 552a(j)(2). The DoD is claiming exemptions from several provisions of the Privacy Act, including various access, amendment, disclosure of accounting, and certain record-keeping and notice requirements, pursuant to 5 U.S.C. 552a(j)(2) and 552a(k)(2), to prevent the harms articulated in this

rule from occurring. In addition, records in this system of records are only exempt from the Privacy Act to the extent the purposes underlying the exemption pertain to the record.

A notice establishing this system of records was published in the **Federal Register** on May 25, 2021 (86 FR 28086–28090). This system of records went into effect on May 25, 2021; however, comments on the Routine Uses were accepted through June 24, 2021. At the end of the comment period, one non-substantive comment was received. The Routine Uses went into effect at the close of the comment period.

Regulatory Analysis

Executive Order 12866, ''Regulatory Planning and Review'' and Executive Order 13563, ''Improving Regulation and Regulatory Review''

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distribute impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. It has been determined that this rule is not a significant regulatory action.

Congressional Review Act

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

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. Chapter 6)

The Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency certified that this rule does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of a Privacy Act system of records within the DoD.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

It has been determined that this rule does not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Section 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been determined that this rule does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that it will not significantly or uniquely affect small governments.

Executive Order 13132, ''Federalism''

It has been determined that this rule does not have federalism implications. This rule does 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.

Executive Order 13175, ''Consultation and Coordination With Indian Tribal Governments''

Executive Order 13175 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on one or more Indian tribes, preempts tribal law, or effects the distribution of power and responsibilities between the Federal Government and Indian tribes. This rule will not have a substantial effect on Indian tribal governments.

List of Subjects in 32 CFR Part 310

Privacy.

Accordingly, 32 CFR part 310 is amended as follows:

PART 310—[AMENDED]

■ 1. The authority citation for 32 CFR part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

■ 2. Section 310.13 is amended by adding paragraph (e)(5) to read as follows:

§ 310.13 Exemptions for DoD-wide systems.

* * * * *

(e) * * *

(5) *System identifier and name.* DoD–0006, ''Military Justice and Civilian Criminal Case Records.''

(i) *Exemptions.* This system of records is exempt from 5 U.S.C. 552a(c)(3) and (4); (d)(1), (2), (3), and (4); (e)(1); (e)(2); (e)(3); (e)(4)(G), (H), and (I); (e)(5); (e)(8); (f); and (g) of the Privacy Act to the extent the records are subject to exemption pursuant to 5 U.S.C. 552a(j)(2). This system of records is exempt from 5 U.S.C. 552a(c)(3); (d)(1), (2), (3), and (4); (e)(1); (e)(4)(G), (H), and (I); and (f) of the Privacy Act to the extent the records are subject to exemption pursuant to 5 U.S.C. 552a(k)(1) and (k)(2).

(ii) *Authority.* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(iii) *Exemption from the particular subsections.* Exemption from the particular subsections is justified for the following reasons:

(A) *Subsection (c)(3), (d)(1), and (d)(2)*—(*1*) *Exemption (j)(2).* Records in this system of records may contain investigatory material compiled for criminal law enforcement purposes to include information identifying criminal offenders and alleged offenders, information compiled for the purpose of criminal investigation, or reports compiled during criminal law enforcement proceedings. Application of exemption (j)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records to avoid criminal penalties or disciplinary measures; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources and result in an unwarranted invasion of the privacy of others.

(*2*) *Exemption (k)(1).* Records in this system of records may contain information that is properly classified pursuant to executive order. Application of exemption (k)(1) may be necessary because access to and amendment of the records, or release of the accounting of disclosures for such records, could reveal classified information. Disclosure of classified records to an individual may cause damage to national security.

(*3*) *Exemption (k)(2).* Records in this system of records may contain investigatory material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2). Application of exemption (k)(2) may be necessary because access to, amendment of, or release of the accounting of disclosures of such records could inform the record subject of an investigation of the existence, nature, or scope of an actual or potential law enforcement or disciplinary investigation, and thereby seriously impede law enforcement or prosecutorial efforts by permitting the record subject and other persons to whom he might disclose the records or the accounting of records to avoid criminal penalties, civil remedies, or disciplinary measures; interfere with a civil or administrative action or

investigation which may impede those actions or investigations; reveal confidential sources who might not have otherwise come forward to assist in an investigation and thereby hinder DoD's ability to obtain information from future confidential sources; and result in an unwarranted invasion of the privacy of others.

(B) *Subsection (c)(4), (d)(3) and (4).* These subsections are inapplicable to the extent that an exemption is being claimed from subsections (d)(1) and (2).

(C) *Subsection (e)(1).* In the collection of information for investigatory or law enforcement purposes, it is not always possible to conclusively determine the relevance and necessity of particular information in the early stages of the investigation or adjudication. In some instances, it will be only after the collected information is evaluated in light of other information that its relevance and necessity for effective investigation and adjudication can be assessed. Collection of such information permits more informed decision-making by the Department when making required disciplinary and prosecutorial determinations. Additionally, records within this system may be properly classified pursuant to executive order. Accordingly, application of exemptions (j)(2), (k)(1) and (k)(2) may be necessary.

(D) *Subsection (e)(2).* To collect information from the subject individual could serve notice that he or she is the subject of a criminal investigation and thereby present a serious impediment to such investigations. Collection of information only from the individual accused of criminal activity or misconduct could also subvert discovery of relevant evidence and subvert the course of justice. Accordingly, application of exemption (j)(2) may be necessary.

(E) *Subsection (e)(3).* To inform individuals as required by this subsection could reveal the existence of a criminal investigation and compromise investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(F) *Subsections (e)(4)(G) and (H).* These subsections are inapplicable to the extent an exemption is claimed from subsections (d)(1) and (2).

(G) *Subsection (e)(4)(I).* To the extent that this provision is construed to require more detailed disclosure than the broad, generic information currently published in the system notice, an exemption from this provision is necessary to protect the confidentiality of sources of information and to protect the privacy and physical safety of witnesses and informants. Accordingly, application of exemptions (j)(2), (k)(1), and (k)(2) may be necessary.

(H) *Subsection (e)(5).* It is often impossible to determine in advance if investigatory records contained in this system are accurate, relevant, timely and complete, but, in the interests of effective law enforcement, it is necessary to retain this information to maintain an accurate record of the investigatory activity to preserve the integrity of the investigation and satisfy various Constitutional and evidentiary requirements, such as mandatory disclosure of potentially exculpatory information in the investigative file to a defendant. It is also necessary to retain this information to aid in establishing patterns of activity and provide investigative leads. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined through judicial processes. Accordingly, application of exemption (j)(2) may be necessary.

(I) *Subsection (e)(8).* To serve notice could give persons sufficient warning to evade investigative efforts. Accordingly, application of exemption (j)(2) may be necessary.

(J) *Subsection (f).* The agency's rules are inapplicable to those portions of the system that are exempt. Accordingly, application of exemptions (j)(2), (k)(1), and (k)(2) may be necessary.

(K) *Subsection (g).* This subsection is inapplicable to the extent that the system is exempt from other specific subsections of the Privacy Act.

(iv) *Exempt records from other systems.* In the course of carrying out the overall purpose for this system, exempt records from other systems of records may in turn become part of the records maintained in this system. To the extent that copies of exempt records from those other systems of records are maintained in this system, the DoD claims the same exemptions for the records from those other systems that are entered into this system, as claimed for the prior system(s) of which they are a part, provided the reason for the exemption remains valid and necessary.

* * * * *

Dated: May 6, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10127 Filed 5–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0330]

RIN 1625–AA00

Safety Zone; Potomac River, Between Charles County, MD, and King George County, VA

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of persons, and the marine environment from the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge, which will occur from May 16, 2022, through June 18, 2022. This rule will prohibit 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 from 7 a.m. on May 16, 2022, through 8 p.m. on June 18, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0330 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
§ Section
TFR Temporary final rule
U.S.C. United States Code

II. Background Information and Regulatory History

On April 21, 2022, Skanska-Corman-McLean, Joint Venture notified the Coast Guard that the company will be setting pier protection fender ring

precast segments adjacent to the Federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge. Details of the operation were provided to the Coast Guard on April 27, 2022. A total of ten pier protection fender ring precast segments are to be set at two pier protection fender rings, which are located on each side of the Federal navigation channel. The setting of these segments is required to complete the construction of the bridge pier protection. The setting of each precast segment will require a minimum of two days and will be conducted between 7 a.m. and 8 p.m. from May 16, 2022, to June 18, 2022. The setting of four of the ten precast segments, two segments at each pier protection fender ring, described by the contractor does not require placing equipment within the Federal navigation channel.

The setting of six of the ten precast segments, three segments at each pier protection fender ring, described by the contractor requires the movement in and anchoring at multiple points of a large crane barge within the Federal navigation channel. This crane can accommodate all of the 250-ton fender ring precast segments to be hoisted and placed precisely. The required sequence of the work involved means that heavy lift operations conducted from within the Federal navigation channel will not be completed continuously. On days when this work will be conducted, the large crane barge will be required to remain within the Federal navigation channel between 8 p.m. and 7 a.m., which will streamline the operation by avoiding the more than four hours it takes to demobilize and transport the large crane barge and its associated anchoring equipment, thereby reducing the time in the channel by several days. This operation will impede vessels requiring the use of the channel.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Construction operations involving large crane heavy lifts at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge must occur within the Federal navigation channel. Immediate action is needed to respond to the potential safety hazards associated with bridge construction. Hazards from the construction operations include low-hanging or falling ropes, cables, large cement cast portions, dangerous projectiles, and or other debris. We must establish this safety zone by May 16, 2022, to guard against these hazards.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable and contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with construction operations at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge to be 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 that potential hazards associated with bridge construction starting May 16, 2022 will be a safety concern for anyone within the Federal navigation channel at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge construction site. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while the bridge is being constructed.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 7 a.m. on May 16, 2022, through 8 p.m. on June 16, 2022. The safety zone will cover all navigable waters of the Potomac River encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point located between Charles County, MD, and King George County, VA.

The duration of the zone is intended to protect personnel and the marine environment in these navigable waters while pier protection fender ring precast segments are being set at the new Governor Harry W. Nice/Senator Thomas ''Mac'' Middleton Memorial (US–301) Bridge. Except for marine equipment and vessels operated by Skanska-Corman-McLean, Joint Venture, or its subcontractors, no vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP Maryland-National Capital Region or a designated representative.

The COTP will notify the public that the safety zone will be enforced by all appropriate means to the affected segments of the public, as practicable, in accordance with 33 CFR 165.7(a). Such means of notification will also include, but are not limited to, Broadcast Notice to Mariners. Vessels or persons violating this rule are subject to the penalties set forth in 46 U.S.C. 70036 (previously codified in 33 U.S.C. 1232) and 46 U.S.C. 70052 (previously codified in 50 U.S.C. 192).

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 size of the safety zone. The temporary safety zone is approximately 450 yards in width and 270 yards in length. This safety zone will impact a small designated area of the Potomac River for 34 days, but we anticipate that there will be no vessels that are unable to conduct business. Excursion vessels and commercial fishing vessels are not impacted by this rulemaking. Excursion vessels do not operate in this area, and commercial fishing vessels are not impacted because of their draft. Some towing vessels may be impacted, but bridge project personnel have been conducting outreach throughout the project in order to coordinate with those vessels. Vessel traffic, including recreational vessels, not required to use the navigation channel will be able to safely transit around the safety zone. Such vessels may be able to transit to the east or the west of the Federal

navigation channel, as similar vertical clearance and water depth exist under the next bridge span to the east and west. Moreover, the Coast Guard will issue Local Notices to Mariners and 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 received no comments from the Small Business Administration on this rulemaking. 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 temporary 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 lasting 34 total days that will prohibit entry within a portion of the Potomac River. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, 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.T05–0330 to read as follows:

§ 165.T05–0330 Safety Zone; Potomac River, Between Charles County, MD and King George County, VA.

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, encompassed by a line connecting the following points beginning at 38°21′50.96″ N, 076°59′22.04″ W, thence south to 38°21′43.08″ N, 076°59′20.55″ W, thence west to 38°21′41.00″ N, 076°59′34.90″ W, thence north to 38°21′48.90″ N, 076°59′36.80″ W, and east back to the beginning point, located between Charles County, MD, and King George County, VA. These coordinates are based on datum NAD 83.

(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.

Marine equipment means any vessel, barge or other equipment operated by

Skanska-Corman-McLean, Joint Venture, or its subcontractors.

(c) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, except for marine equipment, 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.* The section will be enforced from 7 a.m. on May 16, 2022, through 8 p.m. on June 18, 2022.

Dated: May 5, 2022.

David E. O'Connell,

Captain, U.S. Coast Guard, Captain of the Port Sector Maryland-National Capital Region.

[FR Doc. 2022–10093 Filed 5–10–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107 and 190

[Docket No. PHMSA–2021–0119]

RIN 2137–AF58

Administrative Rulemaking—Criminal Referrals

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: PHMSA is incorporating within its regulations language noting its employees' ability to refer actual or possible criminal activity in connection with PHMSA's jurisdictional statutes directly to the DOT Office of Inspector General (OIG).

DATES: Effective May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Jeremy Henowitz, Attorney-Advisor, Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, *Jeremy.Henowitz@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

PHMSA regulations governing its hazardous materials safety and pipeline safety programs provide for referral of actual or possible criminal violations of the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*), Pipeline Safety Act (49 U.S.C. 60101 *et seq.*), and orders or regulations issued thereunder, to law enforcement personnel. Specifically, 49 CFR 107.335 and 190.293 contemplate that employees will report such activity through internal channels, with the PHMSA Office of Chief Counsel thereafter directing allegations to the Department of Justice (DOJ). PHMSA regulations are silent regarding whether employees may bring criminal referrals directly to OIG.

OIG concluded in an August 22, 2018, audit report [1] that DOT and its Operating Administrations' policies governing employee referrals of actual or possible criminal activity to OIG were dated, and that some Operating Administration policies may in fact hinder such referrals to OIG. OIG recommended updating pertinent DOT Orders regarding an employee's ability to refer criminal activity to OIG, followed by each Operating Administration aligning their procedures with those updated DOT Orders.

DOT issued Order 8000.8A [2] to implement OIG's recommendation. DOT Order 8000.8A built on language within predecessor DOT Order 8000.8 and DOT Order 8000.5A regarding employees reporting criminal activity through internal channels, by stating explicitly that DOT ''[e]mployees also have the option of making a direct referral to the Inspector General.'' PHMSA has also updated pertinent agency procedures [3] to align with those revisions introduced in DOT Order 8000.8A.

In parallel with updating pertinent procedures, PHMSA is updating provisions in its regulations governing criminal referrals through this rulemaking. The revised language in §§ 107.335 and 190.293 clarifies that PHMSA employees may directly refer actual or possible criminal activity to OIG through its hotline accessible by telephone, email, physical mail, or OIG's website (*https://www.oig.dot.gov/fraud-hotline*). PHMSA expects that these amendments to its regulations will increase transparency, accountability, reduce waste, fraud, and abuse, and are in line with PHMSA's mission to assure safe transportation of energy and hazardous materials.

II. Issuance of a Final Rule

DOT is publishing this final rule without notice and comment and with an immediate effective date. The Administrative Procedure Act (APA) (5 U.S.C. 551, *et seq.*) does not require notice and comment procedures for rulemakings establishing rules governing ''matter[s] relating to agency management or personnel.'' 5 U.S.C. 553(a)(2). Here, the language being added to the regulations concerns internal PHMSA procedures regarding employees' direct referral of actual or possible criminal activity to OIG.

III. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures and is considered not significant under Executive Order 12866 (''Regulatory Planning and Review'') [4] and DOT Order 2100.6A (''Rulemaking and Guidance Procedures''); therefore, the final rule has not been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866.

B. Regulatory Flexibility Analysis

PHMSA has determined the Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*) does not apply to this rulemaking. The RFA applies, in pertinent part, only when ''an agency is required . . . to publish general notice of proposed rulemaking.'' 5 U.S.C. 604(a).[5] The Small Business Administration's ''A Guide for Government Agencies: How to Comply with the Regulatory Flexibility Act'' (2017), explains that:

If, under the APA . . . the agency is required to publish a general notice of

[1] DOT OIG, No. ST2018076, ''DOT Operating Administrations Can Better Enable Referral of Potentially Criminal Activity to OIG'' (Aug. 22, 2018) (OIG Report).

[2] DOT, Order No. 8000.8A, ''Office of Inspector General Investigative Responsibilities,'' at 6(c) (Nov. 20, 2020).

[3] Specifically, PHMSA Office of Hazardous Materials Safety, ''Inspection, Investigation and Enforcement Manual Version 2.1,'' *available at https://www.phmsa.dot.gov/field-operations/operational-guidance/inspection-investigation-and-enforcement-manual-version-21* (update forthcoming) *and* PHMSA Office of Pipeline Safety, ''Pipeline Safety Enforcement Procedures,'' *available at https://www.phmsa.dot.gov/pipeline/enforcement/pipeline-enforcement-procedures* (last accessed Apr. 11, 2022).

[4] 58 FR 51735 (Oct. 4, 1993).

[5] Under 5 U.S.C. 603(a), the RFA also applies when an agency ''publishes a notice of proposed rulemaking for an interpretative rule involving the internal revenue laws of the United States.'' However, this rule does not involve the internal revenue laws of the United States.

proposed rulemaking (NPRM), the RFA must be considered [citing 5 U.S.C. 604(a)]. . . . If an NPRM is not required, the RFA does not apply.

As stated above, the APA allows PHMSA to publish this final rule without notice and comment. Therefore, the analytical requirements of the RFA do not apply.

C. Executive Order 13132 (Federalism)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism'').[6] This regulation has no substantial direct effects on the States, the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government. It does not contain any provision that imposes substantial direct compliance costs on State and local governments, nor any new provision that preempts State law. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments'')[7] and DOT Order 5301.1 (''Department of Transportation Programs, Polices, and Procedures Affecting American Indians, Alaska Natives, and Tribes''). Because none of the measures in the rule have Tribal implications or impose substantial direct compliance costs on Indian Tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing notice of and a 60-day comment period on, and otherwise consult with members of the public and affected agencies concerning, each proposed collection of information. 5 CFR 1320.8(d). This final rule imposes no new information reporting or record keeping necessitating clearance by OMB.

F. National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to prepare a detailed statement on major Federal actions significantly affecting the quality of the human environment. The Council on Environmental Quality implementing regulations (40 CFR parts 1500–1508) require Federal agencies to conduct an environmental assessment considering (1) the need for the action, (2) alternatives to the action, (3) probable environmental impacts of the action and alternatives, and (4) the agencies and persons consulted during the consideration process. *See also* DOT Order 5610.1C (''Procedures for Considering Environmental Impacts'').[8]

1. Need for the Action

This final rule responds to a recommendation made by OIG for Operating Administrations to clarify that employees can report actual or possible criminal activity directly to OIG. This likewise updates PHMSA's regulations to be harmonious with DOT Order 8000.8A.

2. Alternatives Considered

In developing this rule, PHMSA considered two alternatives:

Alternative (1) No Action: One alternative is to take no action. Under the current regulatory regime, PHMSA employees may report actual or possible criminal activity through internal channels, with the PHMSA Office of Chief Counsel thereafter directing allegations to the DOJ; it is not clearly stated whether they may make reports directly to OIG. OIG found that approach, and similar ambiguities within the regulatory regimes of other DOT Operating Administrations, were confusing and minimized employees' use of the referral process. We reject the no action alternative.

Alternative (2) Preferred Action: The preferred alternative is to amend the regulatory language. This alternative incorporates recommendations from OIG and action required in DOT Order 8000.8A to clarify that PHMSA employees may make direct referrals to OIG of actual or potential criminal activity.

3. Environmental Impacts

This rule affects only internal PHMSA administrative procedures and personnel. Any environmental impact from clarifying the ability of PHMSA employees to refer conduct to OIG would be de minimis. It will have no direct effect but may result in more timely referral to OIG of wrongdoing that could be harmful to the environment, thereby ceasing that harmful behavior. On the other hand, the status quo risks delayed reporting, and therefore remediation, of criminal activities deleterious to the environment.

4. Agencies Consulted

PHMSA consulted with the Office of the Secretary of Transportation.

5. Finding of No Significant Impact

PHMSA has reviewed this action and determined it will not significantly impact the quality of the human environment. The amendments only affect administrative procedures by clarifying the ability of PHMSA personnel to make direct referrals to OIG. This amendment has no predictable adverse impact on human health or the environment.

G. Unfunded Mandates Reform Act

PHMSA analyzed the final rule under the factors in the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). PHMSA considered whether the rule includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year. PHMSA has determined that this final rule will not result in such expenditures. Accordingly, no further assessment or analysis is required under the Unfunded Mandates Reform Act.

List of Subjects

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

Accordingly, PHMSA amends 49 CFR parts 107 and 190 as follows:

Title 49—Transportation

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

■ 2. Revise § 107.335 to read as follows:

§ 107.335 Criminal referrals.

(a) If a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under

[6] 64 FR 43255 (Aug. 10, 1999).

[7] 65 FR 67249 (Nov. 6, 2000).

[8] 44 FR 56420 (Oct. 1, 1979).

§ 107.333, the employee must report it to the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, and to the employee's supervisor. The Chief Counsel may refer the report to the Associate Administrator to investigate. If appropriate, the Chief Counsel shall refer the report to the Office of Inspector General, or other law enforcement as appropriate (with notification to the Office of Inspector General as soon as possible).

(b) A PHMSA employee also has the option of making a direct referral to the Office of Inspector General (OIG), either by directly contacting an OIG investigator, or via the OIG hotline at (800) 424–9071, at *https://www.oig.dot.gov/hotline,* by email at *hotline@oig.dot.gov,* or by mail to the Office of Inspector General, 1200 New Jersey Ave. SE, West Bldg. 7th Floor, Washington, DC 20590.

PART 190—PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

■ 3. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 *et seq.*

■ 4. Revise § 190.293 to read as follows:

§ 190.293 Criminal referrals.

(a) If a PHMSA employee becomes aware of any actual or possible activity subject to criminal penalties under § 190.291, the employee must report it to the Office of Chief Counsel, Pipeline and Hazardous Materials Safety Administration, and to the employee's supervisor. The Chief Counsel may refer the report to the Associate Administrator to investigate. If appropriate, the Chief Counsel shall refer the report to the Office of Inspector General, or other law enforcement as appropriate (with notification to the Office of Inspector General as soon as possible).

(b) A PHMSA employee also has the option of making a direct referral to the Office of Inspector General (OIG), either by directly contacting an OIG investigator, or via the OIG hotline at 800–424–9071, at *https://www.oig.dot.gov/hotline,* by email at *hotline@oig.dot.gov,* or by mail to the Office of Inspector General, 1200 New Jersey Ave. SE, West Bldg. 7th Floor, Washington, DC 20590.

Issued in Washington, DC, on May 2, 2022, under authority delegated in 49 CFR 1.97.

Tristan H. Brown,

Deputy Administrator.

[FR Doc. 2022–09740 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register

Vol. 87, No. 91

Wednesday, May 11, 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 ENERGY

10 CFR Part 431

[EERE–2022–BT–STD–0014]

RIN 1904–AF39

Energy Conservation Program: Energy Conservation Standards for Small Electric Motors; Extension of Comment Period

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

ACTION: Request for information; extension of public comment period.

SUMMARY: On April 20, 2022, the U.S. Department of Energy (''DOE'') published a request for information (''RFI'') regarding energy conservation standards for small electric motors. The RFI provided an opportunity for submitting written comments, data, and information by May 20, 2022. DOE received requests from the European Committee of Manufacturers of Electrical Machines and Power Electronics on April 29, 2022, the National Electrical Manufacturers Association on May 3, 2022, the Association of Home Appliance Manufacturers also on May 3, 2022, and the Air-Conditioning, Heating, and Refrigeration Institute on May 4, 2022, each asking DOE to extend the public comment period for an additional 30 days. DOE has reviewed these requests and is granting an extension of the public comment period to allow comments to be submitted until June 20, 2022.

DATES: The comment period for the RFI published on April 20, 2022 (87 FR 23471), is extended. DOE will accept comments, data, and information regarding the RFI received no later than June 20, 2022.

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–2022–BT–STD–0014 by any of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov*. Follow the instructions for submitting comments.

(2) *Email: SmallElecMotors2022STD0014@ee.doe.gov*. Include the docket number EERE–2022–BT–STD–0014 or regulatory information number (''RIN'') 1904–AF39 in the subject line of the message.

No telefacsimiles (''faxes'') will be accepted.

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 for this activity, which includes **Federal Register** notices, 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-2022-BT-STD-0014*. The docket web page contains instructions on how to access all documents, including public comments, in the docket.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov*.

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov*.

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

SUPPLEMENTARY INFORMATION: On April 20, 2022, DOE published an RFI undertaking a review to determine whether to amend the current energy conservation standards for small electric motors. Specifically, the request for information (''RFI'') sought data and information to help DOE evaluate whether amended energy conservation standards would result in significant savings of energy; be technologically feasible; and be economically justified. 87 FR 23471. The RFI set a comment period deadline of May 20, 2022.

Interested parties in the matter, the European Committee of Manufacturers of Electrical Machines and Power Electronics (''CEMEP'') requested a 30-day extension of the public comment period to review and comment on the RFI given the global impact of a highly interconnected motor industry (CEMEP, EERE–2022–BT–STD–0014, No. 2 at p. 1). The National Electrical Manufacturers Association (''NEMA'') also requested a 30-day extension of the public comment period because NEMA staff and members of the Motor and Generator product section are wholly-occupied with developing responses to, and follow-on items for, the preliminary Technical Support Document for Electric Motor energy conservation standards (NEMA, EERE–2022–BT–STD–0003, No. 3 at p. 1). Additionally, the Association of Home Appliance Manufacturers (''AHAM'') requested a 30-day extension because of the overlap with several other rulemakings that AHAM has been involved in reviewing and commenting on (AHAM, EERE–2022–BT–STD–0014, No. 4 at p. 1). Finally, the Air-Conditioning, Heating, and Refrigeration Institute (''AHRI'') requested a 30-day extension of the comment period due to conflicts with

several other rulemakings affecting AHRI members (AHRI, EERE–2022–BT–STD–0014, No. 5 at p. 1).

DOE has reviewed the requests and is extending the comment period to allow additional time for interested parties to submit comments. In light of the submitted requests, DOE believes that additional time is warranted, and is extending the comment period for 30 additional days, as requested. Therefore, comments on this RFI will be accepted until June 20, 2022.

Signing Authority

This document of the Department of Energy was signed on May 5, 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 May 6, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–10085 Filed 5–10–22; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2021–0393; FRL–9756–01–R10]

Air Plan Approval; OR; Vehicle Inspection Program and Medford-Ashland PM_{10} Maintenance Plan Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the Oregon state implementation plan (SIP) submitted by the State of Oregon (Oregon) on December 9, 2020 and December 22, 2021. The revisions update the SIP-approved vehicle inspection program for the Portland and Medford areas. The EPA is proposing to approve the SIP submittal as consistent with Clean Air Act (Act or CAA) requirements. Additionally, EPA is proposing to make a technical correction to the Medford-Ashland particulate matter (PM_{10}) maintenance plan that incorrectly identified a street-sweeping commitment as a transportation control measure (TCM).

DATES: Comments must be received on or before June 10, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2021–0393, at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *https://www.regulations.gov.* EPA may publish any comment received to its public docket. Do not electronically submit any information you consider to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Claudia Vaupel, (206) 553–6121, *vauepl.claudia@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to EPA.

I. Background for This Action

Section 110 of the CAA requires states to develop and submit to the EPA SIPs to ensure that state air quality meets National Ambient Air Quality Standards (NAAQS). Each federally approved SIP protects air quality primarily by addressing air pollution at its point of origin through air pollution regulations and control strategies. The EPA-approved SIP provisions and control strategies are federally enforceable. States revise the SIP as needed and submit revisions to the EPA for review and approval.

II. The State's Submittal

On December 9, 2020 and December 22, 2021, Oregon submitted a SIP revision for the vehicle inspection program (VIP) in the Portland and Medford areas. Table 1 of this document lists the rule revisions included in the scope of the state's submissions. The SIP revision updates the rules to improve clarity, add requirements for the onboard diagnostics system, and remove references to the enhanced dynamometer test that is no longer required as of January 1, 2007.[1]

TABLE 1—RULE REVISIONS INCLUDED IN OREGON'S VIP SIP SUBMISSION

[Effective November 19, 2020]

Rule No. OAR 340–	Rule title
256–0010	Definitions.
256–0130	Visible Emissions: Motor Vehicle Fleet Operation.
256–0200	Certification of Pollution Control Systems: County Designations.
256–0300	Emission Control System Inspection: Scope.
256–0310	Emission Control System Inspection: Government-Owned Vehicle, Permanent Fleet Vehicle and United States Government Vehicle Testing Requirements.

[1] EPA approved phasing out the enhanced test on December 19, 2011. (*See* 76 FR 78571).

TABLE 1—RULE REVISIONS INCLUDED IN OREGON'S VIP SIP SUBMISSION—Continued

[Effective November 19, 2020]

Rule No. OAR 340–	Rule title
256–0330	Emission Control System Inspection: Department of Defense Personnel Participating in the Privately Owned Vehicle Import Control Program.
256–0340	Emission Control System Inspection: Light Duty Motor Vehicle and Heavy Duty Gasoline Motor Vehicle Emission Control Test Method for Basic Program.
256–0350 (repeal)	Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Test Method for Enhanced Program.
256–0355	Emission Control System Inspection: Emissions Control Test Method for OBD Test Program.
256–0356	Emission Control System Inspection: Emissions Control Test Method for On-Site Vehicle Testing for Automobile Dealerships.
256–0370	Emission Control System Inspection: Renewal of Registration for Light Duty Motor Vehicles and Heavy Duty Gasoline Motor Vehicles Temporarily Operating Outside of Oregon.
256–0380	Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Test Criteria for Basic Program.
256–0390	Emission Control System Inspection: Heavy Duty Gasoline Motor Vehicle Emission Control Test Criteria.
256–0400	Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Standards for Basic Program.
256–0410 (repeal)	Emission Control System Inspection: Light Duty Motor Vehicle Emission Control Standards for Enhanced Program.
256–0420	Emission Control System Inspection: Heavy-Duty Gasoline Motor Vehicle Emission Control Standards.
256–0440	Emission Control System Inspection: Criteria for Qualifications of Persons Eligible to Inspect Motor Vehicles and Motor Vehicle Pollution Control Systems and Execute Certificates.
256–0450	Emission Control System Inspection: Gas Analytical System Licensing Criteria for Basic Program.
256–0460 (repeal)	Emission Control System Inspection: Gas Analytical System Licensing Criteria for Enhanced Program.
256–0465	Emission Control System Inspection: Test Equipment Licensing Criteria for OBD Test Program.
256–0470	Emission Control System Inspection: Agreement With Independent Contractor; Qualifications of Contractor; Agreement Provisions.

III. EPA's Evaluation

VIP Rule Revisions

Oregon's submission amends language in the VIP definitions (OAR 340–256–0010) to improve clarity, including removing definitions that are no longer needed (crankcase emissions, electric vehicle, enhanced test, GPM, Medford-Ashland Air Quality Maintenance Area (AQMA), motorcycle, noise level, oxides of nitrogen, Portland Vehicle Inspection Area, propulsion exhaust noise, two-stroke cycle engine) and adding new definitions (emissions franchised, HC, imported vehicle, permanent fleet vehicle, vehicle identification number). The submission also provides clarifying language in the provision for visible emissions of motor vehicle fleet operation (OAR 340–256–0130), the certification of pollution control systems (OAR 340–256–0200), and several provisions for the emission control system inspection (OAR 340–256–0300, –0310, –0330, –0356, –0370, –0380, –0390, –0450, –0465, –0470).[2]

In addition to improving clarity in the emission control system inspection scope (OAR 340–256–0300), the submission removes references to the enhanced dynamometer test and adds requirements for the onboard diagnostics system (OAR 340–256–0340, –0355, –0400, –0420, –0440). EPA approved phasing out Oregon's enhanced dynamometer test on December 19, 2011 (76 FR 78571). The action proposed will update the regulations in the federally approved SIP to be consistent with EPA's 2011 approval of the phase out of specified VIP requirements.

Oregon's submission also repealed three emission control system inspection provisions that were approved into the SIP (OAR–340–256–0350, –0410, –0460). These provisions provided requirements for the enhanced test program that was no longer required as of January 1, 2007.

Medford-Ashland Technical Correction

EPA is proposing to make a technical correction concerning the naming convention of a Jackson County street sweeping commitment for the Oregon, Medford-Ashland maintenance area. The street sweeping commitment was included in the Medford-Ashland Particulate Matter (PM_{10}) Maintenance Plan (Medford-Ashland SIP) adopted by the Oregon Environmental Quality Commission on December 10, 2004 and submitted to EPA on March 10, 2005. Oregon incorrectly identified the street sweeping commitment in the Medford-Ashland SIP as a ''Transportation Control Measure'' (TCM) and on June 19, 2006, EPA took a direct final action to approve the Medford-Ashland SIP including the street sweeping commitment as a TCM (71 FR 35163). EPA erred in describing the street sweeping commitment as a TCM.

A TCM is defined at 40 CFR 93.101 as ''any measure that is specifically identified and committed to in the applicable implementation plan . . . that is either one of the types listed in CAA section 108, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions.'' Although the street sweeping commitment was included in the Medford-Ashland SIP, it clearly does not meet the regulatory definition of a TCM because road cleaning measures do not reduce vehicle use or change traffic flow or congestion conditions nor is it one of the types of TCMs listed in CAA section 108.

Because the street sweeping commitment was erroneously identified as a TCM, the EPA proposes to correct the nomenclature used to describe the measure and clarify that the street sweeping commitment in the Medford-Ashland SIP is not a TCM, within the meaning of 40 CFR 93.101, upon final action on this proposal. The EPA notes that the Medford-Ashland SIP was never required to include TCMs because former PM_{10} non-attainment areas are not required to include TCMs. This action, thus, clarifies that Oregon is not obliged to treat the street sweeping commitment in its SIP as a TCM.

IV. Proposed Action

EPA is proposing to approve the SIP revision submitted by Oregon on December 9, 2020 and December 22, 2021. EPA is also proposing to correct the nomenclature in the Medford-Ashland PM_{10} maintenance plan used to

[2] In a December 22, 2021 letter to EPA (supplemental submission), Oregon requested that OAR 340–256–0100 be deleted from the scope of the December 9, 2020 submission. DEQ intends to re-submit that provision in a future SIP submission.

describe the street sweeping control measure as a TCM.

V. Incorporation by Reference

In this document, EPA is proposing to include in a final rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the provisions described in Section III of this preamble. Also, in this document, the EPA is proposing to remove, in a final EPA rule, regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to remove the incorporation by reference of OAR–340–256–0350, –0410, –0460 as described in Section III of this preamble. EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 10 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this proposed rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

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

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

Dated: May 4, 2022.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2022–10037 Filed 5–10–22; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 87, No. 91

Wednesday, May 11, 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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International Development (USAID).

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: The United States Agency for International Development (USAID) publishes this notice of a modified system of records entitled the ''Congressional Relations and Correspondence Records,'' formerly named the ''Congressional Relations, Inquiries and Travel Records,'' and this rescindment of a system of records notice entitled ''Public Information Records.'' The modified system of records replaces the system of records entitled ''Public Information Records.'' USAID proposes the rescission to eliminate the duplicative reporting. The records contained in the Public Information Records will be covered by the modified ''Congressional Relations and Correspondence Records'' and the USAID SORN entitled, ''Freedom of Information Act, Privacy Act, and Mandatory Declassification Review Requests Records.''

DATES: Submit comments on or before 10 June 2022. This modified system of records will be effective 10 June 2022 upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Email: Privacy@usaid.gov.*

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: USAID is publishing a notice of a modified system of records to document the records collected and maintained concerning Congressional inquiries. The proposed modification to the system of records makes the following substantive changes to align the notice with the SORN publication standards required by OMB A–108, including:

- Security Classification
- System Manager
- Administrative, technical, and physical safeguards
- Record Access Procedures
- Contesting Records Procedures
- Notification Procedures
- SORN Publication History

The notice also provides updated information for the System of Records Manager and the Address for the System Location.

SYSTEM NAME AND NUMBER:

USAID–22, Congressional Relations and Correspondence Records.

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

1300 Pennsylvania Avenue NW, Washington, DC 20523.

SYSTEM MANAGER:

Deputy Executive Secretary, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

Email: ecarr@usaid.gov.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Foreign Assistance Act of 1961 as amended, especially Section 634(b); 5 U.S.C. 301; 44 U.S.C. Chapters 31 and 33.

PURPOSE OF THE SYSTEM:

The information in this system of records is collected and maintained by the Bureau of Legislative Affairs to fulfill its responsibility to the Congress in tracking Members' correspondence and providing appropriate responses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of Congress and their constituents who request Congressional assistance in obtaining information or services from the United States Agency for International Development.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains correspondence. Records may contain the following information:

- Biographical information about the member of Congress and their professional staff members.
- Memoranda.
- Email messages between Members of Congress, Congressional Committees, and USAID pertaining to Congressional and constituents' requests for information or services from the Agency.
- Constituent Information: name, address and other personal information contained in the inquiry received by USAID.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from Members of Congress, their staff, and individuals on whose behalf there have been Congressional inquiries; USAID employees; Congressional Directory; Congressional Quarterly; Congressional Record; newspapers, magazines, and other public media.

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), all or a portion of the records contained in this system of records may be disclosed outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(a) To respond to requests from Congress, Congressional Committees, or constituents of Members of Congress for information or services from USAID.

(b) To provide USAID principals with information regarding trends or particular interests of Members of Congress or their constituents.

(c) To any person or entity to the extent necessary to prevent an imminent crime which directly threatens loss of life or serious bodily injury.

(d) To other Federal, State, or local government agencies for appropriate action when the matter complained of or inquired about comes within the jurisdiction of such agency.

(e) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for USAID, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USAID officers and employees.

(f) To Medical or Emergency Response Personnel to the extent necessary to meet a bona fide medical emergency.

(g) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal or administrative proceedings, when the USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(h) To appropriate agencies, entities, and persons when: (1) USAID suspects or has confirmed that there has been a breach of the system of records; (2) USAID has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals (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 USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(i) To another federal agency or federal entity, when USAID determines that the information from the 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, that might result from a suspected or confirmed breach.

(j) To the National Archives and Records Administration (NARA), for the purposes of records-management inspections conducted under the authority of Sections 2904 and 2906 of Title 44 of the U.S.C. and in its role as Archivist.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

USAID stores records in this system in electronic format and paper format. Records in paper format are stored in file folders in locked cabinets. Records in electronic format are kept in a user-authenticated and password-protected computerized database system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

USAID indexes and retrieves records by the name of the Congressional member, Congressional staff, or the constituent subject to the inquiry or by an identifying case number that is cross-indexed to the Congressional member or committee.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

USAID follows NARA-approved records retention schedule. Records that have met required retention periods will be disposed of in accordance with NARA guidelines and USAID policy and procedures. Paper records are shredded, and records maintained on internal electronic information systems are electronically removed. USAID electronic storage media that is no longer in service is purged in accordance with National Institute of Standards and Technology guidelines for media sanitization (NIST SP 800–88).

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Access to the records is limited to persons whose official duties require access, such as individuals who prepare responses to Congressional inquiries. Paper records in this system are maintained in a building with restricted public access, patrolled by guards. Both standard and electronic locks may be used to restrict access. Access to USAID buildings where records are located is restricted by 24-hour electronic identification.

For Paper Records: USAID secures records in lockable metal filing cabinets within a locked room when not in use. Access to these records is strictly limited to authorized USAID personnel.

For Electronic Records: USAID personnel store and password-protect electronic records in a user-authenticated, USAID-issued computer and/or a USAID-approved, computerized database system. These records are maintained separately from other systems of records. Access to these electronic records is strictly limited to authorized USAID personnel.

USAID contractors are also required to maintain all USAID records with similar safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained. All persons having access to these records shall be trained in the proper handling of records covered by the Privacy Act.

RECORD ACCESS PROCEDURES:

Under the Privacy Act, individuals may request access to records about themselves. These individuals must be limited to citizens of the United States or aliens lawfully admitted for permanent residence. If a Federal Department or Agency or a person who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, telephone number and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

See section above, Record Access Procedures. Individuals may also contact the appropriate Congressional

Correspondence System of Records Manager at *ecarr@usaid.gov* to: (i) Request access, contest, or amend a notification of records; and (ii) to determine the location of particular records created by contractors on behalf of USAID or maintained by contractors at the contractor's location.

NOTIFICATION PROCEDURES:

See section above, Record Access Procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

42 FR 47384.

Celida Ann Malone,

Government Privacy Task Lead.

[FR Doc. 2022–10088 Filed 5–10–22; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International Development (USAID).

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: The United States Agency for International Development (USAID) proposes to modify a system of records titled, USAID–34, Personal Services Contracts Records, last published March, 3, 2015. USAID is expanding the scope of this system of records with additional applications to better support the unique mission of the Agency. USAID proposes to modify the system location, contact information, purpose, categories of records, record source categories, routine uses, storage, retention, retrieval safeguards and access procedures. Publication of this notice complies with the Privacy Act and the Office of Management and Budget (OMB) Circulars A–108 and A–130 requirement for agencies to publish a notice in the **Federal Register** whenever the agency modifies a system of records.

DATES: Submit comments on or before 10 June 2022. This modified system of records will be effective 10 June 2022 upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Email: Privacy@usaid.gov.*

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: USAID–34: Personal Services Contracts Records will be used by USAID personnel to determine if applicants are eligible and current personal services contractors (PSCs) are compliant with statutory, regulatory and agency requirements for continued employment, participation in USAID programs and access to USAID facilities. Multiple USAID IT systems/applications are used to document, certify and report the individual's eligibility and compliance. The following modifications are made to this system of records: (1) Category of records has been modified to include vaccination records, records checks and (2) routine uses have been added to facilitate interagency sharing.

SYSTEM NAME AND NUMBER:

USAID–34, Personal Services Contracts Records.

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

United States Agency for International Development (USAID), 1300 Pennsylvania Avenue NW, Washington, DC 20523; AWS East Ashburn, 21155 Smith Switch Road, Ashburn, VA, USA; AWS West Oregon, 73575 Lewis & Clark Drive, Boarman, Oregon 97818; and other USAID offices in the United States and abroad that have personal services contractor hiring authority and their corresponding automated data processing facilities.

SYSTEM MANAGER(S):

Francisco Escobar, 1300 Pennsylvania Ave. NW, USAID Annex: 10.6.IH, Washington, DC 20523. *pscpolicymailbox@usaid.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system was established and is maintained pursuant to the Foreign Assistance Act, Public Law 87–165, as amended; 48 CFR 37. 104, Personal services contracts; 48 CFR Ch. 7, App. D, Direct USAID Contracts with a U.S. Citizen or a U.S. Resident Alien for Personal Services Abroad; Executive Order 14043, Requiring Coronavirus Disease 2019 Vaccination for Federal Employees (Sept. 9, 2021); 5 U.S.C. 30, Departmental Regulations; 44 U.S.C. 3101, Records Management by Agency Heads; and E.O. 9397, as amended.

PURPOSE(S) OF THE SYSTEM:

The records are collected, used, maintained, and disseminated for the purposes of administering personal services contracts, including: Personal services contracts records, pay, and benefits determinations and processing; determining accountability and liability of contract parties; reports of contractor actions; documenting clearances and eligibility to access USAID facilities; ensuring personal and workplace safety; and other records as may be required by federal laws, regulation, or guidance required in connection with the personal services contractor during the contract cycle.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system contains records on individuals who are current and/or former personal services contractors with USAID and certain family members. It also contains records on current and former candidates for a personal services contract with USAID.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of records created or compiled for contract actions related to personal services contractors, including personal services contractor files and contract documents. A personal services contractor file includes:

- Proof of Citizenship, including passport, social security number or other national identification number, and Selective Service Registration data.
- Individual's Contact Information, including: Name, employee identification numbers, job titles, home/work addresses, home/work telephone numbers, email addresses, ages, and addresses of family members, next of kin, power of attorney or alternate contact persons.
- Individual's Biographical Information, including: Date of birth, place of birth, education, military service, financial information, photograph of individual, language proficiencies, licenses and certifications.

• Demographic Information: Such as race, gender, sexual orientation, marital status.

• Employment information, such as employment history and address, past supervisor names and phone numbers, salary history, travel availability, training received, assignments, position number, performance evaluations, release forms and out-processing checklists.

• Financial Information, including: Financial institution account number, direct deposit information, and salary computation worksheet.

• System Access/Usage information: IP addresses, passwords, usernames, geotags or geographical metadata.

• Medical Information, such as vaccination records, test results, medical clearances, and insurance information.

• Treatment Records, such as referrals to testing sites, treatment facilities and/or organizations that conduct clinical trials/studies.

• Contracting Documentation, including Unique Entity Identifier (UEI), application, Statement of Work, Qualifications Approval Memoranda, Salary Compensation worksheet, performance evaluations, out-processing/close out form, leave balances, Final Offer Letter, and correspondence.

Note 1: Listed below are other types of records that contain information about Personal Services Contractors, which are not covered by this system of records. Such records are covered by a government-wide system of records, GSA/GOVT–9/SAM, which is managed by the General Services Administration. Records covered by the government-wide SORNs include:

• The information voluntarily provided as part of the process to register to do business with the Federal government.

• Exclusion records to suspend, debar, or otherwise declare individuals ineligible from receiving certain Federal assistance and/or benefits.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from:

• The individual to whom the information pertains;

• The individual's former employers;

• Supervisors, contracting officers and contracting officers' representatives in USAID bureaus and missions, Office of Human Resources employees and other Agency officials;

• Those authorized by the individual to furnish information to USAID; and

• Related correspondence from other Federal agencies, organizations, or persons.

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), all or a portion of the records contained in this system of records may be disclosed outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To the Internal Revenue Service and the Social Security Administration for the purposes of reporting earnings information.

(2) To a Federal Government agency or entity that furnished the record or information for the purposes of permitting that agency or entity to make a decision as to access to or correction of the record or information.

(3) To Federal agencies with which USAID has entered into an agreement to provide services to assist USAID in carrying out its functions under the Foreign Assistance Act of 1961, as amended. Such disclosures would be for the purpose of transmission of information between organizational units of USAID; of providing to the original employing agency information concerning the services of its employee while under the supervision of USAID, including performance evaluations, reports of conduct, awards and commendations, and information normally obtained in the course of personnel administration and employee supervision; or of providing other information directly related to the purposes of the inter-agency agreement as set forth therein, and necessary and relevant to its implementation.

(4) To a prospective employer of a current or former USAID personal services contractor for the purposes of providing the following information to prospective employers: Job descriptions, dates of contract, and reason for termination of contract.

(5) To appropriate agencies, entities, and persons for the purposes of confirming the qualifications of an applicant for the award of a personal services contract.

(6) To the General Services Administration and the Office of Management and Budget for the purposes of periodic reporting required by statute regulations, and/or Executive order. Information provided is in the form of listings, reports, and records of all transportation and travel related transactions, including refunds and adjustments, by the contractor, to enable audits of transportation and travel related charges to the Government.

(7) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(8) To the Department of Justice or other appropriate United States Government Agency when the records are arguably relevant to a proceeding in a court or other tribunal in which USAID or a USAID official in his or her official capacity is a party or has an interest, or when the litigation is likely to affect USAID.

(9) In the event of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or particular program pursuant thereto, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(10) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of USAID, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, ensuring fiscal accountability in transporting the effects personnel stationed at embassies, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(11) To a foreign government or international agency in response to its request for information to facilitate the conduct of U.S. relations with that government or agency through the issuance of such documents as visas, country clearances, identification cards, drivers' licenses, diplomatic lists, licenses to import or export personal effects, and other official documents and permits routinely required in connection with the official service or travel abroad of the individual and his or her dependents.

(12) To Shipping Contractors limited information is provided, such as delivery address and telephone number, for the purposes of providing shipping services.

(13) To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of a contractor; the assignment, detail or deployment of a contractor; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(14) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(15) To appropriate agencies, entities, and persons when (a) USAID suspects or has confirmed that there has been a breach of the system of records, (b) USAID has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USAID (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(16) To another Federal Department or Agency or Federal entity, when USAID determines information from this system of records is reasonably necessary to assist the recipient Department or Agency or entity in: (a) Responding to a suspected or confirmed breach; or (b) 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, that might result from a suspected or confirmed breach.

(17) To the Office of Management and Budget in connection with review of private relief legislation, as set forth in OMB Circular No. A–19, at any stage of the legislative coordination and clearance process as set forth in that Circular.

(18) To an agency or organization for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(19) To the Federal Bureau of Investigation, the Department of Homeland Security, the National Counter-Terrorism Center (NCTC), the Terrorist Screening Center (TSC), or other appropriate federal agencies, for the integration and use of such information to protect against terrorism, if that record is about one or more individuals known, or suspected, to be or to have been involved in activities constituting, in preparation for, in aid of, or related to terrorism. Such information may be further disseminated by recipient agencies to Federal, State, local, territorial, tribal, and foreign government authorities, and to support private sector processes as contemplated in Homeland Security Presidential Directive/HSPD–6 and other relevant laws and directives, for terrorist screening, threat-protection, and other homeland security purposes.

(20) To a congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

USAID stores records in this system in electronic format and paper format. Records in paper format are stored in file folders in locked cabinets. Records in electronic format are kept in a user-authenticated and password-protected computerized database system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records in this system are retrieved by various combinations of name, identifying number, account number, contract number, phone number, email address, or other unique identifier.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with the Federal Acquisition Regulations and/or the National Archives Records Administration's General Records Disposition Schedules, and the agency's approved disposition schedules.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

USAID safeguards records in this system according to applicable rules and policies, including all applicable USAID Automated Directives System (ADS) operational policies. USAID has implemented controls to minimize the risk of compromising the information that is being stored. In general, records are maintained in buildings with restricted access. The required use of password protection identification features and other system protection methods also restrict access. Paper records and Sensitive But Unclassified records are kept in an approved security container at the USAID Washington headquarters, and at the relevant locations where USAID has a program. The electronic records are stored in the Agency Secure Image and Storage Tracking (ASIST) or other document management systems, which are safeguarded in accordance with applicable laws, rules, and policies, including USAID's automated systems security and access policies. Access to the system containing the records in this system is limited to those individuals who have a need to know the information for performance of their official duties and who have appropriate clearances and permissions.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, telephone number, and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The USAID rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 22 CFR part 212 or may be obtained from the program manager or system owner.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Individuals may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written

requests that should include the individual's full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Pursuant to 5 U.S.C. 552a(k)(5) and as specified in 22 CFR 215.14(a)(5) and (c)(5), certain records in this system of records are exempt from the following provisions of the Privacy Act: 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G); (H); (I); and (f).

HISTORY:

80 FR 11391, March 3, 2015.

Celida Ann Malone,

Government Privacy Task Lead.

[FR Doc. 2022–10091 Filed 5–10–22; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International Development (USAID).

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: The United States Agency for International Development (USAID) is issuing public notice of its intent to modify the system of records maintained in accordance with the Privacy Act of 1974, as amended, titled, 'USAID–30, Google Apps Business Edition, published July 27, 2011. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** a notice of the existence and character of record systems maintained by the agency. USAID is modifying this SORN to update the system of records name from Google Apps Business Edition to Google Workspace (Enterprise Edition,) as well as to update the following sections: ''System Location;'' ''System Manager;'' ''Categories of Records in the System'' to include all PII that is collected; ''Routine Uses of Records Maintained in the System Including Categories of Users and Purposes of Such Uses'' to detail whom the information can be shared with as Blanket Routines Uses is in the previous SORN; ''Policies and Practices for Retention and Disposal of Records'' adding the approved NARA disposition schedule; and ''Administrative, Technical, and Physical Safeguards.'' The proposed updates will allow USAID users to utilize the Google Workspace System for online messaging and collaboration.

DATES: Submit comments on or before 10 June 2022. This modified system of records will be effective 10 June 2022 upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Email: Privacy@usaid.gov.*

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: USAID is modifying this SORN to update the system of records name and modify its SORN to reflect various changes and updates required by OMB Circular A–108. The proposed updates will allow USAID users to utilize the Google Workspace System for online messaging and collaboration.

SYSTEM NAME AND NUMBER:

USAID –30, Google Workspace (Enterprise Edition).

SECURITY CLASSIFICATION:

Sensitive But Unclassified.

SYSTEM LOCATION:

United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523 and Google Data Centers (CONUS and EU only). In addition, some workforce members may download and store information from the system. Those copies are located within the employees' or contractors' offices or on encrypted USAID-issued workstations.

SYSTEM MANAGER(S):

Malcolm Dicko, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Email: *mdicko@usaid.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 U.S.C. chapter 32, subchapter 1, Foreign Assistance Act of 1961, as amended; 5 U.S.C 301 Departmental Regulations; and 44 U.S.C. 3101–3103 Records Management.

PURPOSE(S) OF THE SYSTEM:

USAID established this system of records to facilitate connections and ensure efficient collaboration among USAID employees, contractors, grantees and members of the public, support the USAID workforce's ability to communicate, store files and engage with the American public, using various cloud-based apps, such as Gmail, Hangouts, Calendar, Drive, Docs, Sheets, Slides, Sites, Groups, etc.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records of current and former employees, contractors, consultants, and partners who work in support of the Agency's mission. This system also covers members of the public who engage with USAID.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains information related to the documents, messages, calendar entries, and other work-related records of USAID account holders. It also maintains information related to functionality of specific applications, including:

- User's Biographical Information, such as: Name, personal home address, home phone number, mobile phone number, email address, date of birth, social security number, and personal photograph
- User's Professional Information, such as: Organization/office assignment, position/title, business phone number, business email address, business address, taxpayer or employer ID number
- Collaboration records, such as email correspondence, instant messaging transcripts, calendars and tasks
- Financial information, such as account and transaction information maintained to facilitate payroll functions
- Video conferencing information, such as video and audio recordings and meeting participants

• Other Biographical information users may voluntarily provide, and

• System Generated information, such as username, password, user log-in information, IP address, date and time of access, queries run, passcodes and other information required for system administration and security.

RECORD SOURCE CATEGORIES:

The records contained in this system will be provided and updated by the individual who is the subject of the record, or by members of the USAID workforce during the performance of their official duties.

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), all or a portion of the records contained in this system of records may be disclosed outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To consumer reporting agencies in order to obtain consumer credit reports.

(2) To federal, international, state, and local law enforcement agencies, U.S. Government Agencies, courts, the Department of State, Foreign Governments, to the extent necessary to further the purposes of an investigation.

(3) Results of the investigation may be disclosed to the Department of State or other Federal Agencies for the purposes of granting physical and/or logical access to federally owned or controlled facilities and/or information systems in accordance with the requirements set forth in HSPD–12.

(4) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(5) To the Department of Justice or other appropriate United States Government Agency when the records are arguably relevant to a proceeding in a court or other tribunal in which USAID or a USAID official in his or her official capacity is a party or has an interest, or when the litigation is likely to affect USAID.

(6) In the event of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or particular program pursuant thereto, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(7) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of USAID, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, ensuring fiscal accountability in transporting the effects personnel stationed at embassies, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(8) To a foreign government or international agency in response to its request for information to facilitate the conduct of U.S. relations with that government or agency through the issuance of such documents as visas, country clearances, identification cards, drivers' licenses, diplomatic lists, licenses to import or export personal effects, and other official documents and permits routinely required in connection with the official service or travel abroad of the individual and his or her dependents.

(9) To Federal agencies with which USAID has entered into an agreement to provide services to assist USAID in carrying out its functions under the Foreign Assistance Act of 1961, as amended. Such disclosures would be for the purpose of transmission of information between organizational units of USAID; of providing to the original employing agency information concerning the services of its employee while under the supervision of USAID, including performance evaluations, reports of conduct, awards and commendations, and information normally obtained in the course of personnel administration and employee supervision; or of providing other information directly related to the purposes of the inter-agency agreement as set forth therein, and necessary and relevant to its implementation.

(10) To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(11) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(12) To the Office of Management and Budget (OMB), in connection with review of private relief legislation, as set forth in OMB Circular A–19, at any stage of the legislative coordination and clearance process, as set forth in that Circular.

(13) To a former employee of USAID for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(14) To appropriate agencies, entities, and persons when (a) USAID suspects or has confirmed that there has been a breach of the system of records, (b) USAID has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USAID (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(15) To another Federal Department or Agency or Federal entity, when USAID determines information from this system of records is reasonably necessary to assist the recipient Department or Agency or entity in: (a) Responding to a suspected or confirmed breach; or (b) 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, that might result from a suspected or confirmed breach.

(16) To a Member of Congress or to a Congressional staff member in response to an inquiry of the Congressional office, made at the written request of the constituent about whom the record is maintained.

(17) To designated Agency personnel for the purpose of performing an authorized audit or oversight function.

(18) To the Office of Management and Budget (OMB), the General Accountability Office (GAO), or other Federal agency when the information is required for program evaluation purposes.

(19) To the Internal Revenue Service and the Social Security Administration for the purposes of reporting earnings information.

(20) To unions recognized as exclusive bargaining representatives of the individual, the Foreign Service Grievance Board in the course of the Board's consideration of matters properly before it, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective action, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

(21) To attorneys, union representatives, or other persons designated by USAID employees in writing to represent them in complaints, grievance, appeal, or litigation cases.

(22) To the Federal Bureau of Investigation, the Department of Homeland Security, the National Counter-Terrorism Center (NCTC), the Terrorist Screening Center (TSC), or other appropriate federal agencies, for the integration and use of such information to protect against terrorism, if that record is about one or more individuals known, or suspected, to be or to have been involved in activities constituting, in preparation for, in aid of, or related to terrorism. Such information may be further disseminated by recipient agencies to Federal, State, local, territorial, tribal, and foreign government authorities, and to support private sector processes as contemplated in Homeland Security Presidential Directive/HSPD–6 and other relevant laws and directives, for terrorist screening, threat-protection and other homeland security purposes.

(23) To foreign law enforcement, security, investigatory, or administrative authorities to comply with requirements imposed by, or to claim rights conferred in, international agreements and arrangements including those regulating the stationing and status in foreign countries of USAID personnel.

(24) To an appeal, grievance, hearing, or complaints examiner; an equal employment opportunity investigator, arbitrator, or mediator; and/or an exclusive representative or other person authorized to investigate or settle a grievance, complaint, or appeal filed by an individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic records are maintained in user-authenticated, password-protected systems. All records are accessed only by authorized personnel who have a need to access the records in the performance of their official duties.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by a combination of first and last name, email address, and other unique identifiers as configured by the program office for their program requirements.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained for 10-year retention rule for all data contained within Google Drive and Google mail. There are exceptions for specific users as required by NARA, FOIA, and USAID Records Management.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

USAID safeguards records in this system according to applicable rules and policies, including all applicable USAID Automated Directive Systems (ADS) operational policies. USAID has implemented controls to minimize the risk of compromising the information that is being stored. Access to the system containing the records is limited to those individuals who have a need to know the information for performance of their official duties and who have appropriate clearances and permissions. USAID ensures that the practices stated in the Google Workspace Privacy Impact Assessment are followed by leveraging standard operating procedures (SOP), training, policies, rules of behavior, and auditing and accountability.

Cloud systems are authorized to operate separately by the USAID AO at the moderate level. All USAID Users utilize two-factor authentication to access Google Workspace Applications.

Google Mail DLP actively scans all outbound messages for defined PII elements and quarantines emails that may violate defined transmission rules. Messages are then manually released by an approved administrator.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, telephone number, and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The USAID rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 22 CFR part 212 or may be obtained from the program manager or system owner.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Individuals may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

76 FR 44888, July 27, 2011.

Celida Ann Malone,

Government Privacy Task Lead.

[FR Doc. 2022–10092 Filed 5–10–22; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International Development (USAID).

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: The Agency for International Development (USAID) is issuing public notice of its intent to modify its system of records entitled USAID—008–Personnel Security and Suitability Investigations Records, last published in the **Federal Register** on May 1, 2013, in accordance with the Privacy Act of 1974, as amended. USAID is updating this system of records to provide clarification on the routine uses; and update the addresses for the location of the system.

DATES: Submit comments on or before 10 June 2022. This modified system of records will be effective 10 June 2022 upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Email: Privacy@usaid.gov.*

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: USAID is proposing to modify its Personnel Security and Suitability Investigations Records SORN to update the system locations and enhance the descriptions of routine uses for records maintained in this system to provide further transparency into USAID's recordkeeping and information sharing practices. The Personal Security and Suitability Investigations Records are maintained by the USAID Office of Security (SEC). SEC has been charged with providing security services to protect USAID personnel and facilities, safeguard national security information, and promote and preserve personal integrity. SEC receives investigative authority from the Director of National Intelligence and the Office of Personnel Management to conduct personnel security investigations for USAID and all other Federal Agencies/Departments permitted under the delegation.

SYSTEM NAME AND NUMBER

Personnel Security and Suitability Investigations Records, USAID–008.

SECURITY CLASSIFICATION:

Classified—Secret.

SYSTEM LOCATION:

Records covered by this system are maintained at the following locations: (Paper) USAID Office of Security, 1300 Pennsylvania Avenue, Washington, DC 20523; (Electronic copies) AWS East Ashburn, 21155 Smith Switch Road, Ashburn, VA, USA and AWS West Oregon, 73575 Lewis & Clark Drive Boarman, Oregon, 97818.

SYSTEM MANAGER:

Director of the Office of Security, *United States Agency for International Development:* Office of Security, RRB, Suite 2.06–A, 1300 Pennsylvania Ave. NW, Washington, DC 20523.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Foreign Assistance Act of 1961 (FAA), as amended; Executive Order 10450: Security requirements for Government Employment; Homeland Security Presidential Directive 12 (HSPD–12): Policy for a Common Identification Standard for Federal Employees and Contractors; Executive Order 12968: Access to Classified Information; Executive Order 12333: United States Intelligence Activities; Executive Order 13381: Strengthening Processes Relating to Determining Eligibility for Access to Classified National Security Information; Executive Order 13467: Reforming Processes Related to Suitability for Government Employment, Fitness for Contractor Employees, and Eligibility for Access to Classified National Security Information; Executive Order 13488: Granting Reciprocity on Excepted Service and Federal Contractor Employee Fitness and Reinvestigating Individuals in Positions of Public Trust; and the Intelligence Reform and Terrorism Prevention Act of 2004 (Pub. L. 108–458), and E.O. 9397 (SSN), as amended; E.O. 14042: Ensuring Adequate Safety Protocols for Federal Contractors; E.O. 14043: Requiring Coronavirus Disease 2019 Vaccination for Federal Employees; 5 U.S.C. 301, Departmental Regulations authorizes the operations of an executive agency, including the creation, custodianship, maintenance and distribution of records; and 44 U.S.C. 3101, Records management by agency heads.

PURPOSE OF THE SYSTEM:

The Office of Security gathers information in order to create investigative records, which are used for processing personal security background investigations to determine eligibility to be awarded a federal security clearance, suitability or fitness determination for federal employment, access to federally owned/controlled facilities and access to federally owned/controlled information systems.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals maintained in this system are: Current and former USAID employees; contractor personnel (Personal Service Contractors and Institutional Contractors); applicants for employment; persons and entities performing business with USAID to include consultants, volunteers, grantees and recipients; individuals employed from other Federal Agencies through a detail, Participating Agency Service Agreement, Resources Support Services Agreement, or the Interagency Personnel Act; individuals working at USAID through government agreements (second agreement); paid and unpaid interns; and visitors requiring access to USAID facilities; and the U.S. Citizen and/or non-U.S. Citizen spouse, intended spouse, family members, and/or cohabitants of the above listed individuals and other individuals who provide personal references for USAID employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records maintained in this system include:

- *Individual's Contact Information,* including: Name, Employee Identification Numbers, Job Title/Series, Grade, Home/Work Address, Home/Work Telephone Number, Names and Addresses of family members.
- *Individual's Biographical Information,* including: Date of Birth, Place of Birth, Citizenship status,

Educational institutions attended, Military service, Financial information, including credit reports.

• *Individual's Social Security Number (or other identifying number).*

• *Demographic Information:* Race, Gender, Sexual Orientation, Marital Status.

• *Employment information,* such as employment history, records related to work performance or conduct issues, such as records of referrals, leave usage, supervisory/organizational interventions.

• *Facility Access Information:* Authorizations/restrictions, fingerprints, photographs, previous clearances levels granted; resulting clearance levels; documentation of release of security files; request for special access; records of infractions; and records of facility accesses and credentials issued.

• *Individual's Character Information,* such as Conduct and behavior in the community where they presently live and/or previously lived; Arrests and/or Convictions, Reports from Interviews and other inquiries.

• *Electronic communication cables,* such as email and instant messages, as well as,

• *Medical records,* such as vaccination records, test results, medical clearances, and insurance information.

Note 1: Listed below are other types of records that contain information about employee health and fitness, which are not covered by this system of records. Such records are covered by a government-wide system of records OPM/GOVT–10, which is managed by the Office of Personnel Management. Records covered by OPM/GOVT–10 include:

• Medical records, forms, and reports completed or obtained when an individual applies for a Federal job and is subsequently employed;

• Medical records, forms and reports completed during employment as a condition of employment, either by the USAID or by another State or local government entity, or a privacy sector entity under contract to USAID.

• Records pertaining to and resulting from drug screening for use of illegal drugs under Executive Order 12564.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from the individual on whom it applies; independent sources such as other government agencies, state/local government; law enforcement agencies; credit bureaus; medical providers; educational institutions; private organizations; information provided by personal references; and through source interviews.

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), all or a portion of the records contained in this system of records may be disclosed outside USAID as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

(1) To consumer reporting agencies in order to obtain consumer credit reports.

(2) To federal, international, state, and local law enforcement agencies, U.S. Government Agencies, courts, the Department of State, Foreign Governments, to the extent necessary to further the purposes of an investigation.

(3) Results of the investigation may be disclosed to the Department of State or other Federal Agencies for the purposes of granting physical and/or logical access to federally owned or controlled facilities and/or information systems in accordance with the requirements set forth in HSPD–12.

(4) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings, when USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(5) To the Department of Justice or other appropriate United States Government Agency when the records are arguably relevant to a proceeding in a court or other tribunal in which USAID or a USAID official in his or her official capacity is a party or has an interest, or when the litigation is likely to affect USAID.

(6) In the event of an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by statute or particular program pursuant thereto, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

(7) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of USAID, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, ensuring fiscal accountability in transporting the effects personnel stationed at embassies, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(8) To a foreign government or international agency in response to its request for information to facilitate the conduct of U.S. relations with that government or agency through the issuance of such documents as visas, country clearances, identification cards, drivers' licenses, diplomatic lists, licenses to import or export personal effects, and other official documents and permits routinely required in connection with the official service or travel abroad of the individual and his or her dependents.

(9) To Federal agencies with which USAID has entered into an agreement to provide services to assist USAID in carrying out its functions under the Foreign Assistance Act of 1961, as amended. Such disclosures would be for the purpose of transmission of information between organizational units of USAID; of providing to the original employing agency information concerning the services of its employee while under the supervision of USAID, including performance evaluations, reports of conduct, awards and commendations, and information normally obtained in the course of personnel administration and employee supervision; or of providing other information directly related to the purposes of the inter-agency agreement as set forth therein, and necessary and relevant to its implementation.

(10) To appropriate officials and employees of a federal agency or entity when the information is relevant to a decision concerning the hiring, appointment, or retention of an employee; the assignment, detail or deployment of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

(11) To the National Archives and Records Administration for the purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(12) To the Office of Management and Budget (OMB), in connection with review of private relief legislation, as set forth in OMB Circular A–19, at any

stage of the legislative coordination and clearance process, as set forth in that Circular.

(13) To a former employee of USAID for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable agency regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the agency requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

(14) To appropriate agencies, entities, and persons when (a) USAID suspects or has confirmed that there has been a breach of the system of records, (b) USAID has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, USAID (including its information systems, programs, and operations), the Federal Government, or national security; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(15) To another Federal Department or Agency or Federal entity, when USAID determines information from this system of records is reasonably necessary to assist the recipient Department or Agency or entity in: (a) Responding to a suspected or confirmed breach; or (b) 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, that might result from a suspected or confirmed breach.

(16) To a congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

(17) To the Federal Bureau of Investigation, the Department of Homeland Security, the National Counter-Terrorism Center (NCTC), the Terrorist Screening Center (TSC), or other appropriate federal agencies, for the integration and use of such information to protect against terrorism, if that record is about one or more individuals known, or suspected, to be or to have been involved in activities constituting, in preparation for, in aid of, or related to terrorism. Such information may be further disseminated by recipient agencies to Federal, State, local, territorial, tribal, and foreign government authorities, and to support private sector processes as contemplated in Homeland Security Presidential Directive/HSPD–6 and other relevant laws and directives, for terrorist screening, threat-protection and other homeland security purposes.

(18) To the Foreign Service Grievance Board in the course of the Board's consideration of matters properly before it.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

USAID stores records in this system in electronic format and paper format. Records in paper format are stored in file folders in locked cabinets. Records in electronic format are kept in a user-authenticated and password-protected computerized database system. Records that contain national security information and are classified are stored in accordance with applicable executive orders, statutes, and Agency implementing regulations.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by last name, social security number, and/or USAID assigned case number or other unique identifier attributed to the individual.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are retained and disposed of in accordance with disposition schedules approved by USAID and NARA General Records Schedule 5. 6-Security Records for Electronic Records shall apply.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records are kept within the Office of Security secured space. Access to this space is controlled by electronic card readers, office personnel to control access, visitor escorts policy and supplemented by an armed response force. Administrative safeguards of records are provided through the use of internal Standard Operating Procedures and routine appraisal reviews of the personnel security and suitability program by the Director of National Intelligence and the Office of Personnel Management.

USAID has implemented controls to minimize the risk of compromising the information that is being stored. Access to the system containing the records in this system is limited to those individuals who have a need to know the information for performance of their official duties and who have appropriate clearances and permissions. USAID ensures that the practices stated in the Cross Match and Security Investigations Database Privacy Impact Assessments are followed by leveraging standard operating procedures (SOP), training, policies, rules of behavior, and auditing and accountability.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2.4. 0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, and telephone number and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

The USAID rules for accessing records, contesting contents, and appealing initial agency determinations are contained in 22 CFR 212 or may be obtained from the program manager or system owner.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2. 4.0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Individuals may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, and telephone number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state)

under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Under the specific authority provided by subsection (k) (1), (3), and (5) of 5 U.S.C. 552a, USAID has promulgated rules specified in 22 CFR 215.14, that exempts this system from notice, access, and amendment requirements of 5 U.S.C. 552a, subsections (c) (3), (d); (e) (1); (e) (4); (G); (H); (I); and (f). USAID claims these exemptions to protect the materials required by Executive Order to be kept secret in the interest of national defense or foreign policy, to prevent subjects of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law-enforcement activities, to prevent the disclosure of investigative techniques, to maintain the ability to obtain candid and necessary information, to fulfill commitments made to sources to protect the confidentiality of information, to avoid endangering these sources, and to facilitate the proper selection or continuance of the best applicants or persons for a given position.

HISTORY:

USAID modified the Personnel Security and Suitability Investigations Records system of records on April 17, 2008 (75 FR 20905).

USAID modified the Personnel Security and Suitability Investigations Records system of records on May 1, 2013 (78 FR 25414).

Celida Ann Malone.

Government Privacy Task Lead.

[FR Doc. 2022–10089 Filed 5–10–22; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act of 1974; System of Records

AGENCY: Agency for International for Development (USAID).

ACTION: Notice of modified Privacy Act system of records.

SUMMARY: The United States Agency for International Development (USAID) proposes to modify an existing Agency-wide system of records entitled, Litigation Records. This system of records contains records used to assist attorneys and legal staff in providing legal advice to the agency on a wide variety of legal issues. This modification includes updates to the following sections: '' System Location'', ''System Manager'', ''Categories of Records in the System'' to include what PII is collected, ''Routine Uses of Records Maintained in the System'', ''Policies and Practices for Retention and Disposal of Records'' adding the approved NARA disposition schedule, and ''Administrative, Technical, and Physical Safeguards''.

DATES: Submit comments on or before 10 June 2022. This modified system of records will be effective 10 June 2022 upon publication. The Routine Uses are effective at the close of the comment period.

ADDRESSES: You may submit comments:

Electronic

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions on the website for submitting comments.
- *Email: Privacy@usaid.gov*

Paper

- *Fax:* 202–916–4946.
- *Mail:* Chief Privacy Officer, United States Agency for International Development, 1300 Pennsylvania Avenue NW, Washington, DC 20523.

FOR FURTHER INFORMATION CONTACT: Ms. Celida A. Malone, USAID Privacy Program at United States Agency for International Development, Bureau for Management, Office of the Chief Information Officer, Information Assurance Division: ATTN: USAID Privacy Program, 1300 Pennsylvania Avenue NW, Washington, DC 20523, or by phone number at 202–916–4605.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended, USAID is publishing notice of proposed updates and reissuance of its system of records titled ''USAID 26- Litigation Records,'' last published in full in the **Federal Register** on 02/06/2014 (42 FR 47386). USAID proposes to modify this system of records with the revisions to the following sections: The purposes for maintaining the system; the system's storage location/environment; the system location; and routine uses, including new routine uses pursuant to new requirements announced by OMB on January 3, 2017, in its memorandum M–17–12, Preparing for and Responding to a Breach of Personally Identifiable Information.

SYSTEM NAME AND NUMBER:

USAID–26, Litigation Records

SECURITY CLASSIFICATION:

Unclassified

SYSTEM LOCATION:

1300 Pennsylvania Avenue NW, Washington, DC 20523.

SYSTEM MANAGER:

Office of General Counsel, United States Agency for International Development, Ronald Reagan Building, 1300 Pennsylvania Avenue NW, Washington, DC 20523. Email: *gcams@usaid.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Foreign Assistance Act of 1961, as amended; Foreign Service Act of 1946, as amended; Federal Tort Claims Act; Federal Claims Collection Act, 31 U.S.C. 951–953; The Federal Records Act, 44 U.S.C. 3101; False Claims Act; Age Discrimination in Employment Act, the Equal Pay Act, section 321 of the Government Employees Rights Act of 1991; 5 U.S.C. 1204; 5 U.S.C. 7301, 7351, 7353; 5 U.S.C. App. (Ethics in Government Act of 1978); 31 U.S.C. 1353; E.O. 12674 (as modified by E.O. 12731); Federal Service Labor Management Relations Statute; Title VII of the Civil Rights Act of 1964; Freedom of Information Act; and other legislation as may be implicated in the course of attorneys' legal work representing USAID, including litigation.

PURPOSE OF THE SYSTEM:

The purpose of this system is to assist USAID's Office of General Counsel staff in providing legal advice to USAID personnel on a wide variety of legal issues; to collect the information of any individual who is, or will be, in litigation with USAID, as well as the attorneys representing them; to collect information in response to allegations filed by employees, former employees, and other individuals as needed; to advise on legal issues; to assist in the settlement of claims against the government; to maintain information collected and/or generated to represent USAID in administrative or federal proceedings and any other type of litigation or advisory work. This includes litigation or proceedings against or involving USAID, and includes preparing for reasonably anticipated litigation/proceedings, or responding to requests for USAID employee testimony or records. USAID uses the records contained within USAID 26—Litigation Records to document how USAID handles each matter; provide a resource for

consistency in interpretation and application of the law; and allow for statistical reports and analysis of matters processed by the Office of General Counsel.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are or who USAID reasonably anticipates may be involved in civil and criminal litigation, or administrative proceedings, that involve USAID, its employees/contractors/workforce (to include foreign service officers), the United States, or USAID records, including but not limited to USAID employees, attorneys, witnesses, plaintiffs, defendants, or third parties involved in such litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains information collected or generated in response to, or in anticipation of, civil and criminal litigation, or administrative proceedings, which may include: Names of individuals involved; names of witnesses; Social Security number (SSN), if applicable; contact information; information pertaining to the subject matter of litigation, complaints, answers, motions, briefs, orders, decisions, correspondence, exhibits, discovery, legal research, hearing and deposition transcripts, investigation reports; claims and records regarding discrimination, including employment and sex discrimination, including reasonable and/or religious accommodation issues; claims and records regarding the Rehabilitation Act; personnel matters; claims and records communications with the Department of Justice (DOJ), medical records, such as evaluations by physicians in cases where personal injury or alleged disabling conditions are involved; records relating to requests for USAID records other than requests under the Freedom of Information Act and the Privacy Act of 1974; testimonies of USAID employees in federal, state, local, or administrative criminal or civil litigation; documentary evidence; supporting documents including the legal and programmatic issues of the case, correspondence, legal opinions and memoranda and related records; State Bar grievance/discipline proceedings records; security Clearance Information; any type of legal document, including but not limited to complaints, summaries, affidavits, litigation reports, motions, subpoenas, and any other court filing or administrative filing or evidence; employee and former employee ethics question forms and responses; and court transcripts.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from existing USAID records; legal pleadings, discovery, and other records exchanged between parties and their attorneys in litigation and pre-litigation; courts; State and local governments; other Federal agencies; and other individuals and entities with information relevant to cases involving USAID, its employees, the United States, or USAID records.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

We will disclose records pursuant to the following routine uses, however, we will not disclose any information defined as ''return or return information'' under 26 U.S.C. 6103 of the Internal Revenue Service Code, unless authorized by statute, the Internal Revenue Service (IRS), or IRS regulations. In addition to those disclosures generally permitted under 5 U.S.C. 552a(b), relevant records or information in this system may be disclosed without consent as follows:

(a) To a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information if necessary to obtain information relevant to an Agency decision concerning the hiring or retention of an employee; the issuance of a security clearance; the reporting of an investigation of an employee; the assignment, detail, or deployment of an employee; the letting of a contract; or the approval of a grant or other benefits.

(b) To appropriate State or local authorities to report, where required under State law, incidents of suspected child, elder, or domestic abuse or neglect.

(c) To the Department of State and its posts abroad for the purpose of transmission of information between organizational units of the Agency, or for purposes related to the responsibilities of the Department of State in conducting United States foreign policy or protecting United States citizens, such as the assignment of employees to positions abroad, the reporting of accidents abroad, evacuation of employees and dependents, and other purposes for which officers and employees of the Department of State have a need for the records in the performance of their duties.

(d) To the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A–19, *www.whitehouse.gov/wp-content/uploads/2017/11/Circular-019.pdf* at any stage of the legislative coordination and clearance process as set forth in that Circular.

(e) To the Internal Revenue Service (a) to obtain mailing addresses of debtors in order to collect a Federal debt; and (b) to offset a Federal debt against the debtor's income tax refund.

(f) To contractors and their agents, grantees, experts, consultants, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for USAID, when necessary to accomplish an agency function related to this system of records. Individuals provided information under this routine use are subject to the same Privacy Act requirements and limitations on disclosure as are applicable to USAID officers and employees.

(g) To a Federal, state or local agency, professional licensing authority, or other appropriate entities as required to ensure the professional responsibility requirements are met by USAID employees.

(h) To a court, magistrate, or other administrative body in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal or administrative proceedings, when the USAID is a party to the proceeding or has a significant interest in the proceeding, to the extent that the information is determined to be relevant and necessary.

(i) To appropriate agencies, entities, and persons when: (1) USAID suspects or has confirmed that there has been a breach of the system of records; (2) USAID has determined that as a result of the suspected or confirmed breach, there is a risk of harm to individuals (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 USAID's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

(j) To another federal agency or federal entity, when USAID determines that the information from the 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, that might result from a suspected or confirmed breach.

(k) To the National Archives and Records Administration (NARA), for the purposes of records-management inspections conducted under the authority of Sections 2904 and 2906 of Title 44 of the U.S.C. and in its role as Archivist.

(l) To a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of the individual to whom the record pertains.

(m) To an agency, organization, or individual for the purpose of performing audit or oversight operations as authorized by law, but only such information as is necessary and relevant to such audit or oversight function.

(n) To international and foreign governmental entities in accordance with law and formal or informal international agreement.

(o) To third parties during the course of an administrative, civil or criminal investigation to the extent necessary to obtain information pertinent to the investigation, provided disclosure is appropriate to the proper performance of the official duties of the officer making the disclosure.

(p) To unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114, the Merit Systems Protection Board, arbitrators, the Federal Labor Relations Authority, and other parties responsible for the administration of the Federal labor-management program for the purpose of processing any corrective actions, or grievances, or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties.

(q) To a former employee of USAID, in accordance with applicable regulations, for purposes of responding to an official inquiry by a federal, state, or local government entity or professional licensing authority; or facilitating communications with a former employee that may be necessary for personnel—related or other official purposes where the agency requires information or consultation assistances from the former employee regarding a matter within that person's former area of responsibility.

(r) To the DOJ, United States Attorney's Office, or other federal agencies for further collection action on any delinquent debt when circumstances warrant, as well as to a debt collection agency for the purpose of debt collection.

(s) To third parties about individuals who are their employees, job applicants, contractors, or any other individual who is issued credentials or granted clearances by the third party to secured areas when relevant to such employment, application, contract, or issuance of the credential or clearance.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

USAID stores records in this system in electronic format and paper format. Records in paper format are stored in file folders in locked cabinets. Records in electronic format are kept in a user-authenticated and password-protected computerized database system.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

USAID indexes and retrieves records by the case name, party names, case number, or names of individuals reasonably anticipated to be involved in litigation.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

USAID follows NARA-approved records retention schedule. Periods of retention vary depending on the type of litigation record. See *http://www.archives.gov/records-mgmt/rcs/schedules/independent-agencies/rg-0047/n1-047-10-004_sf115.pdf.* The Office of the General Counsel reserves the right to retain for an indefinite period certain records that, in the judgment of that office, are of precedential value.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

USAID maintains electronic and paper files with personal identifiers in secure storage areas. Access to USAID buildings where records are located is restricted by 24-hour electronic identification.

For Paper Records: USAID secures records in lockable metal filing cabinets within a locked room when not in use. Access to these records are strictly limited to authorized USAID personnel. Only the case number appears on the file label. The file is cross-referenced with a separately secured list with a corresponding name and case number.

For Electronic Records: USAID personnel store and password-protect electronic records in a user-authenticated, USAID-issued computer and/or a USAID-approved, computerized database system. These records are maintained separately from other systems of records. Access to these electronic records is strictly limited to authorized USAID personnel.

All persons having access to these records shall be trained in the proper handling of records covered by the Privacy Act. Secondary disclosure of released information is prohibited without client consent.

RECORD ACCESS PROCEDURES:

Under the Privacy Act, individuals may request access to records about themselves. These individuals must be limited to citizens of the United States or aliens lawfully admitted for permanent residence. If a Federal Department or Agency or a person who is not the individual who is the subject of the records, requests access to records about an individual, the written consent of the individual who is the subject of the records is required.

Individuals seeking access to information about themselves contained in this system of records should address inquiries to the Bureau for Management, Office of Management Services, Information and Records Division (M/MS/IRD), USAID Annex—Room 2. 4. 0C, 1300 Pennsylvania Avenue NW, Washington, DC 20523. The requester may complete and sign a USAID Form 507–1, Certification of Identity Form or submit signed, written requests that should include the individual's full name, current address, telephone number and this System of Records Notice number. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).''

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).''

CONTESTING RECORD PROCEDURES:

See above, Record Access Procedures.

NOTIFICATION PROCEDURES:

See above, Record Access Procedures.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

USAID has claimed exemptions for several of its other systems of records under 5 U.S.C. 552a(j)(2) and (k). Additional exemptions are delineated in 22 CFR 215. 13 and 215. 14. During the processing of FOIA and Privacy Act requests and administrative appeals, exempt records from these other systems of records may become part of

the case record in this system of records. To the extent that exempt records from other USAID systems of records are entered or become part of this system, USAID has claimed the same exemptions. In addition, any such records compiled in this system of records from any other system of records continues to be subject to any exemption(s) applicable for the records as they have in the primary systems of records of which they are a part.

HISTORY:

USAID established USAID–26: Litigation Records as a new system of records on November 3, 1975, and published a modification on January 10, 2014 (42 FR 47386).

Celida Ann Malone,

Government Privacy Task Lead.

[FR Doc. 2022–10090 Filed 5–10–22; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, U.S. Department of Commerce.

ACTION: Notice and opportunity for public comment.

SUMMARY: The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

SUPPLEMENTARY INFORMATION:

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/15/2022 through 5/2/2022]

Firm name	Firm address	Date accepted for investigation	Product(s)
Catamount Machine Works, LLC	2804 Sydney Road, Plant City, FL 33566.	4/20/2022	The firm manufactures miscellaneous metal parts.
United Precision Products Co., Inc	25040 Van Born Road, Dearborn Heights, MI 48125.	4/28/2022	The firm manufactures aircraft engine parts.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Bryan Borlik,

Director.

[FR Doc. 2022–10039 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

Renewable Energy and Energy Efficiency Advisory Committee

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Renewable Energy and Energy Efficiency Advisory Committee (REEEAC or the Committee) will hold a hybrid meeting, accessible in-person and online, on Tuesday May 24, 2022, hosted by the U.S. Department of Commerce at the National Electrical Manufacturers Association office in Arlington, VA. The meeting is open to the public with registration instructions provided below. The meeting has a limited number of spaces for members of the public to attend in-person. Requests to attend in-person will be considered on a first-come first-served basis.

DATES: May 24, 2022, from 10:00 a.m. to 4:00 p.m. Eastern Standard Time (EST). Members of the public wishing to participate virtually or in-person must register in advance with the REEEAC Designated Federal Officer (DFO) Cora Dickson at the contact information below by 5:00 p.m. EST on Wednesday, May 18, 2022, in order to pre-register, including any requests to make comments during the meeting or for accommodations or auxiliary aids. Members of the public wishing to attend in-person must request in-person attendance in their registration by the firm deadline above.

ADDRESSES: To register, please contact Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.* Registered participants joining virtually will be emailed the login information for the meeting, which will be accessible via WebEx. Registered participants joining in-person will be emailed instructions on accessing the designated meeting space.

FOR FURTHER INFORMATION CONTACT: Cora Dickson, REEEAC DFO, Office of Energy and Environmental Industries (OEEI), Industry and Analysis, International Trade Administration, U.S. Department of Commerce at (202) 482–6083; email: *Cora.Dickson@trade.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Commerce established the REEEAC pursuant to discretionary authority and in accordance with the Federal Advisory Committee Act, as amended (5

U.S.C. App.), on July 14, 2010. The REEEAC was re-chartered most recently on June 5, 2020. The REEEAC provides the Secretary of Commerce with advice from the private sector on the development and administration of programs and policies to expand the export competitiveness of U.S. renewable energy and energy efficiency products and services. More information about the Committee, including the list of appointed members for this charter, is published online at *http://trade.gov/reeeac.*

On May 24, 2022, the REEEAC will hold the ninth meeting of its current charter term. The Committee, with officials from the Department of Commerce and other agencies, will discuss major issues affecting the competitiveness of the U.S. renewable energy and energy efficiency industries, covering four broad themes: Trade promotion and market access, global decarbonization, clean energy supply chains, and technology and innovation. The Committee will provide an overview of its recommendations to the relevant U.S. Government officials from the Trade Promotion Coordinating Committee agencies. To receive an agenda please make a request to REEEAC DFO Cora Dickson per above. The agenda will be made available no later than May 18, 2022.

The Committee meeting will be open to the public and will be accessible to people with disabilities. All guests are required to register in advance by the deadline identified under the **DATE** caption. Requests for auxiliary aids must be submitted by the registration deadline. Last minute requests will be accepted but may not be possible to fill.

A limited amount of time before the close of the meeting will be available for oral comments from members of the public attending the meeting. To accommodate as many speakers as possible, the time for public comments will be limited to two to five minutes per person (depending on number of public participants). Individuals wishing to reserve speaking time during the meeting must contact REEEAC DFO Cora Dickson using the contact information above and submit a brief statement of the general nature of the comments, as well as the name and address of the proposed participant, by 5:00 p.m. EST on Wednesday May 18, 2022. If the number of registrants requesting to make statements is greater than can be reasonably accommodated during the meeting, the International Trade Administration may conduct a lottery to determine the speakers. Speakers are requested to submit a copy of their oral comments by email to Cora Dickson for distribution to the participants in advance of the meeting.

Any member of the public may submit written comments concerning the REEEAC's affairs at any time before or after the meeting. Comments may be submitted via email to the Renewable Energy and Energy Efficiency Advisory Committee, c/o: Cora Dickson, DFO, Office of Energy and Environmental Industries, U.S. Department of Commerce; *Cora.Dickson@trade.gov.* To be considered during the meeting, public comments must be transmitted to the REEEAC prior to the meeting. As such, written comments must be received no later than 5:00 p.m. EST on Wednesday May 18, 2022. Comments received after that date will be distributed to the members but may not be considered at the meeting.

Copies of REEEAC meeting minutes will be available within 30 days following the meeting.

Dated: May 6, 2022.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2022–10086 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–824]

Oil Country Tubular Goods From Argentina: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that oil country tubular goods (OCTG) from Argentina are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Dmitry Vladimirov, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0665.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on November 1, 2021.[1] On February 17, 2022, Commerce postponed the preliminary determination of this investigation until May 4, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of sections in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are OCTG from Argentina. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, *see* the Preliminary

[1] *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 60205 (November 1, 2021) (*Initiation Notice*).

[2] *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 9034 (February 17, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Affirmative Determinations of Sales at less Than Fair Value and Critical Circumstances in Investigation of Oil Country Tubular Goods from Argentina,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 86 FR at 60205–60206.

Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily modified the scope language that appeared in the *Initiation Notice.*

In the Preliminary Scope Decision Memorandum Commerce established the deadline for parties to submit scope case briefs.[7] Commerce did not receive any comments from interested parties regarding the scope as stated in the Preliminary Scope Decision Memorandum prior to the deadline. As explained in the Preliminary Scope Decision Memorandum, there will be no further opportunity for comments on scope-related issues.[8]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated constructed export prices in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. The rate shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated weighted-average dumping margin above *de minimis* for the sole mandatory respondent, Siderca S.A.I.C. (Siderca). Because Siderca is the sole mandatory respondent for which Commerce calculated a weighted-average dumping margin, Commerce assigned Siderca's preliminary margin to all other producers and exporters of the merchandise under consideration.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances exist for all companies in Argentina. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist in this investigation:

Exporter or producer	Estimated weighted-average dumping margin (percent)
Siderca S.A.I.C	76.43
All Others	76.43

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of OCTG from Argentina, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed in the table above is the company-specific estimated weighted-average dumping margin calculated in this preliminary determination; (2) if the exporter is not the respondent identified in the table above, but the producer is, then the cash deposit rate is the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise in the table above; and (3) the cash deposit rate for all other producers and exporters is the ''All-Others'' estimated weighted-average dumping margin listed in the table above.

Further, section 733(e)(2) of the Act provides that, in the event of an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce preliminarily finds that critical circumstances exist for imports of OCTG from Argentina produced and exported by all companies. In accordance with 733(e)(2)(A), suspension of liquidation shall apply to unliquidated entries of subject merchandise for shipments that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its preliminary calculations and related analysis to interested parties within five days of any public announcement of the preliminary determination or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.[9]

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[10] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues

[6] *See* Memorandum, ''Antidumping Duty Investigations of Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation and Countervailing Duty Investigations of Oil Country Tubular Goods from the Republic of Korea, and the Russian Federation: Preliminary Scope Decision Memorandum,'' dated March 7, 2022 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and ''Public Comment'' section of this notice.

[8] *See* Preliminary Scope Decision Memorandum at 4.

[9] *See* Commerce's Letter, ''Antidumping Duty Investigation of Oil Country Tubular Goods from Argentina: Notification of Intent to Conduct Virtual Verification,'' dated March 16, 2022.

[10] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline expired on April 13, 2022. *See* Preliminary Scope Decision Memorandum at 3–4; *see also Oil Country Tubular Goods from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 87 FR 14248 (March 14, 2022); and *Oil Country Tubular Goods from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 87 FR 14249 (March 14, 2022).

raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[11] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[12]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) The requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing, including whether any individuals are foreign nationals; and (3) a list of the issues the party intends to discuss at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 19 CFR 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 27, 2022, pursuant to 19 CFR 351.210(b) and (e), Siderca requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination in this investigation up to 135 days after publication of this notice and that the provisional measures be extended to a period not to exceed six months.[13]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because (1) the preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise;[14] and (3) no compelling reasons for denial exist, Commerce is postponing the final determination in this investigation and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[15]

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of OCTG from Argentina into the United States are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: May 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of this investigation also covers OCTG coupling stock.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG.

Excluded from the scope of the investigation are: casing, tubing, or coupling stock containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to this investigation may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

The HTSUS subheadings and specifications above are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II—List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of Investigation

[11] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[12] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[13] *See* Siderca's Letter, ''Oil Country Tubular Goods from Argentina: Request for Postponement of Final Determination and Extension of Provisional Measures Period,'' dated April 27, 2022.

[14] *See* Memorandum, ''Antidumping Duty Investigation of Oil Country Tubular Goods from Argentina: Respondent Selection,'' dated November 10, 2021.

[15] *See also* 19 CFR 351.210(e).

V. Discussion of the Methodology
VI. Preliminary Affirmative Determination of Critical Circumstances
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2022–10049 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–833]

Oil Country Tubular Goods From the Russian Federation: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Preliminary Negative Critical Circumstances Determination, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that oil country tubular goods (OCTG) from the Russian Federation (Russia) are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable May 11, 2022.

FOR FURTHER INFORMATION CONTACT: George McMahon or Mike Heaney, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1167 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on November 1, 2021.[1] On February 17, 2022, Commerce postponed the preliminary determination of this investigation until May 4, 2022.[2]

For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of sections in the Preliminary Decision Memorandum is included in Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are OCTG from Russia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation, and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily modified the scope language as it appeared in the *Initiation Notice.*

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case briefs.[7] Commerce did not receive any comments from interested parties regarding the scope as stated in the Preliminary Scope Decision Memorandum prior to the deadline. As explained in the Preliminary Scope Decision Memorandum, there will be no further opportunity for comments on scope-related issues.[8]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated export prices in accordance with section 772(a) of the Act and constructed export prices in accordance with section 772(b) of the Act. Normal value (NV) is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* dumping margins, and any dumping margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated estimated weighted-average dumping margins that are above *de minimis* for the mandatory respondents, JSC Vyksa Steel Works (VSW) and Volzhsky Pipe Plant, Joint Stock Company (VTZ). Commerce calculated the all-others rate by weight-averaging the estimated weighted-average dumping margins that it calculated for the individually examined respondents. Commerce weight-averaged these dumping margins using the publicly ranged total quantities of each respondent's sales of subject merchandise to the United States during the POI.[9]

[1] *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 60205 (November 1, 2021) (*Initiation Notice*).

[2] *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 9034 (February 17, 2022).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Determination in the Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from the Russian Federation,'' dated concurrently with, and hereby adopted by this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 86 FR at 60205–60206.

[6] *See* Memorandum, ''Antidumping Duty Investigations of Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation and Countervailing Duty Investigations of Oil Country Tubular Goods from the Republic of Korea, and the Russian Federation: Preliminary Scope Decision Memorandum,'' dated March 7, 2022 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted by in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum, and ''Public Comment'' section of this notice.

[8] *See* Preliminary Scope Decision Memorandum at 4.

[9] With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents; (B) a simple average of the estimated weighted-average dumping margins calculated for the examined respondents; and (C) a weighted-average of the estimated weighted-average dumping margins calculated for the examined respondents using each company's publicly ranged U.S. sale quantities for

Preliminary Negative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily determines that critical circumstances do not exist for all companies in Russia.[10] For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist in this investigation:

Exporter/producer	Estimated weighted-average dumping margin (percent)	Cash deposit rate (adjusted for subsidy offset(s)) (percent) [11]
JSC Vyksa Steel Works	11.82	11.35
Volzhsky Pipe Plant, Joint Stock Company/Public Joint-Stock Company Trubnaya Metallurgicheskaya Kompaniya/Sinarsky Pipe Plant, Joint Stock Company/Seversky Pipe Plant, Joint Stock Company/Taganrog Metallurgical Plant, Joint Stock Company/Pervouralsk Pipe Plant, Joint Stock Company/Chelyabinsk Pipe Plant, Joint Stock Company/Orsky Machine Building Plant, Joint Stock Company	121.11	121.11
All Others	70.49	70.27

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of OCTG from Russia, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for each of the respondents listed in the table above is the company-specific cash deposit rate listed for the respondent in the table; (2) if the exporter is not a respondent listed in the table above, but the producer is, then the cash deposit rate is the company-specific cash deposit rate listed for the producer of the subject merchandise in the table above; and (3) the cash deposit rate for all other producers and exporters is the all-others cash deposit rate listed in the table above.

Commerce normally adjusts cash deposits for estimated antidumping duties by the amount of export subsidies countervailed in a companion countervailing duty (CVD) investigation when CVD provisional measures are in effect. Accordingly, where Commerce made a preliminary affirmative determination of countervailable export subsidies in the companion CVD investigation, we offset the estimated weighted-average dumping margins listed in the table above by the appropriate CVD rates to determine the cash deposit rates. Any such adjusted cash deposit rate may be found in the table in the ''Preliminary Determination'' section above.

Should provisional measures in the companion CVD investigation expire prior to the expiration of provisional measures in this LTFV investigation, Commerce will direct CBP to begin collecting estimated antidumping duty cash deposits unadjusted for countervailed export subsidies at the time that the provisional CVD measures expired. These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its preliminary calculations and related analysis to interested parties in this preliminary determination within five days of any public announcement of the preliminary determination or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register** in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.[12]

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[13] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[14] Pursuant to 19 CFR 351.309(c)(2) and (d)(2),

the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closer to (A) as the most appropriate rate for all other producers and exporters. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010). As complete publicly ranged sales data were available, Commerce based the all-others rate on the publicly ranged sales data of the mandatory respondents. For a complete analysis of the data, please *see* the All-Others Rate Calculation Memorandum.

[10] *See* Petitioners' Letter, ''Oil Country Tubular Goods from Russia: Allegation of the Existence of Critical Circumstances,'' dated March 16, 2022.

[11] *See* Memoranda, ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from the Russian Federation: Preliminary Determination Analysis Memorandum for JSC Vyksa Steel Works,'' and ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from the Russian Federation: Preliminary Determination Analysis Memorandum for Volzhsky Pipe Plant,'' dated concurrently with this memorandum; and Memorandum, ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from the Russian Federation: Preliminary Determination Calculation for the All-Others,'' dated concurrently with this memorandum (All-Others Rate Calculation Memorandum).

[12] *See* Commerce's Letter to OMK/VSW, ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from Russia: Notification of Intent to Conduct Virtual Verification,'' dated March 16, 2022; *see also* Commerce's Letter to TMK/VTZ, ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from Russia: Notification of Intent to Conduct Virtual Verification,'' dated March 16, 2022.

[13] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline expired on April 13, 2022. *See* Preliminary Scope Decision Memorandum at 3–4; *see also Oil Country Tubular Goods from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 87 FR 14248 (March 14, 2022), and *Oil Country Tubular Goods from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 87 FR 14249 (March 14, 2022).

[14] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[15]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) The requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing, including whether any individuals are foreign nationals; and (3) a list of the issues the party intends to discuss at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 14, 2022, pursuant to 19 CFR 351.210(e), VSW and VTZ requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination in this investigation up to 135 days after publication of this notice and that provisional measures be extended to a period not to exceed six months.[16]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporters account for a significant proportion of exports of the subject merchandise;[17] and (3) no compelling reasons for denial exist, Commerce is postponing the final determination and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination no later than 135 days after the date of publication of this preliminary determination in the **Federal Register**, pursuant to section 735(a)(2) of the Act.[18]

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of OCTG from Russia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: May 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of this investigation also covers OCTG coupling stock.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG.

Excluded from the scope of the investigation are: Casing, tubing, or coupling stock containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to this investigation may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

The HTSUS subheadings and specifications above are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Affiliation/Single Entity
VI. Discussion of the Methodology
VII. Preliminary Negative Determination of

[15] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[16] *See* VSW's Letter, ''Oil Country Tubular Goods from the Russian Federation: Request to Extend the Deadline for the Final Determination and Provisional Measures,'' dated April 14, 2022; *see also* VTZ's Letter, ''Antidumping Investigation of Oil Country Tubular Goods from Russia—Request for Extension of Final Determination,'' dated April 14, 2022.

[17] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from Russia: Respondent Selection,'' dated November 17, 2021.

[18] *See also* 19 CFR 351.210(e).

Critical Circumstances
VIII. Currency Conversion
IX. Adjustments to Cash Deposit Rates for Export Subsidies in Companion CVD Investigation
X. Recommendation

[FR Doc. 2022–10051 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–844]

Emulsion Styrene-Butadiene Rubber From Italy: Termination of Less-Than-Fair-Value Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a withdrawal of the antidumping duty petition on emulsion styrene-butadiene rubber (ESBR) from Italy by Lion Elastomers LLC (the petitioner), we are terminating this less-than-fair-value (LTFV) investigation.

DATES: Applicable May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Zachary Le Vene, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0056.

SUPPLEMENTARY INFORMATION:

Background

On November 12, 2021, Commerce received a petition concerning imports of ESBR from Italy, filed in proper form by the petitioner.[1] Commerce published the notice of initiation of this investigation on December 10, 2021.[2] On April 29, 2022, Commerce published its preliminary determination in the LTFV investigation of ESBR from Italy.[3] On May 2, 2022, the petitioner submitted a letter withdrawing the Petition with respect to Italy.[4]

Section 351.207(b)(1) of Commerce's regulations stipulates that the Secretary may terminate an investigation, provided it has concluded that termination of the investigation is in the public interest. Because the petitioner has withdrawn its Petition with respect to Italy, Commerce has concluded that termination is in the public interest, pursuant to 19 CFR 351.207(b)(1). Accordingly, pursuant to section 734(a)(1)(A) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.207(b)(1), and based on the petitioner's letter withdrawing the Petition, we are terminating this LTFV investigation.

Termination of the Investigation

In accordance with section 734(a)(1)(A) of the Act and 19 CFR 351.207(b)(1), upon the petitioner's withdrawal of the Petition, we are terminating the LTFV investigation of ESBR from Italy.

Suspension of Liquidation

In the *Preliminary Determination,* Commerce determined weighted-average dumping margins for exporters of ESBR from Italy that were above *de minimis.* Because Commerce is terminating this LTFV investigation, we will instruct U.S. Customs and Border Protection to terminate suspension of liquidation and refund any cash deposits of estimated antidumping duties for entries of ESBR form Italy.

Dated: May 5, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10121 Filed 5–10–22; 8:45 am]

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[1] *See* Petitioner's Letter, ''Petition (Vol. I–IV) for the Imposition of Antidumping Duties on Imports of Emulsion Styrene-Butadiene Rubber from Czech Republic, Italy, and Russia,'' dated November 12, 2021 (Petition).

[2] *See Emulsion Styrene-Butadiene Rubber from the Czech Republic, Italy, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 70447 (December 10, 2021).

[3] *See Emulsion Styrene-Butadiene Rubber from Italy: Preliminary Affirmative Determination of Sales at Less Than Fair Value,* 87 FR 25447 (April 29, 2022) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[4] *See* Petitioner's Letter, ''Emulsion Styrene-Butadiene Rubber from Italy: Petitioner's Withdrawal of Antidumping Duty Petition Alleging Sales of ESBR from Italy at LTFV (Vol. III),'' dated May 2, 2022.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–859]

Steel Concrete Reinforcing Bar From Taiwan: Notice of Court Decision Not in Harmony With the Results of Antidumping Duty Administrative Review; Notice of Amended Final Results

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 28, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Power Steel Co., Ltd.* v. *United States,* Court no. 20–03771, sustaining the Department of Commerce (Commerce)'s first remand results pertaining to the administrative review of the antidumping duty (AD) order on steel concrete reinforced bar (rebar) from Taiwan covering the period March 7, 2017, through September 30, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results with respect to the dumping margin assigned to Power Steel Co., Ltd. (Power Steel).

DATES: Applicable May 8, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Saude, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0981.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 2020, Commerce published its final results in the 2017–2018 AD administrative review of rebar from Taiwan.[1] In the *Final Results,* Commerce deducted section 232 duties from export price for all of Power Steel's transactions because Commerce found that the documents Power Steel submitted did not support its claim that section 232 duties were not included in U.S. price for certain transactions.[2] Commerce calculated a weighted-average dumping margin of 3.27 percent.[3]

Power Steel appealed Commerce's *Final Results.* On December 23, 2021, the CIT sustained, in part, and remanded, in part, aspects of the *Final Results.*[4] The CIT sustained Commerce's interpretation that section 232 duties are ''United States import duties'' that are deducted from export price under section 772(c)(2)(A) of the Tariff Act of 1930, as amended (the Act). The CIT remanded Commerce's determination that Power Steel paid section 232 duties for all its U.S. sales.[5] The CIT found the evidence Power Steel submitted during the administrative review ''appears to be ambiguous if considered in a vacuum'' and further found that certain information Power Steel submitted to the CIT, some of which was not previously on Commerce's record, ''may show that Power Steel did not pay the

[1] *See Steel Concrete Reinforcing Bar from Taiwan: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 63505 (October 8, 2020) (*Final Results*).

[2] *Id.*

[3] *Id.*

[4] *See Power Steel Co., Ltd.* v. *United States,* Court No. 20–03771, Slip. Op. 21–173 (CIT December 23, 2021).

[5] *Id.* at 6–7.

{s}ection 232 duties for the disputed transactions and that therefore they were not part of the sales price used to establish base {export price}.'' [6]

In its final remand redetermination, issued on April 8, 2022, Commerce found that the record supported Power Steel's claim that it did not pay section 232 duties on two of its U.S. sales, and thus, that section 232 duties were not included in the gross unit price that was used as the basis for export price. Commerce recalculated the weighted-average dumping margin for Power Steel, which changed from 3.27 percent in the *Final Results* to 0.01 percent.[7] Thus, Commerce found that Power Steel did not make sales at less than normal value during the period of review. The CIT sustained Commerce's final redetermination.[8]

Timken Notice

In its decision in *Timken,*[9] as clarified by *Diamond Sawblades,*[10] the Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Act, Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 28, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Power Steel as follows:

Company	Final results (percent)	Final results of remand redetermination (percent)
Power Steel Co., Ltd	3.27	* 0.01

* (*de minimis*).

Cash Deposit Requirements

Commerce will issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP).

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: Were produced and/or exported by Power Steel, and were entered, or withdrawn from warehouse, for consumption during the period March 7, 2017, through September 30, 2018, excluding the period September 3, 2017, through September 14, 2017. These entries will remain enjoined pursuant to the terms of the injunction during the pendency of any appeals process.

In the event the CIT's ruling is not appealed, or, if appealed, upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise produced and/or exported by Power Steel in accordance with 19 CFR 351.212(b). We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.*[11] Where an import-specific *ad valorem* assessment rate is zero or *de minimis,*[12] we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: May 5, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–10077 Filed 5–10–22; 8:45 am]

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[6] *Id.* at 10–11.

[7] *See* Final Results of Remand Redetermination, *Power Steel Co., Ltd.* v. *United States,* Court No. 20–03771, Slip. Op. 21–173, dated April 8, 2022, (Final Results of Remand Redetermination).

[8] *See Power Steel Co., Ltd.* v. *United States,* Court No. 20–3771, Slip. Op. 22–39 (CIT April 28, 2022).

[9] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[10] See *Diamond Sawblades Manufacturers Coalition* v. United States, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[11] *See* 19 CFR 351.106(c)(2).

[12] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–856]

Oil Country Tubular Goods From Mexico: Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances, Postponement of Final Determination, and Extension of Provisional Measures

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that oil country tubular goods (OCTG) from Mexico are being, or are likely to be, sold in the United States at less than fair value (LTFV). The period of investigation (POI) is October 1, 2020, through September 30, 2021. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Emily Bradshaw or Yang Jin Chun, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3896 or (202) 482–5760, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 733(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this LTFV investigation on November 1, 2021.[1] On February 17, 2022, Commerce postponed the preliminary determination of this investigation until May 4, 2022.[2] For a complete description of the events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of sections in the Preliminary Decision Memorandum is

[1] *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Initiation of Less-Than-Fair-Value Investigations,* 86 FR 60205 (November 1, 2021) (*Initiation Notice*).

[2] *See Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation: Postponement of Preliminary Determinations in the Less-Than-Fair-Value Investigations,* 87 FR 9034 (February 17, 2022).

[3] *See* Memorandum, ''Oil Country Tubular Goods from Mexico: Decision Memorandum for Preliminary Affirmative Determinations of Sales at Less Than Fair Value and Critical Circumstances,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Investigation

The products covered by this investigation are OCTG from Mexico. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] in the *Initiation Notice,* Commerce set aside a period of time for parties to raise issues regarding product coverage (*i.e.,* scope).[5] Certain interested parties commented on the scope of the investigation as it appeared in the *Initiation Notice.* For a summary of the product coverage comments and rebuttal responses submitted to the record for this investigation and accompanying discussion and analysis of all comments timely received, *see* the Preliminary Scope Decision Memorandum.[6] As discussed in the Preliminary Scope Decision Memorandum, Commerce preliminarily modified the scope language that appeared in the *Initiation Notice.*

In the Preliminary Scope Decision Memorandum, Commerce established the deadline for parties to submit scope case briefs.[7] Commerce did not receive any comments from interested parties regarding the scope as stated in the Preliminary Scope Decision Memorandum prior to the deadline. As explained in the Preliminary Scope Decision Memorandum, there will be no further opportunity for comments on scope-related issues.[8]

Methodology

Commerce is conducting this investigation in accordance with section 731 of the Act. Commerce calculated constructed export prices in accordance with section 772(b) of the Act. Commerce calculated normal value in accordance with section 773 of the Act. For a full description of the methodology underlying the preliminary determination, *see* the Preliminary Decision Memorandum.

All-Others Rate

Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act provide that in the preliminary determination, Commerce shall determine an estimated all-others rate for all exporters and producers not individually examined. This rate shall be equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* dumping margins, and any dumping margins determined entirely under section 776 of the Act.

In this investigation, Commerce calculated an estimated weighted-average dumping margin above *de minimis* for the sole mandatory respondent, Tubos de Acero de Mexico, S.A. (TAMSA). Because TAMSA is the sole mandatory respondent for which Commerce calculated a weighted-average dumping margin, Commerce assigned TAMSA's preliminary margin to all other producers and exporters of the merchandise under consideration.

Preliminary Affirmative Determination of Critical Circumstances

In accordance with section 733(e) of the Act and 19 CFR 351.206, Commerce preliminarily finds that critical circumstances exist for all companies in Mexico. For a full description of the methodology and results of Commerce's critical circumstances analysis, *see* the Preliminary Decision Memorandum.[9]

Preliminary Determination

Commerce preliminarily determines that the following estimated weighted-average dumping margins exist in this investigation:

Exporter/producer	Estimated weighted-average dumping margin (percent)
Tubos de Acero de Mexico, S.A	69.56
All Others	69.56

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all entries of OCTG from Mexico, as described in Appendix I, entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Further, pursuant to section 733(d)(1)(B) of the Act and 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the estimated weighted-average dumping margin or the estimated all-others rate, as follows: (1) The cash deposit rate for the respondent listed in the table above is the company-specific estimated weighted-average dumping margin calculated in this preliminary determination; (2) if the exporter is not the respondent identified in the table above, but the producer is, then the cash deposit rate is the company-specific estimated weighted-average dumping margin established for that producer of the subject merchandise in the table above; and (3) the cash deposit rate for all other producers and exporters is the all-others estimated weighted-average dumping margin listed in the table above.

Further, section 733(e)(2) of the Act provides that, in the event of an affirmative determination of critical circumstances, any suspension of liquidation shall apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of: (a) The date which is 90 days before the date on which the suspension of liquidation was first ordered; or (b) the date on which notice of initiation of the investigation was published. As noted above, Commerce preliminarily finds that critical circumstances exist for imports of OCTG from Mexico produced and exported by all companies. In accordance with 733(e)(2)(A) of the Act, suspension of liquidation shall apply to unliquidated entries of subject merchandise for shipments that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the publication of this notice, the date suspension of liquidation is first ordered.

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice.*

[6] *See* Memorandum, ''Antidumping Duty Investigations of Oil Country Tubular Goods from Argentina, Mexico, and the Russian Federation and Countervailing Duty Investigations of Oil Country Tubular Goods from the Republic of Korea, and the Russian Federation: Preliminary Scope Decision Memorandum,'' dated March 7, 2022 (Preliminary Scope Decision Memorandum).

[7] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. *See* Preliminary Scope Decision Memorandum and ''Public Comment'' section of this notice.

[8] *See* Preliminary Scope Decision Memorandum at 4.

[9] *See* Preliminary Decision Memorandum at 12–16.

These suspension of liquidation instructions will remain in effect until further notice.

Disclosure

Commerce intends to disclose its preliminary calculations and related analysis to interested parties within five days of any public announcement of the preliminary determination or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify information relied upon in making its final determination.[10]

Public Comment

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance.[11] Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.[12] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days after the date of publication of this notice in the **Federal Register**. Requests for a hearing should contain: (1) The requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing, including, whether any individuals are foreign nationals; and (3) a list of the issues the party intends to discuss at the hearing. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time of the hearing two days before the scheduled hearing date.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner. Section 351.210(e)(2) of Commerce's regulations requires that a request by exporters for postponement of the final determination be accompanied by a request for extension of provisional measures from a four-month period to a period not more than six months in duration.

On April 27, 2022, pursuant to 19 CFR 351.210(e), TAMSA requested that, contingent upon an affirmative preliminary determination of sales at LTFV, Commerce postpone the final determination in this investigation up to 135 days after publication of this notice and that the provisional measures be extended to a period not to exceed six months.[14]

In accordance with section 735(a)(2)(A) of the Act and 19 CFR 351.210(b)(2)(ii), because: (1) The preliminary determination is affirmative; (2) the requesting exporter accounts for a significant proportion of exports of the subject merchandise;[15] and (3) no compelling reasons for denial exist, Commerce is postponing the final determination in this investigation and extending the provisional measures from a four-month period to a period not greater than six months. Accordingly, Commerce will make its final determination in this investigation no later than 135 days after the date of publication of this preliminary determination in the **Federal Register** pursuant to section 735(a)(2) of the Act.[16].

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its preliminary determination. If Commerce's final determination is affirmative, then the ITC will determine before the later of 120 days after the date of this preliminary determination, or 45 days after the final determination, whether imports of OCTG from Mexico into the United States are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This preliminary determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act, and 19 CFR 351.205(c).

Dated: May 4, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—Scope of the Investigation

The merchandise covered by this investigation is certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than case iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (*e.g.,* whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of this investigation also covers OCTG coupling stock.

Subject merchandise includes material matching the above description that has been finished, packaged, or otherwise processed in a third country, including by performing any heat treatment, cutting, upsetting, threading, coupling, or any other finishing, packaging, or processing that would not otherwise

[10] *See* Commerce's Letter, ''Antidumping Duty Investigation of Oil Country Tubular Goods from Mexico: Notification of Intent to Conduct Virtual Verification,'' dated March 16, 2022.

[11] Case briefs, other written comments, and rebuttal briefs submitted by parties in response to this preliminary LTFV determination should not include scope-related issues. The scope case briefs deadline expired on April 13, 2022. *See* Preliminary Scope Decision Memorandum at 3–4; *see also Oil Country Tubular Goods from the Republic of Korea: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With Final Antidumping Duty Determination,* 87 FR 14248 (March 14, 2022), and *Oil Country Tubular Goods from the Russian Federation: Preliminary Affirmative Countervailing Duty Determination, Preliminary Negative Critical Circumstances Determination, and Alignment of Final Determination With Final Antidumping Duty Determination,* 87 FR 14249 (March 14, 2022).

[12] *See* 19 CFR 351.309; *see also* 19 CFR 351.303 (for general filing requirements).

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See* TAMSA's Letter, ''Request for Postponement of Final Determination and Extension of Provisional Measures Period,'' dated April 27, 2022.

[15] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Oil Country Tubular Goods from Mexico: Respondent Selection,'' dated November 12, 2021, at Attachment.

[16] *See also* 19 CFR 351.210(e).

remove the merchandise from the scope of the investigation if performed in the country of manufacture of the OCTG.

Excluded from the scope of this investigation are: Casing, tubing, or coupling stock containing 10.5 percent or more by weight of chromium; drill pipe; unattached couplings; and unattached thread protectors.

The merchandise subject to this investigation is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.1010, 7304.29.1020, 7304.29.1030, 7304.29.1040, 7304.29.1050, 7304.29.1060, 7304.29.1080, 7304.29.2010, 7304.29.2020, 7304.29.2030, 7304.29.2040, 7304.29.2050, 7304.29.2060, 7304.29.2080, 7304.29.3110, 7304.29.3120, 7304.29.3130, 7304.29.3140, 7304.29.3150, 7304.29.3160, 7304.29.3180, 7304.29.4110, 7304.29.4120, 7304.29.4130, 7304.29.4140, 7304.29.4150, 7304.29.4160, 7304.29.4180, 7304.29.5015, 7304.29.5030, 7304.29.5045, 7304.29.5060, 7304.29.5075, 7304.29.6115, 7304.29.6130, 7304.29.6145, 7304.29.6160, 7304.29.6175, 7305.20.2000, 7305.20.4000, 7305.20.6000, 7305.20.8000, 7306.29.1030, 7306.29.1090, 7306.29.2000, 7306.29.3100, 7306.29.4100, 7306.29.6010, 7306.29.6050, 7306.29.8110, and 7306.29.8150.

The merchandise subject to this investigation may also enter under the following HTSUS item numbers: 7304.39.0024, 7304.39.0028, 7304.39.0032, 7304.39.0036, 7304.39.0040, 7304.39.0044, 7304.39.0048, 7304.39.0052, 7304.39.0056, 7304.39.0062, 7304.39.0068, 7304.39.0072, 7304.39.0076, 7304.39.0080, 7304.59.6000, 7304.59.8015, 7304.59.8020, 7304.59.8025, 7304.59.8030, 7304.59.8035, 7304.59.8040, 7304.59.8045, 7304.59.8050, 7304.59.8055, 7304.59.8060, 7304.59.8065, 7304.59.8070, 7304.59.8080, 7305.31.4000, 7305.31.6090, 7306.30.5055, 7306.30.5090, 7306.50.5050, and 7306.50.5070.

The HTSUS subheadings and specifications above are provided for convenience and customs purposes only. The written description of the scope of this investigation is dispositive.

Appendix II—List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Scope of the Investigation
V. Discussion of the Methodology
VI. Preliminary Affirmative Determination of Critical Circumstances
VII. Currency Conversion
VIII. Recommendation

[FR Doc. 2022–10050 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB850]

Taking of Threatened or Endangered Marine Mammals Incidental to Commercial Fishing Operations; Issuance of Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The National Marine Fisheries Service (NMFS) is issuing a permit to authorize the incidental, but not intentional, take of specific Endangered Species Act (ESA)-listed marine mammal species or stocks under the Marine Mammal Protection Act (MMPA), in the California (CA) thresher shark/swordfish drift gillnet fishery and the corresponding high seas component of the fishery as defined on the MMPA List of Fisheries as the Pacific highly migratory species drift gillnet fishery.

DATES: The permit is effective for a three-year period beginning May 11, 2022.

ADDRESSES: Reference materials for the permit including the final negligible impact determination are available on the internet at: *https://www.fisheries.noaa.gov/action/negligible-impact-determination-and-mmpa-section-101a5e-authorization-ca-thresher-shark* or *https://www.regulations.gov/docket/NOAA-NMFS-2021-0105.* Other supporting information is available on the internet including: Recovery plans for the ESA-listed marine mammal species, *https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act;* 2021 MMPA List of Fisheries (LOF), *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables;* the most recent Marine Mammal Stock Assessment Reports (SAR) by region, *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region,* and stock, *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-species-stock;* and Take Reduction Teams and Plans, *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-take-reduction-plans-and-teams.*

FOR FURTHER INFORMATION CONTACT: Tina Fahy, NMFS West Coast Region, (562) 980–4023, *Christina.Fahy@noaa.gov;* or Jaclyn Taylor, NMFS Office of Protected Resources, (301) 427–8402, *Jaclyn.Taylor@noaa.gov.*

SUPPLEMENTARY INFORMATION: The MMPA requires NMFS to authorize the incidental take of ESA-listed marine mammals in commercial fisheries provided it can make the following determinations: (1) The incidental mortality and serious injury (M/SI) from commercial fisheries will have a negligible impact on the affected species or stocks; (2) a recovery plan for all affected species or stocks of threatened or endangered marine mammals has been developed or is being developed; and (3) where required under MMPA section 118, a take reduction plan has been developed or is being developed, a monitoring program is implemented, and vessels participating in the fishery are registered. NMFS has determined that the CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery meets these three requirements and is issuing a permit to the fishery to authorize the incidental take of ESA-listed marine mammal species or stocks (CA/OR/WA stock of humpback whale and CA/OR/WA stock of sperm whale) under the MMPA for a period of three years.

Background

The MMPA List of Fisheries (LOF) classifies each commercial fishery as a Category I, II, or III fishery based on the level of mortality and injury of marine mammals occurring incidental to each fishery as defined in 50 CFR 229.2. Category I and II fisheries must register with NMFS and are subsequently authorized to incidentally take marine mammals during commercial fishing operations. However, that authorization is limited to those marine mammals that are not listed as threatened or endangered under the ESA. Section 101(a)(5)(E) of the MMPA, 16 U.S.C. 1371, states that NMFS, as delegated by the Secretary of Commerce, for a period of up to three years shall allow the incidental, but not intentional, taking of marine mammal stocks designated as depleted because of their listing as an endangered species or threatened species under the ESA, 16 U.S.C. 1531 *et seq.,* by persons using vessels of the United States and those vessels which have valid fishing permits issued by the Secretary in accordance with section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act, 16

U.S.C. 1824(b), while engaging in commercial fishing operations, if NMFS makes certain determinations. NMFS must determine, after notice and opportunity for public comment, that: (1) Incidental M/SI from commercial fisheries will have a negligible impact on the affected species or stock; (2) a recovery plan has been developed or is being developed for such species or stock under the ESA; and (3) where required under section 118 of the MMPA, a monitoring program has been established, vessels engaged in such fisheries are registered in accordance with section 118 of the MMPA, and a take reduction plan has been developed or is being developed for such species or stock.

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. We evaluated ESA-listed stocks or species included on the final 2021 MMPA LOF as killed or seriously injured following NMFS' Procedural Directive 02–238 ''Process for Distinguishing Serious from Non-Serious Injury of Marine Mammals.'' Based on this evaluation, we proposed to issue a permit under MMPA section 101(a)(5)(E) to vessels registered in the Category II CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery, as classified on the final 2021 MMPA LOF, to incidentally kill or seriously injure the CA/OR/WA stock of humpback whale and CA/OR/WA stock of sperm whale (86 FR 71423; December 16, 2021).

NMFS will regularly evaluate other commercial fisheries for purposes of making a negligible impact determination (NID) and issuing section 101(a)(5)(E) authorizations with the annual LOF as new information becomes available. More information about the CA thresher shark/swordfish drift gillnet and Pacific highly migratory species drift gillnet fishery is available in the 2021 MMPA LOF (86 FR 3028; January 14, 2021) and on the internet at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/list-fisheries-summary-tables.*

We reviewed the best available scientific information to determine if the fishery met the three requirements of MMPA section 101(a)(5)(E) for issuing a permit. This information is included in the 2021 MMPA LOF (86 FR 3028; January 14, 2021), the SARs for these species (available at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*), recovery plans for these species (available at: *https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act*), and other relevant information, as detailed further in the documents describing the preliminary and final determinations supporting the permit (available at: *https://www.regulations.gov/docket/NOAA-NMFS-2021-0105*).

NMFS is in the process of revising humpback whale stock structure under the MMPA in light of the 14 Distinct Population Segments (DPSs) established under the ESA (81 FR 62259, September 8, 2016), and based on the ''Procedural Directive 02–204–03: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act'' (NMFS 2019). The humpback whale DPSs that occur in waters under the jurisdiction of the United States do not align with the existing MMPA stocks. Some of the listed DPSs partially coincide with the currently defined stocks. Because we cannot manage one portion of an MMPA stock as ESA-listed and another portion of a stock as not ESA-listed, until such time as the MMPA stock designations are revised, NMFS continues to use the existing MMPA stock structure for MMPA management purposes (*e.g.,* selection of a recovery factor, stock status) and treats such stocks as ESA-listed if a component of that stock is listed under the Act and overlaps with the analyzed commercial fishery. Therefore, for the purpose of this MMPA 101(a)(5)(E) authorization, NMFS considered the CA/OR/WA stock of humpback whale to be ESA-listed as it overlaps with the two ESA-listed DPSs (Mexico, and Central America).

Basis for Determining Negligible Impact

Prior to issuing a MMPA 101(a)(5)(E) permit to take ESA-listed marine mammals incidental to commercial fishing, NMFS must determine if the M/SI incidental to commercial fisheries will have a negligible impact on the affected marine mammal species or stocks. NMFS satisfies this requirement by making a NID. Although the MMPA does not define ''negligible impact,'' NMFS has issued regulations providing a qualitative definition of ''negligible impact,'' defined in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Criteria for Determining Negligible Impact

NMFS relies on a quantitative approach for determining negligible impact detailed in NMFS Procedural Directive 02–204–02 (directive), ''Criteria for Determining Negligible Impact under MMPA section 101(a)(5)(E),'' which became effective on June 17, 2020 (NMFS 2020). The procedural directive is available online at: *https://www.fisheries.noaa.gov/national/laws-and-policies/protected-resources-policy-directives.* The directive describes NMFS' process for determining whether incidental M/SI from commercial fisheries will have a negligible impact on ESA-listed marine mammal species/stocks (the first requirement necessary for issuing a MMPA section 101(a)(5)(E) permit as noted above).

The directive first describes the derivation of two Negligible Impact Thresholds (NIT), which represent levels of removal from a marine mammal species or stock. The first, Total Negligible Impact Threshold (NIT_t), represents the total amount of human-caused M/SI that NMFS considers negligible for a given stock. The second, lower threshold, Single NIT (NIT_s) represents the level of M/SI from a single commercial fishery that NMFS considers negligible for a stock. NIT_s was developed in recognition that some stocks may experience non-negligible levels of total human-caused M/SI but one or more individual fisheries may contribute a very small portion of that M/SI, and the effect of an individual fishery may be considered negligible.

The directive describes a detailed process for using these NIT values to conduct a NID analysis for each fishery classified as a Category I or II fishery on the MMPA LOF. The NID process uses a two-tiered analysis. The Tier 1 analysis first compares the total human-caused M/SI for a particular stock to NIT_t. If NIT_t is not exceeded, then all commercial fisheries that kill or seriously injure the stock are determined to have a negligible impact on the particular stock. If NIT_t is exceeded, then the Tier 2 analysis compares each individual fishery's M/SI for a particular stock to NIT_s. If NIT_s is not exceeded, then the commercial fishery is determined to have a negligible impact on that particular stock. For transboundary, migratory stocks, because of the uncertainty regarding the M/SI that occurs outside of U.S. waters, we assume that total M/SI exceeds NIT_t and proceed directly to the Tier 2 NIT_s analysis. If a commercial fishery has a negligible impact across all ESA-listed stocks, then the first of three findings necessary for issuing a MMPA 101(a)(5)(E) permit to the commercial fishery has been met (*i.e.,* a NID). If a commercial fishery has a non-negligible

impact on any ESA-listed stock, then NMFS cannot issue a MMPA 101(a)(5)(E) permit for the fishery to incidentally take ESA-listed marine mammals.

These NID criteria rely on the best available scientific information, including estimates of a stock's minimum population size and human-caused M/SI levels, as published in the most recent SARs and other supporting documents, as appropriate. Using these inputs, the quantitative negligible impact thresholds allow for straightforward calculations that lead to clear negligible or non-negligible impact determinations for each commercial fishery analyzed. In rare cases, robust data may be unavailable for a straightforward calculation, and the directive provides instructions for completing alternative calculations or assessments where appropriate.

Negligible Impact Determination

NMFS evaluated the impact of the CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery using the process outlined in the directive, and, based on the best available scientific information, made a NID.

The CA/OR/WA stock of humpback whale is a transboundary stock. As noted above, because of the uncertainty regarding M/SI that occurs outside of U.S. waters for transboundary stocks, we assumed that total M/SI exceeds NIT_t and proceeded directly to the Tier 2 NIT_s analysis. The most recent (draft 2021) CA/OR/WA humpback whale SAR has documented M/SI of the CA/OR/WA stock of humpback whale incidental to this fishery (Carretta *et al.* 2021).

The estimated annual M/SI of humpback whales (CA/OR/WA stock) in the CA drift gillnet fishery is 0.1, based on observer data. Since this M/SI (0.1) is less than NIT_s (2.48), NMFS determined that the CA drift gillnet fishery/Pacific highly migratory species drift gillnet fishery has a negligible impact on the CA/OR/WA stock of humpback whales (see accompanying MMPA 101(a)(5)(E) determination document linked above for NIT calculations).

The draft 2021 SAR includes the mean annual total commercial fishery-related M/SI (≥25.2) for the CA/OR/WA stock of humpback whale. This comprises M/SI from all commercial fisheries, including the CA thresher shark/swordfish drift gillnet fishery, as well as fishery-related M/SI for the stock not assigned to a specific commercial fishery. The SAR also includes unattributed fishery-related M/SI (11.15) for the stock, which is not assigned to a specific commercial fishery. This unattributed fishery-related M/SI could be from any number of commercial, recreational or tribal fisheries, including the CA thresher shark/swordfish drift gillnet fishery. In accordance with NMFS Procedural Directive 02–204–02, because data are not currently available to assign the unattributed fishery-related M/SI to a specific commercial fishery, we did not include unattributed mortality in the calculations for the NID Tier 2 analysis (NMFS 2020).

In addition, because the CA/OR/WA humpback whale stock is considered a transboundary stock, NMFS assumed NIT_t is exceeded and conducted the more conservative Tier 2 analysis with the lower NIT_s criterion. NMFS is actively monitoring the CA thresher shark/swordfish drift gillnet fishery through a fishery observer program. Further, most of the information on large whale entanglements on the West Coast is reported to and documented by the West Coast Large Whale Entanglement Response Program. If additional fishery-related M/SI of the CA/OR/WA stock of humpback whale is documented through the observer program or West Coast Large Whale Entanglement Response Program that indicates additional M/SI of the CA/OR/WA stock of humpback whale in the CA thresher shark/swordfish drift gillnet fishery, then NMFS will re-evaluate the NID and the permit.

The CA/OR/WA stock of sperm whale is not a transboundary stock. Therefore, we conducted the NID analysis starting with the Tier 1 (NIT_t) analysis. The most recent (final 2020) CA/OR/WA sperm whale SAR documented M/SI of the CA/OR/WA stock of sperm whale incidental to this fishery (Carretta et al. 2021). The total annual average human-caused M/SI for the CA/OR/WA stock of sperm whales from 2013–2017 is 0.64, including 0.4 per year for the CA thresher shark/swordfish drift gillnet fishery and 0.24 per year for the sablefish hook and line fishery (Carretta et al. 2021). There was no other human-related M/SI of the CA/OR/WA stock of sperm whale reported during this time period. Since M/SI (0.64) is less than NIT_t (2.54), the CA drift gillnet fishery/Pacific highly migratory species drift gillnet fishery is considered to have a negligible impact on the CA/OR/WA stock of sperm whales.

The NID analysis is presented in an accompanying MMPA 101(a)(5)(E) determination document that provides summaries of the information used to evaluate each ESA-listed stock documented on the 2021 MMPA LOF as killed or injured incidental to the fishery (available at: *https://www.fisheries.noaa.gov/action/mmpa-list-fisheries-2021*). The final MMPA 101(a)(5)(E) determination document is available at: *https://www.fisheries.noaa.gov/action/negligible-impact-determination-and-mmpa-section-101a5e-authorization-ca-thresher-shark* or *https://www.regulations.gov/docket/NOAA-NMFS-2021-0105.* Based on the criteria outlined in the directive, the most recent SAR, and the best available scientific information, NMFS has determined that the M/SI incidental to the Category II CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery will have a negligible impact on the associated ESA-listed marine mammal stocks (CA/OR/WA stock of humpback whale and CA/OR WA stock of sperm whale). Accordingly, this MMPA 101(a)(5)(E) requirement is satisfied for the commercial fishery (see MMPA 101(a)(5)(E) determination document is available at: *https://www.regulations.gov/docket/NOAA-NMFS-2021-0105*).

Recovery Plan

Recovery plans for humpback whales and sperm whales have been completed (see *https://www.fisheries.noaa.gov/national/endangered-species-conservation/recovery-species-under-endangered-species-act*). Accordingly, the requirement to have recovery plans in place or being developed is satisfied.

Take Reduction Plan

Subject to available funding, MMPA section 118 requires the development and implementation of a Take Reduction Plan (TRP) for each strategic stock that interacts with a Category I or II fishery. The stocks considered for this permit are designated as a strategic stock under the MMPA because the stocks, or a component of the stocks, are listed as threatened or endangered under the ESA (MMPA section 3(19)(C)).

The CA thresher shark/swordfish drift gillnet fishery, for the affected marine mammal species or stocks, has a TRP in place. Accordingly, the requirement under MMPA section 118 to have TRPs in place or in development is satisfied (see determination supporting the permit available on the internet at *https://www.regulations.gov/docket/NOAA-NMFS-2021-0105*).

Monitoring Program

Under MMPA section 118(d), NMFS is to establish a program for monitoring incidental M/SI of marine mammals from commercial fishing operations.

The CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery has been observed by NMFS since 1990. Accordingly, the requirement under MMPA section 118 to have a monitoring program in place is satisfied.

Vessel Registration

MMPA section 118(c) requires that vessels participating in Category I and II fisheries register to obtain an authorization to take marine mammals incidental to fishing activities. NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program, with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Therefore, the requirement for vessel registration is satisfied.

Conclusions for Permit

Based on the above evaluation for the CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery as it relates to the three requirements of MMPA section 101(a)(5)(E), we are issuing a MMPA 101(a)(5)(E) permit to the CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery to authorize the incidental take of ESA-listed species or stocks during commercial fishing operations. If, during the three-year authorization, there is a significant change in the information or conditions used to support any of these determinations, NMFS will re-evaluate whether to amend or modify the authorization, after notice and opportunity for public comment.

ESA Section 7 and National Environmental Policy Act Requirements

ESA section 7(a)(2) requires federal agencies to ensure that actions they authorize, fund, or carry out do not jeopardize the existence of any species listed under the ESA, or destroy or adversely modify designated critical habitat of any ESA-listed species. The effects of the CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery on ESA-listed marine mammals, were analyzed in the appropriate ESA section 7 Biological Opinion on the commercial fishery, and incidental take was exempted for those ESA-listed marine mammals for the fishery.

Under section 7 of the ESA, Biological Opinions analyze the effects of the proposed action on ESA-listed species and their critical habitat and, where appropriate, exempt anticipated future take of ESA-listed species as specified in the incidental take statement. Under MMPA section 101(a)(5)(E), NMFS analyzes previously documented M/SI incidental to commercial fisheries through the NID process, and when the necessary findings can be made, issues a MMPA section 101(a)(5)(E) permit that allows for an unspecified amount of incidental taking of specific ESA-listed marine mammal stocks while engaging in commercial fishing operations. Thus, the applicable standards and resulting analyses under the MMPA and ESA differ, and as such, may not always align.

The National Environmental Policy Act (NEPA) requires Federal agencies to evaluate the impacts of alternatives for their actions on the human environment. Because the permit would not modify any fishery operation and the effects of the fishery operations have been evaluated in accordance with NEPA, no additional NEPA analysis beyond that conducted for the associated Fishery Management Plan is required for the permit. Issuing the permit would have no additional impact on the human environment or effects on threatened or endangered species beyond those analyzed in these documents.

Public Comments

On December 16, 2021, NMFS published a notice and request for comments in the **Federal Register** for the proposed issuance of a permit under MMPA section 101(a)(5)(E) to vessels registered in the CA thresher shark/swordfish drift gillnet/Pacific highly migratory species drift gillnet fishery (86 FR 71423). The public comment period closed on January 18, 2022. NMFS received three comment letters on the proposed issuance of the permit and underlying preliminary determination. Oceana opposed issuing the permit. In addition, two non-substantive comment letters from members of the public opposed issuing the permit. Only responses to substantive comments pertaining to the proposed permit and preliminary determination under MMPA section 101(a)(5)(E) are addressed below.

Comment 1: Oceana incorporates their previous comments submitted on the NMFS' draft ''Criteria for Determining Negligible Impact under MMPA Section 101(a)(5)(E).''

Response: Oceana's comments on the draft ''Criteria for Determining Negligible Impact under MMPA Section 101(a)(5)(E)'' were previously addressed by NMFS and are available at: *https://www.fisheries.noaa.gov/action/criteria-determining-negligible-impact-under-mmpa-section-101a5e.*

Comment 2: Oceana states that the existing monitoring program for the CA drift gillnet fishery does not meet the MMPA's requirement to provide statistically-reliable M/SI estimates. They note that observer coverage has averaged 20 percent annually, despite recommendations from the Pacific Fishery Management Council (Council) to achieve 100 percent observer coverage. Oceana asserts that 20 percent observer coverage is inadequate to accurately document marine mammal M/SI in the fishery. Oceana recommends NMFS not issue the MMPA 101(a)(5)(E) permit until the CA drift gillnet fishery is observed at 100 percent.

Response: NMFS disagrees that the monitoring program for the CA thresher shark/swordfish drift gillnet is insufficient to fulfill the monitoring requirements of MMPA section 101(a)(5)(E). The CA thresher shark/swordfish drift gillnet fishery has been observed by NMFS since 1990. The observer program in the CA drift gillnet fishery collects data on all target and non-target species, including the incidental M/SI of marine mammals. NMFS scientists use data from the observer program to generate statistically-valid estimates of M/SI that are in the most recent SARs for the CA/OR/WA stocks of humpback whale and sperm whale. As such, it satisfies the requirement in MMPA section 101(a)(5)(E)(i)(III).

Comment 3: Oceana recommends NMFS implement the protected species hard caps for the CA drift gillnet fishery recommended by the Council before issuing the MMPA 101(a)(5)(E) permit to the fishery. They further state that NMFS should phase out and prohibit the use of large mesh drift gillnets and transition to a sustainable swordfish fishery. They note that in 2015 the Council recommended that NMFS increase observer coverage to 100 percent and set mortality and injury hard caps for nine sea turtle and marine mammal species in the CA drift gillnet fishery. Oceana states that NMFS has not implemented either of the Council's recommendations.

Response: The Council's fishery management actions are taken to implement the Magnuson–Stevens Fishery Conservation and Management Act, and this permit is authorized under section 101(a)(5)(E) of the MMPA. In January 2020, the federal court in the Central District of California ordered NMFS to finalize its proposed ''hard caps'' rule, which would close the fishery upon reaching specified limits of

interactions with protected species. NMFS had sought to withdraw its proposed hard caps rule, after public comment had demonstrated closures would cause fishermen economic hardships NMFS had not anticipated. In February 2021, the federal court in the District of Columbia vacated the rule, agreeing that NMFS had found that the rule did not comply with National Standard 7's requirement to, where practicable, minimize costs and avoid unnecessary duplication.

NMFS made a NID for the CA thresher shark/swordfish drift gillnet fishery's current bycatch using the process outlined in the directive, and, based on the best available scientific information (NMFS 2020). While implementation of future fishery management actions in the CA thresher shark/swordfish drift gillnet fishery could affect marine mammal bycatch rates, consideration of those actions are not relevant to or needed to support the determinations for this permit.

Comment 4: Oceana comments NMFS's NID is biased towards inflating PBR and underestimating M/SI in the CA drift gillnet fishery. They state that, in 2016, NMFS established separate DPSs for humpback whales, including the Mexican and Central American DPSs. However, both the SAR and NID combine the Mexican and Central American DPSs into the CA/OR/WA stock of humpback whale and do not consider declines in the humpback population since 2018.

Oceana also notes that the NID analysis does not include two observed entanglements in drift gillnet gear in 2021. They note that observer coverage for the 2021–22 fishing season is not yet available, as the fishing season has not concluded. However, using an estimate of 20 percent observer coverage, the two observed entanglements would be approximately five total takes using a ratio estimator approach.

Response: Humpback whales were listed globally as endangered under the ESA in 1970 (35 FR 18319). On September 8, 2016, NMFS published a final rule dividing the globally listed endangered humpback whale into 14 DPSs and categorizing four DPSs as endangered and one as threatened (81 FR 62259). NMFS is in the process of revising humpback whale stock structure under the MMPA in light of the 2016 final rule on humpback whale DPSs as established under the ESA. In doing so, NMFS is following the process laid out in ''Procedural Directive 02–204–03: Reviewing and Designating Stocks and Issuing Stock Assessment Reports under the Marine Mammal Protection Act'' (NMFS 2019). As noted by the commenter, the CA/OR/WA stock of humpback whales does not align with the DPSs established under the ESA and comprises animals from the endangered Central American DPS, the threatened Mexico DPS, and the unlisted Hawaii DPS.

Because we cannot manage one portion of an MMPA stock as ESA-listed and another portion of a stock as not ESA-listed, until humpback whale stock structure has been revised, NMFS continues to use the existing MMPA stock structure for MMPA management purposes, including NIDs and 101(a)(5)(E) authorizations. Therefore, for purposes of evaluating the impact of the CA thresher shark/swordfish drift gillnet fishery under the MMPA, NMFS used the current MMPA designation of the CA/OR/WA stock of humpback whales. In the case of the CA/OR/WA stock of humpback whales, for the purposes of this NID analysis, NMFS considers the entire stock to be endangered under the ESA and depleted under the MMPA. In addition, because the CA/OR/WA humpback whale stock is considered to be transboundary, NMFS assumed NITt is exceeded and conducted the more conservative Tier 2 analysis with the lower NITs criterion.

The most recent (draft 2021) CA/OR/WA humpback whale SAR has documented M/SI of the CA/OR/WA stock of humpback whale incidental to this fishery (Carretta *et al.* 2021). The draft 2021 SAR includes observer data through the 2019 fishing season. NMFS anticipates that future SARs will incorporate bycatch estimates for the CA thresher shark/swordfish drift gillnet fishery that include recent observed M/SI in 2021 after they have been completed.

Given this approach and ongoing efforts to revise humpback whale stock structure in the Pacific, NMFS has proceeded with a final NID for the CA thresher shark/swordfish drift gillnet fishery with respect to the CA/OR/WA stock of humpback whales and is issuing a 101(a)(5)(E) permit for this fishery. Nevertheless, if, during the 3-year authorization, there is a significant change in the information or conditions used to support any of these determinations, including a change in MMPA stock structure and associated estimates of abundance and M/SI incidental to commercial fisheries, NMFS may re-evaluate the NID.

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Dated: May 5, 2022.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2022–10066 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Highly Migratory Species Tournament Registration and Reporting

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of

1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on February 4, 2022, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: National Oceanic & Atmospheric Administration (NOAA), Commerce.

Title: Highly Migratory Species Tournament Registration and Reporting.

OMB Control Number: 0648–0323.

Form Number(s): None.

Type of Request: Regular submission (extension of a current information collection).

Number of Respondents: 300.

Average Hours per Response: Tournament registration, 2 minutes; tournament summary report, 20 minutes.

Total Annual Burden Hours: 110.

Needs and Uses: This request is for extension of a currently approved information collection. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), NOAA's National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. Existing regulations require operators of tournaments involving Atlantic highly migratory species (HMS; Atlantic swordfish, sharks, billfish, and tunas) to register four weeks in advance of the tournament. Operators must provide contact information and the tournament's date(s), location(s), and target species. If selected by NMFS, operators are required to submit an HMS tournament summary report within seven days after tournament fishing has ended. Most of the catch data in the summary report is routinely collected in the course of regular tournament operations. NMFS uses the data to estimate the total annual catch of HMS and the impact of tournament operations in relation to other types of fishing activities. In addition, HMS tournament registration provides a method for tournament operators to request educational and regulatory outreach materials from NMFS. No changes to the reporting requirements are being made at this time..

Affected Public: Business or other for-profit organizations; Not-for-profit institutions.

Frequency: Annually; on occasion.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*)

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0648–0323.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–10112 Filed 5–10–22; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0056]

Agency Information Collection Activities; Proposed Collection; Comment Request; Safety Standard for Omnidirectional Citizens Band Base Station Antennas

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (Commission or CPSC) requests comments on a proposed extension of approval for a collection of information associated with the Commission's Safety Standard for Omnidirectional Citizens Band Base Station Antennas, approved previously under OMB Control No. 3041–0006. CPSC will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by July 11, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0056, 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. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number. 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 through this website: 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 mail/hand delivery/courier/confidential 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–2012–0056, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov.*

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Safety Standard for Omnidirectional Citizens Band Base Station Antennas.

OMB Number: 3041–0006.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers, importers, and private labelers of

omnidirectional citizens band base station antennas.

Estimated Number of Respondents: Approximately 10 firms supply omnidirectional citizen band base station antennas.

Estimated Time per Response: Based on the information compiled by manufacturers, importers, and private labelers of antennas to test and maintain records for certificates of compliance, we estimate an average of 220 hours per firm for annual testing and recordkeeping.

Total Estimated Annual Burden: 2,200 hours (10 firms × 220 hours).

General Description of Collection: The Safety Standard for Omnidirectional Citizens Band Base Station Antennas (16 CFR part 1204) establishes performance requirements for omnidirectional citizens band base station antennas to reduce unreasonable risks of death and injury that may result if an antenna contacts overhead power lines while being erected or removed from its site. The regulations implementing the standard (16 CFR part 1204, subpart B) require manufacturers, importers, and private labelers of antennas subject to the standard to test the antennas for compliance with the standard and to maintain records of that testing. Based on an average hourly wage of $71.82,[1] the total annual cost to the industry to perform the required testing and maintain the records is approximately $158,000 ($71.82 times 2,200 hours).

Request for Comments

CPSC solicits written comments from all interested persons about the proposed collection of information. The CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of CPSC's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Brenda C. Rouse,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–10071 Filed 5–10–22; 8:45 am]

BILLING CODE 6355–01–P

[1] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2021, Table 4. Private industry workers by occupational and industry group: *https://www.bls.gov/news.release/ecec.t04.htm.*

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2012–0055]

Agency Information Collection Activities; Proposed Collection; Comment Request; Flammability Standards for Children's Sleepwear

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Consumer Product Safety Commission (Commission or CPSC) requests comment on a proposed extension of approval for the information collection requirements associated with the Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14, approved previously under OMB Control No. 3041–0027. CPSC will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget (OMB).

DATES: Submit written or electronic comments on the collection of information by July 11, 2022.

ADDRESSES: You may submit comments, identified by Docket No. CPSC–2012–0055, 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. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal, as described above.

Mail/Hand Delivery/Courier/Confidential Written Submissions: Submit comments by mail, hand delivery, or courier to: Division of the Secretariat, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov*.

Instructions: All submissions must include the agency name and docket number. 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 through this website: 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 mail/hand delivery/courier/confidential 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–2012–0055, into the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Cynthia Gillham, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; (301) 504–7991, or by email to: *cgillham@cpsc.gov*.

SUPPLEMENTARY INFORMATION: CPSC seeks to renew the following currently approved collection of information:

Title: Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; and the Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14.

OMB Number: 3041–0027.

Type of Review: Renewal of collection.

Frequency of Response: On occasion.

Affected Public: Manufacturers and importers of children's sleepwear.

Estimated Number of Respondents: Based on a review of past inspections and published industry information, CPSC staff estimates that there could be as many as 866 domestic children's apparel manufacturers in the United States subject to the rule. However, not all these manufacturers will produce children's sleepwear. Therefore, this figure is likely an overestimate of the actual number of firms performing tests and creating records in any given year. Furthermore, using the Harmonized Tariff System (HTS) codes for children's sleepwear, CPSC staff found approximately 3,641 importers that supply children's sleepwear to the U.S. market. Many of the 866 domestic manufacturers, along with many large

U.S. retailers, may be among the importers. However, if all 866 U.S. producers and, in addition, all 3,641 importers did introduce new children's sleepwear garments each year, the total number of firms subject to the CPSC recordkeeping requirements each year would be 4,507 (866 + 3,641). As noted, the actual number of firms is likely lower.

Estimated Time per Response: Testing and recordkeeping of each sleepwear item is approximately 3 hours.

Total Estimated Annual Burden: The 50 largest domestic manufacturers and the 100 largest importers may each introduce an average of 100 new children's sleepwear items annually. The annual burden for the 50 large domestic manufacturers and the 100 largest importers is estimated at 45,000 hours for testing and recordkeeping (150 firms × 100 items × 3 hours). Without adjusting for possible double-counting, CPSC staff estimates that the remaining 816 manufacturers and 3,541 importers may each introduce an average of 10 new children's sleepwear items, for a total testing and recordkeeping burden of 130,710 hours (4,357 × 10 items × 3 hours.) Therefore, the total estimated potential annual burden imposed by the standard and regulations on all manufacturers and importers of children's sleepwear will be about 175,710 hours (45,000 + 130,710). The annual cost to the industry is estimated to be $12,369,984 based on an hourly wage of $70.40 × 175,710 hours.[1]

Description of Collection: The Standard for the Flammability of Children's Sleepwear: Sizes 0 through 6X (16 CFR part 1615) and the Standard for the Flammability of Children's Sleepwear: Sizes 7 through 14 (16 CFR part 1616) address the fire hazard associated with small-flame ignition sources for children's sleepwear manufactured for sale in, or imported into, the United States. The standards also require manufacturers and importers of children's sleepwear to collect information resulting from product testing, and maintenance of the testing records. 16 CFR part 1615, subpart B; 16 CFR part 1616; subpart B.

Request for Comments

CPSC solicits written comments from all interested persons about the proposed collection of information. CPSC specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the CPSC's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Brenda C. Rouse,

Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–10070 Filed 5–10–22; 8:45 am]

BILLING CODE 6355–01–P

[1] U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' December 2021, Table 4, total compensation for management, professional, and related workers in goods-producing private industries: *http://www.bls.gov/ncs.*

DEPARTMENT OF DEFENSE

Office of the Secretary

Charter Renewal of Department of Defense Federal Advisory Committees—Reserve Forces Policy Board

AGENCY: Department of Defense (DoD).

ACTION: Charter renewal of Federal advisory committee.

SUMMARY: The DoD is publishing this notice to announce that it is renewing the charter for the Reserve Forces Policy Board (RFPB).

FOR FURTHER INFORMATION CONTACT: Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

SUPPLEMENTARY INFORMATION: The RFPB's charter is being renewed pursuant to 10 U.S.C. 175 and 10301(a) in accordance with the Federal Advisory Committee Act (FACA) (5 U.S.C., Appendix) and 41 CFR 102–3.50(a). The charter and contact information for the RFPB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

Pursuant to 10 U.S.C. 10301(b), the RFPB shall serve as an independent adviser to provide advice and recommendations on strategies, policies, and practices designed to improve and enhance the capabilities, efficiency, and effectiveness of the reserve components. The RFPB may act on those matters referred to it by the Chair and on any matter raised by a member of the RFPB or the Secretary of Defense. All RFPB work, including subcommittee work, will be in response to written terms of reference or taskings approved by the Secretary of Defense or the Deputy Secretary of Defense (''the DoD Appointing Authority''), or the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) unless otherwise provided by statute or Presidential directive.

Consistent with the provisions of 10 U.S.C. 10301(c), the RFPB shall be composed of 20 members, appointed or designated as follows: (a) A civilian appointed by the Secretary of Defense from among persons determined by the Secretary to have the knowledge of, and experience in, policy matters relevant to national security and reserve component matters necessary to carry out the duties of the RFPB, who shall serve as chair of the RFPB. (b) Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon recommendation of the Secretary of the Army: One of whom shall be a member of the Army National Guard of the United States or a former member of the Army National Guard of the United States in the Retired Reserve; and one of whom shall be a member or retired member of the Army Reserve. (c) Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Navy: One of whom shall be an active or retired officer of the Navy Reserve and one of whom shall be an active or retired officer of the Marine Corps Reserve. (d) Two active or retired reserve officers or enlisted members designated by the Secretary of Defense upon the recommendation of the Secretary of the Air Force: One of whom shall be a member of the Air National Guard of the United States or a former member of the Air National Guard of the United States in the Retired Reserve; and one of whom shall be a member or retired member of the Air Force Reserve. (e) One active or retired reserve officer or enlisted member of the U.S. Coast Guard designated by the Secretary of Homeland Security. (f) Ten persons appointed or designated by the Secretary of Defense, each of whom shall be a U.S. citizen having significant knowledge of and experience in policy matters relevant to national security and reserve component matters and shall be one of the following: An individual not employed in any Federal or State department or agency, an individual employed by a Federal or State department or agency, an officer of a regular component of the armed forces on active duty, or an officer of a reserve

component of the armed forces in an active status, who is serving or has served in a senior position on the Joint Staff, the headquarters staff of a combatant command, or the headquarters staff of an armed force; and has experience in joint professional military education, joint qualification, and joint operations matters. (g) A reserve officer of the Army, Navy, Air Force, or Marine Corps who is a general or flag officer recommended by the chair and designated by the Secretary of Defense, who shall serve without vote, as Military adviser to the Chair; Military executive officer of the RFPB; and Supervisor of the operations and staff of the RFPB. (h) A senior enlisted member of a reserve component recommended by the Chair and designated by the Secretary of Defense, who shall serve without vote as enlisted military adviser to the Chair.

The appointment of RFPB members will be approved by the DoD Appointing Authority for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the RFPB, to include its subcommittees, or serve on more than two DoD Federal advisory committees at one time.

RFPB members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be appointed as experts or consultants pursuant to 5 U.S.C. 3109 to serve as special government employee members. RFPB members who are full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, shall be designated pursuant to 41 CFR 102–3.130(a) to serve as regular government employee members.

All members of the RFPB are appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner that is free from conflicts of interest. With the exception of reimbursement of official RFPB related travel and per diem, RFPB members serve without compensation.

The public or interested organizations may submit written statements to the RFPB about the RFPB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the RFPB. All written statements shall be submitted to the DFO for the RFPB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: May 5, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–10069 Filed 5–10–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0018]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; HEERF Quarterly Budget and Expenditure Reporting

AGENCY: Office of Postsecondary Education (OPE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before June 10, 2022.

ADDRESSES: Written comments and recommendations for proposed information collection requests should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this information collection request by selecting ''Department of Education'' under ''Currently Under Review,'' then check ''Only Show ICR for Public Comment'' checkbox. Comments may also be sent to *ICDocketmgr@ed.gov.*

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Karen Epps, (202) 453–6337.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: HEERF Quarterly Budget and Expenditure Reporting.

OMB Control Number: 1840–0849.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 20,680.

Total Estimated Number of Annual Burden Hours: 103,400.

Abstract: Section 18004(a)(1) of the CARES Act, Public Law 116–136 (March 27, 2020), authorizes the Secretary of Education to allocate formula grant funds to participating institutions of higher educations (IHEs). Section 18004(c) of the CARES Act allows the IHEs to use up to one-half of the total funds received to cover any costs associated with the significant changes to the delivery of instruction due to the coronavirus (with specific exceptions).

Section 18004(a)(2) of the CARES Act authorizes the Secretary to make awards under parts A and B of title III, parts A and B of title V, and subpart 4 of part A of title VII of the Higher Education Act of 1965, as amended (''HEA''), to address needs directly related to the coronavirus. These awards are in addition to awards made in Section 18004(a)(1) of the CARES Act.

Section 18004(a)(3) of the CARES Act, Pub. authorizes the Secretary to allocate funds for part B of Title VII of the HEA, for IHEs that the Secretary determines have the greatest unmet needs related to coronavirus.

This information collection request includes the quarterly budget and expenditure reporting form that will be used by grantees under these sections, as well as comparable sections of the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (CRRSAA) (Pub. L. 116–260) and the American Rescue Plan Act of 2021 (ARP) (Pub. L. 117–2).

Dated: May 5, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–10047 Filed 5–10–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2022–SCC–0064]

Agency Information Collection Activities; Comment Request; Rural Education Achievement Program: Small, Rural School Achievement Program and Rural and Low-Income School Program Application

AGENCY: Office of Elementary and Secondary Education (OESE), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before July 11, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0064. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208D, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Staci Cummins, (202) 453–6504.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Rural Education Achievement Program: Small, Rural School Achievement Program and Rural and Low-Income School Program Application.

OMB Control Number: 1810–0646.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 4,565.

Total Estimated Number of Annual Burden Hours: 4,120.

Abstract: The U.S. Department of Education (the Department) administers two grant programs under Title V, Part B (Rural Education Achievement Program (REAP) of the Elementary and Secondary Education Act of 1965 (ESEA): The Small, Rural School Achievement (SRSA) program (administered by the Department, which makes awards directly to local educational agencies (LEAs)) and the Rural and Low-Income School (RLIS) program (awarded by the Department to SEAs, which then make awards to and administer the program for LEAs, except that the Department may also make RLIS awards directly to LEAs in States that do not submit an approvable RLIS application to the Department. The LEAs that apply directly to the Department under RLIS are known as Specially Qualified Agencies (SQAs)).

The information shared with the Department enables the Department to make eligibility determinations for LEAs and to calculate formula allocations for each eligible LEA. Form 1 consists of the REAP Eligibility Spreadsheet through which SEAs provide to the Department eligibility and allocation data for both the RLIS and SRSA programs. Form 2 consists of the application package for LEAs under the SRSA program. Form 3 consists of the application package for SQAs under the RLIS program. This proposed application package is a revision of current information collection package (OMB #1810–0646), updated to include process improvements and enhance consistency across Forms 1,2, and 3. Updates include clarifications to data collection processes (*e.g.,* which year data is requested), improved question structure, and process improvements related to LEA eligibility (*e.g.,* clarifying virtual and operational status).

Dated: May 5, 2022.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–10048 Filed 5–10–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–1794–000]

Green USA, 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 Green USA, 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 May 25, 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: May 5, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10104 Filed 5–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP22–26–000]

Northern Natural Gas Company; Notice of Schedule for the Preparation of an Environmental Assessment for the Des Moines A-Line Replacement Project

On December 3, 2021, Northern Natural Gas Company (Northern) filed an application in Docket No. CP22–26–000 requesting a Certificate of Public Convenience and Necessity pursuant to Section 7(b) and 7(c) of the Natural Gas Act to abandon, remove, and construct certain natural gas pipeline facilities in Boone, Dallas and Polk Counties, Iowa. The proposed project is known as the Des Moines A-Line Replacement Project (Project). Northern proposes to abandon its existing 16-inch-diameter Des Moines A-Line, originally authorized in 1943, and replace its capacity through the installation of new 20-inch-diameter pipeline as an extension of its Des Moines C-Line. The C-Line extension would not increase the capacity of the system; but rather restore the 340 million cubic feet per day (MMcf/day) of natural gas lost with abandonment of the A-line. The Project would result in no loss of service to Northern's customers and would have no impact on Northern's ability to serve markets on its system.

On December 17, 2021, the Federal Energy Regulatory Commission (Commission or FERC) issued its Notice of Application for the Project. Among other things, that notice alerted agencies issuing federal authorizations of the requirement to complete all necessary reviews and to reach a final decision on a request for a federal authorization within 90 days of the date of issuance of the Commission staff's environmental document for the Project.

This notice identifies Commission staff's intention to prepare an environmental assessment (EA) for the Project and the planned schedule for the completion of the environmental review.[1]

Schedule for Environmental Review

Issuance of EA: November 4, 2022.

90-day Federal Authorization Decision Deadline:[2] February 2, 2023.

If a schedule change becomes necessary, additional notice will be provided so that the relevant agencies are kept informed of the Project's progress.

Project Description

Northern proposes to abandon about 29.6 miles of its existing 16-inch-diameter Des Moines IAB65001 A-Line in Boone, Dallas and Polk Counties, Iowa. The abandonment would begin at its existing Ogden Compressor Station at A-Line milepost (MP) 0.0 in Boone County. It would terminate at an existing A-Line Third Launcher, at A-Line MP 29.63, in Polk County. The A-Line would remain in-service downstream of the launcher; which would be renamed the Des Moines Pigging and Regulator Facility. Most of the existing A-Line would be abandoned-in-place; however, Northern proposes to remove about 0.06 mile of the A-Line. Northern also proposes to install a total of about 9.1 miles of new 20-inch-diameter pipeline as an extension of its existing C-Line in Boone, Dallas, and Polk Counties, Iowa.

Background

On February 8, 2022, the Commission issued a *Notice of Scoping Period Requesting Comments on Environmental Issues for the Proposed Des Moines A-Line Replacement Project.* The scoping period closed March 11, 2022. The Notice of Scoping was sent to affected landowners; federal, state, and local government agencies; elected officials; environmental and public interest groups; potentially interested Indian tribes; other interested parties; and local libraries and newspapers. In response to the Notice of Scoping, the Commission received a comment from the Teamsters National Pipeline Labor Management Cooperation Trust, stating that they support the building of the Project if union labor is utilized in construction. A landowner stated that the Project was rerouted to avoid their property, and referenced a past incident of pipeline failure on their property. A second landowner expressed concerns that the Project would negatively impact the impending sale of their property. All substantive environmental comments will be addressed in the EA.

Additional Information

In order to receive notification of the issuance of the EA and to keep track of formal issuances and submittals in specific dockets, the Commission offers a free service called eSubscription. This

[1] 40 CFR 1501.10 (2020).

[2] The Commission's deadline applies to the decisions of other federal agencies, and state agencies acting under federally delegated authority, that are responsible for federal authorizations, permits, and other approvals necessary for proposed projects under the Natural Gas Act. Per 18 CFR 157.22(a), the Commission's deadline for other agency's decisions applies unless a schedule is otherwise established by federal law.

service provides automatic notification of filings made to subscribed dockets, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

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, select ''General Search'' from the eLibrary menu, enter the selected date range and ''Docket Number'' excluding the last three digits (*i.e.,* CP22–26), and follow the instructions. For assistance with access to eLibrary, the helpline can be reached at (866) 208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov.* The eLibrary link on the FERC website also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rule makings.

Dated: May 5, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10105 Filed 5–10–22; 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: PR22–37–000.

Applicants: Duke Energy Kentucky, Inc.

Description: Submits tariff filing per 284.123(b)(2)+(: Petition for Rate Approval to be effective 5/2/2022.

Filed Date: 5/2/22.

Accession Number: 20220502–5245.

Comment Date: 5 p.m. ET 5/23/2022.

Docket Numbers: RP22–907–000.

Applicants: Maritimes & Northeast Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rates—Northern to Direct eff 5–1–2022 to be effective 5/1/2022.

Filed Date: 5/4/22.

Accession Number: 20220504–5128.

Comment Date: 5 p.m. ET 5/16/22.

Docket Numbers: RP22–908–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—BUG to Sunsea eff 5–4–22 to be effective 5/4/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5000.

Comment Date: 5 p.m. ET 5/17/22.

Docket Numbers: RP22–909–000.

Applicants: Rager Mountain Storage Company LLC.

Description: § 4(d) Rate Filing: Price Indice Update to be effective 6/4/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5040.

Comment Date: 5 p.m. ET 5/17/22.

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: May 5, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10106 Filed 5–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3562–026]

KEI (Maine) Power Management (III) LLC; Notice of Settlement Agreement and Soliciting Comments

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 3562–026.

c. *Date filed:* April 29, 2022.

d. *Applicant:* KEI (Maine) Power Management (III) LLC.

e. *Name of Project:* Barker Mill Upper Hydroelectric Project (a.k.a. Upper Barker Project).

f. *Location:* On the Little Androscoggin River, in the City of Auburn, Androscoggin County, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Lewis C. Loon, General Manager, KEI (USA) Power Management Inc., 423 Brunswick Avenue, Gardiner, ME 04345; phone at (207) 203–3027; email at *LewisC.Loon@krueger.com.*

i. *FERC Contact:* John Matkowski, telephone (202) 502–8576, and email *john.matkowski@ferc.gov.*

j. *Deadline for filing comments:* May 25, 2022. Reply comments due June 4, 2022.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–3562–026.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. KEI (Maine) Power Management (III) LLC (KEI Power) filed a Settlement Agreement for the Barker's Mill Project (FERC No. 2808),[1] Upper Barker Project (FERC No. 3562), and Marcal Project (FERC No. 11482) (Settlement) executed by and between the licensee and the U.S. Department of Justice, the U.S. Fish and Wildldife Service, the National Marine Fisheries Service, the Maine

[1] The Barker's Mill Project is also known as and referred herein as the Lower Barker Project.

Department of Marine Resources (Maine DMR), and the Maine Department of Inland Fisheries and Widlife (Settlement Parties). The purpose of the Settlement is to resolve the parties' disagreements over the issues related to fish and aquatic resource management, including upstream and downstream passage measures for American eel, river herring, American shad, sea lamprey, and Atlantic salmon; minimum flow releases; and, aquatic invasive species. Specifically for the relicensing of the Upper Barker Project, the Settlement provides for: (1) Coordinating the time frame for providing upstream and downstream fish passage at the Upper Barker Project; (2) aligning the minimum and seasonal flows at the Upper Barker and the Lower Barker Projects; (3) aligning the Upper Barker and Lower Barker Projects license terms by extending the 40-year license term of the Lower Barker Project to 50 years and requesting a license term of 47 years for the Upper Barker Project; (4) establishing an off-license agreement to fund an Androscoggin Basin Stewardship Fund administered by Maine DMR to benefit spawning and rearing habitat in the basin; and (5) assuring, through an off-license agreement, the resources agencies' support for KEI Power's request for Low Impact Hydropower Institute certification for the Upper Barker Project.

l. A copy of the Settlement Agreement is available for review on the Commission's website at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document (*i.e.,* P–3562). For assistance, contact FERC Online Support.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: May 5, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10103 Filed 5–10–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC19–27–000; EC20–94–000.

Applicants: IIF US Holding LP, IIF US Holding 2 LP, IIF US Holding LP, IIF US Holding 2 LP.

Description: Informational Filing of November 16, 2018 and August 31, 2020 Application for Authorization Under Section 203 of the Federal Power Act of IIF US Holding LP, et al.

Filed Date: 5/3/22.

Accession Number: 20220503–5217.

Comment Date: 5 p.m. ET 5/24/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–110–000.

Applicants: Arnold & Arnold LLP.

Description: SJRR Power LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/4/22.

Accession Number: 20220504–5164.

Comment Date: 5 p.m. ET 5/25/22.

Docket Numbers: EG22–111–000.

Applicants: Arnold & Arnold LLP.

Description: Victoria Port Power II LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 5/4/22.

Accession Number: 20220504–5166.

Comment Date: 5 p.m. ET 5/25/22.

Docket Numbers: EG22–112–000.

Applicants: Yaphank Fuel Cell Park, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Yaphank Fuel Cell Park, LLC.

Filed Date: 5/5/22.

Accession Number: 20220505–5049.

Comment Date: 5 p.m. ET 5/26/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1575–016; ER10–1827–009; ER10–2630–004; ER10–2791–018; ER10–2792–018; ER10–2876–018; ER10–3230–012; ER10–3237–012; ER10–3239–012; ER10–3240–012; ER10–3253–012; ER11–4111–003; ER13–1248–002; ER13–1485–012; ER12–1777–001; ER15–2722–008; ER18–552–004; ER18–1310–003; ER18–2264–008; ER19–289–007; ER19–461–003; ER19–2462–005; ER21–684–001

Applicants: Wheelabrator South Broward Inc., Macquarie Energy LLC, Wheelabrator Concord Company, L.P., Cleco Cajun LLC, Macquarie Energy Trading LLC, Wheelabrator Millbury Inc., Clean Energy Future-Lordstown, LLC, Wheelabrator Saugus Inc., The Dayton Power and Light Company, Wheelabrator Baltimore, L.P., Patua Project LLC, Hudson Ranch Power I LLC, Wheelabrator Bridgeport, L.P., Wheelabrator North Andover Inc., Wheelabrator Westchester L.P., Wheelabrator Frackville Energy Company Inc., Wheelabrator Portsmouth Inc., Louisiana Generating LLC, Big Cajun I Peaking Power LLC, Bayou Cove Peaking Power LLC, NGP Blue Mountain I LLC, Cleco Power LLC, Cottonwood Energy Company, LP.

Description: Notice of Change in Status of Cottonwood Energy Company, LP, et al.

Filed Date: 5/2/22.

Accession Number: 20220502–5402.

Comment Date: 5 p.m. ET 5/23/22.

Docket Numbers: ER15–1332–009; ER17–1314–004; ER10–2397–004; ER10–2398–011; ER10–2399–011; ER10–2400–016; ER10–2401–010; ER10–2402–009; ER11–3414–010; ER19–1280–004; ER10–2403–010; ER20–2717–002; ER17–2541–002; ER10–2423–010; ER10–2404–010; ER14–1933–011; ER20–2714–002; ER10–2405–012; ER10–2406–012; ER17–2087–007; ER21–714–005; ER16–1152–005; ER19–1281–004; ER14–1594–004; ER14–1596–004; ER10–2407–009; ER10–2408–007; ER22–399–001; ER10–2409–011; ER10–2410–011; ER10–2411–012; ER10–2412–012; ER17–1315–009; ER18–1189–006; ER10–2414–015; ER11–2935–013; ER16–1724–008; ER19–1282–004; ER10–2425–011; ER18–1188–005; ER17–1316–007; ER10–2424–009; ER17–1318–006; ER14–1934–005; ER14–1935–005; ER15–1020–003; ER20–2746–003; ER19–2626–004; ER10–2426–003; ER20–245–002; ER20–242–002; ER13–1816–016; ER19–1044–005; ER18–1186–006; ER15–1333–009; ER10–2428–004; ER20–246–002.

Applicants: Windhub Solar A, LLC, Wheat Field Wind Power Project LLC, Waverly Wind Farm LLC, Turtle Creek Wind Farm LLC, Telocaset Wind Power Partners, LLC, Sustaining Power Solutions LLC, Sunshine Valley Solar, LLC, Sun Streams, LLC, Sagebrush Power Partners, LLC, Rosewater Wind Farm LLC, Riverstart Solar Park LLC, Rising Tree Wind Farm III LLC, Rising Tree Wind Farm II LLC, Rising Tree Wind Farm LLC, Redbed Plains Wind Farm LLC, Rail Splitter Wind Farm, LLC, Quilt Block Wind Farm LLC, Prairie Queen Wind Farm LLC, Pioneer Prairie Wind Farm I, LLC, Paulding

Wind Farm IV LLC, Paulding Wind Farm III LLC, Paulding Wind Farm II LLC, Old Trail Wind Farm, LLC, Meadow Lake Wind Farm VI LLC, Meadow Lake Wind Farm V LLC, Meadow Lake Wind Farm IV LLC, Meadow Lake Wind Farm III LLC, Meadow Lake Wind Farm II LLC, Meadow Lake Wind Farm LLC, Meadow Lake Solar Park LLC, Marble River, LLC, Lost Lakes Wind Farm LLC, Lone Valley Solar Park II LLC, Lone Valley Solar Park I LLC, Lexington Chenoa Wind Farm LLC, Jericho Rise Wind Farm LLC, Indiana Crossroads Wind Farm LLC, Hog Creek Wind Project, LLC, High Trail Wind Farm, LLC, High Prairie Wind Farm II, LLC, Headwaters Wind Farm II LLC, Headwaters Wind Farm LLC, Flat Rock Windpower II LLC, Flat Rock Windpower LLC, Estill Solar I, LLC, Crossing Trails Wind Power Project LLC, Cloud County Wind Farm, LLC, Broadlands Wind Farm LLC, Blue Canyon Windpower VI LLC, Blue Canyon Windpower V LLC, Blue Canyon Windpower II LLC, Blue Canyon Windpower LLC, Blackstone Wind Farm II LLC, Blackstone Wind Farm, LLC, Arlington Wind Power Project LLC, Arkwright Summit Wind Farm LLC, Arbuckle Mountain Wind Farm LLC.

Description: Notice of Change in Status of Arbuckle Mountain Wind Farm LLC, et al.

Filed Date: 5/2/22.

Accession Number: 20220502–5400.

Comment Date: 5 p.m. ET 5/23/22.

Docket Numbers: ER22–1432–001.

Applicants: Arizona Public Service Company.

Description: Tariff Amendment: Amendment 1—Time Zone Modifications to be effective 5/23/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5124.

Comment Date: 5 p.m. ET 5/26/22.

Docket Numbers: ER22–1554–000.

Applicants: Ford County Wind Farm LLC.

Description: Supplement to April 4, 2022 Ford County Wind Farm LLC tariff filing.

Filed Date: 5/4/22.

Accession Number: 20220504–5159.

Comment Date: 5 p.m. ET 5/16/22.

Docket Numbers: ER22–1797–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3718 Frontier Windpower II GIA Cancellation to be effective 4/20/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5060.

Comment Date: 5 p.m. ET 5/26/22.

Docket Numbers: ER22–1798–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, Service Agreement No. 6456; Queue No. AE1–196 to be effective 4/5/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5132.

Comment Date: 5 p.m. ET 5/26/22.

Docket Numbers: ER22–1799–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original NSA, SA No. 6435; Queue No. AD2–009 to be effective 4/7/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5142.

Comment Date: 5 p.m. ET 5/26/22.

Docket Numbers: ER22–1800–000.

Applicants: Red Lake Falls Community Hybrid LLC.

Description: Baseline eTariff Filing: Reactive Power Compensation Filing to be effective 7/1/2022.

Filed Date: 5/5/22.

Accession Number: 20220505–5158.

Comment Date: 5 p.m. ET 5/26/22.

Take notice that the Commission received the following foreign utility company status filings:

Docket Numbers: FC22–2–000.

Applicants: BillerudKorsnäs Sweden AB,BillerudKorsnäs Skog & Industri AB.

Description: Self-Certification of Foreign Utility Company Status of BillerudKorsnäs Sweden AB, et. al.

Filed Date: 5/2/22.

Accession Number: 20220502–5401.

Comment Date: 5 p.m. ET 5/23/22.

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: May 5, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–10102 Filed 5–10–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2021–0513; FRL–9716–01–OCSPP]

Cancellation Order for Certain Pesticide Registrations and Amendments To Terminate Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations and amendments to terminate uses, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 and Table 2 of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a February 1, 2022, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 3 of Unit II to voluntarily cancel and amend to terminate uses of these product registrations. In the February 1, 2022, notice, EPA indicated that it would issue an order implementing the cancellations and amendments to terminate uses, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency did not receive any comments on the notice. Further, the registrants did not withdraw their requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations and amendments to terminate uses. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations and amendments are effective May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.christopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical

industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2021–0513, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744.

Due to the public health concerns related to COVID–19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellations and amendments to terminate uses, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Tables 1 and 2 of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
432–1515	432	BES0531	Bacillus thuringiensis subspecies israelensis Strain BMP 144 solids, spores and insecticidal toxins.
524–487	524	Harness 20G Granular Herbicide	Acetochlor.
524–496	524	Mon 58430 Herbicide	Acetochlor.
524–497	524	Mon 58442 Herbicide	Atrazine; Glyphosate-isopropylammonium & Acetochlor.
1258–1401	1258	IWC 2300–G	Sodium bromide.
2693–70	2693	Latenac Antifouling Red	Cuprous oxide.
2724–688	2724	Security BT Dust Biological Insecticide.	Bacillus thuringiensis subspecies kurstaki strain SA-12 solides, spores, and insecticidal toxins, ATCC # SD–1323.
4822–278	4822	Raid Formula 278 Insect Killer	Permethrin.
5185–448	5185	NABR97–E	Sodium bromide.
6836–264	6836	Dantobrom TBS-2	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
6836–281	6836	Dantobrom PG Granular	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-; 1,3-Dichloro-5,5-dimethylhydantoin & 1,3-Dichloro-5-ethyl-5-methylhydantoin.
7946–11	7946	Mauget Inject-A-Cide B	Dicrotophos.
8622–25	8622	Halobrom	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–28	8622	Halogene	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–29	8622	Halogene G	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–30	8622	Halogene T–30	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–41	8622	Halobrom Mini Slow Dissolving Brominating Tablets for Pool & Spa.	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–70	8622	Halobrom BCDMH 96%	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–73	8622	Halogene—Tab	2,4-Imidazolidinedione, 1-bromo-3-chloro-5,5-dimethyl-.
8622–82	8622	Halogene 96	2,4-Imidazolidinedione, 3-bromo-1-chloro-5,5-dimethyl-.
9688–84	9688	Chemsico Lawn & Garden Insect Control.	Permethrin.
9688–85	9688	Chemsico Home Insect Control C	Permethrin.
9688–120	9688	Chemsico Concentrate MP	Permethrin & Myclobutanil.
9688–149	9688	Chemsico Insecticide Concentrate 57P.	Permethrin.
9688–184	9688	Chemsico Fire Ant Killer PD	Permethrin.
11678–78	11678	Titanium 9.3	Novaluron.
41750–3	41750	Awlgrip Awlstar Anti-Fouling Gold Label BP802 White Lightning.	Cuprous oxide.
62719–42	62719	Reldan F Insecticidal Chemical	Chlorpyrifos-methyl.
73049–405	73049	BTI Technical Powder Bioinsecticide.	Bacillus thuringiensis subsp. israelensis strain EG2215.
74229–1	74229	Magna Cide D	Nabam & Sodium dimethyldithiocarbamate.
80289–16	80289	Dipron 10 EC	Novaluron.
87093–12	87093	LN Iron HEDTA	Ferric HEDTA.
AR–970005	2217	Acme Hi-Dep Herbicide	2,4-D, diethanolamine salt & 2,4-D, dimethylamine salt.
CA–100003	66222	Rimon 0.83 EC Insecticide	Novaluron.
ID–100005	66222	Rimon 0.83 EC	Novaluron.
ID–180003	5481	Parazone 3SL Herbicide	Paraquat dichloride.
ID–190005	5481	Parazone 3SL Herbicide	Paraquat dichloride.
ID–190006	5481	Parazone 3SL Herbicide	Paraquat dichloride.
ID–190007	5481	Parazone 3SL Herbicide	Paraquat dichloride.
MT–060002	66222	Rimon 0.83 EC	Novaluron.
OR–180005	5481	Parazone 3SL Herbicide	Paraquat dichloride.
OR–160008	264	Sivanto 200 SL	Flupyradifurone.
WA–050016	61282	Prozap Zinc Phosphide Pellets	Zinc phosphide (Zn3P2).

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
WA–120012	59639	Valor Herbicide	Flumioxazin.
WA–180003	5481	Parazone 3SL Herbicide	Paraquat dichloride.
WY–060005	66222	Rimon 0.83 EC	Novaluron.

TABLE 2—PRODUCT REGISTRATION AMENDMENTS TO TERMINATE USES

Registration No.	Company No.	Product name	Active ingredient	Uses to be terminated
10088–55	10088	Non-Selective Herbicide #3.	Prometon	Weed control on railroad sidings.
10324–81	10324	Maquat 7.5-M	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride.	Cadaver.
10324–177	10324	Maquat 705-M	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride; 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride.	Cadaver.
66222–22	66222	Pramitol 25E	Prometon	Railroads.
70506–575	70506	Thiram 480DP	Thiram	Turf and golf.

Table 3 of this unit includes the names and addresses of record for all registrants of the products in Tables 1 and 2 of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed above.

TABLE 3—REGISTRANTS OF CANCELLED AND AMENDED PRODUCTS

EPA company No.	Company name and address
264	Bayer CropScience, LP, Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004.
432	Bayer Environmental Science, A Division of Bayer CropScience, LP, 700 Chesterfield Parkway West, Chesterfield, MO 63017.
524	Bayer CropScience, LP, 801 Pennsylvania Ave. NW, Suite 900, Washington, DC 20004.
1258	Innovative Water Care, LLC, 1400 Bluegrass Lakes Parkway, Alpharetta, GA 30004.
2217	PBI/Gordon Corporation, 22701 W 68th Terrace, Shawnee, KS 66226.
2693	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
2724	Wellmark International, 1501 E Woodfield Road, Suite 200 West, Schaumburg, IL 60173.
4822	S.C. Johnson & Son, Inc., 1525 Howe Street, Racine, WI 53403.
5185	Bio-Lab, Inc., P.O. Box 300002, Lawrenceville, GA 30049–1002.
5481	Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706.
6836	Arxada, LLC, 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
7946	J.J. Mauget Co., Agent Name: SciReg, Inc., 12733 Director's Loop, Woodbridge, VA 22192.
8622	ICL–IP America, Inc., 11636 Huntington Road, Gallipolis Ferry, WV 25515.
9688	Chemsico, A Division of United Industries Corp., One Rider Trail Plaza Drive, Suite 300, Earth City, MO 63045–1313.
10088	Athea Laboratories, Inc., P.O. Box 240014, Milwaukee, WI 53224.
10324	Mason Chemical Company, 9075 Centre Pointe Dr., Suite 400, West Chester, OH 45069.
11678	Adama Makhteshim Ltd., Agent Name: Makhteshim-Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
41750	International Paint, LLC, 6001 Antoine Drive, Houston, TX 77091.
59639	Valent U.S.A., LLC, 4600 Norris Canyon Road, P.O. Box 5075, San Ramon, CA 94583.
61282	Hacco, Inc., 620 Lesher Place, Lansing, MI 48912.
62719	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
66222	Makhteshim Agan of North America, Inc., D/B/A Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70506	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
73049	Valent Biosciences, LLC, 1910 Innovation Way, Suite 100, Libertyville, IL 60048–6316.
74229	Pro Tech USA, LLC, Agent Name: KRK Consulting, LLC, 5807 Churchill Way, Medina, OH 44256.
80289	Isagro S.P.A., D/B/A Isagro USA, Inc., Agent Name: Exigent Sciences, LLC, 370 S Main St., Yuma, AZ 85364.
87093	LNouvel, Inc., 4657 Courtyard Trail, Plano, TX 75024.

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received no comments in response to the February 1, 2022, **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations and amendments to terminate uses of products listed in Tables 1 and 2 of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)(1)), EPA hereby approves the requested cancellations and amendments to terminate uses of the registrations identified in Tables 1 and 2 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Tables 1 and 2 of Unit II are canceled and amended to terminate the affected uses. The effective date of the cancellations that are subject of this notice is May 11, 2022. Any distribution, sale, or use of existing stocks of the products identified in Tables 1 and 2 of Unit II in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of February 1, 2022 (87 FR 5476) (FRL–9417–01–OCSPP). The comment period closed on March 3, 2022.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the action. The existing stocks provision for the products subject to this order is as follows.

For voluntary cancellations, listed in Table 1, the registrants may continue to sell and distribute existing stocks of products listed in Table 1 until May 11, 2023, which is 1 year after publication of this cancellation order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o) or for proper disposal.

Now that EPA has approved product labels reflecting the requested amendments to terminate uses, registrants are permitted to sell or distribute products listed in Table 2 of Unit II under the previously approved labeling until November 11, 2023, a period of 18 months after publication of the cancellation order in this **Federal Register**, unless other restrictions have been imposed. Thereafter, registrants will be prohibited from selling or distributing the products whose labels include the terminated uses identified in Table 2 of Unit II, except for export consistent with FIFRA section 17 or for proper disposal.

Persons other than the registrant may sell, distribute, or use existing stocks of canceled products and products whose labels include the terminated uses until supplies are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products and terminated uses.

Authority: 7 U.S.C. 136 *et seq.*

Dated: April 29, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2022–10042 Filed 5–10–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9827–01–OAR]

Request for nominations for Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for nominations for Mobile Sources Technical Review Subcommittee (MSTRS).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to its Mobile Sources Technical Review Subcommittee (MSTRS). Vacancies are anticipated to be filled by October 17, 2022. Sources in addition to this **Federal Register** Notice may also be utilized in the solicitation of nominees.

DATES: Nominations must be postmarked or emailed by July 11, 2022.

ADDRESSES: Submit nominations in writing to: Julia Burch, Designated Federal Officer, Office of Transportation and Air Quality, U.S. Environmental Protection Agency (3204A), 1200 Pennsylvania Avenue NW, Washington, DC 20460.

You may also email nominations with subject line MSTRS2022 to *mstrs@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Julia Burch, Designated Federal Officer, U.S. EPA; telephone: (202) 564–0961; email: *burch.julia@epa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The MSTRS is a federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. The MSTRS provides the Clean Air Act Advisory Committee (CAAAC) with independent advice, counsel, and recommendations on the scientific and technical aspects of programs related to mobile source air pollution and its control.

Through its expert members from diverse stakeholder groups and from its various workgroups, the subcommittee reviews and addresses a wide range of developments, issues, and research areas such as emissions modeling, emission standards and standard setting, air toxics, innovative and incentive-based transportation policies, onboard diagnostics, heavy-duty engines, diesel retrofit, and fuel quality. The Subcommittee's website is at: *http://www.epa.gov/caaac/mobile-sources-technical-review-subcommittee-mstrs-caaac.*

Members are appointed by the EPA Administrator for three-year terms with the possibility of reappointment to a second term. The MSTRS usually meets two times annually and the average workload for the members is approximately 5 to 10 hours per month. EPA provides reimbursement for travel and other incidental expenses associated with official government business for members who qualify.

EPA is seeking nominations from representatives of nonfederal interests such as:

- Future transportation options and shared mobility interests
- Community and/or environmental and/or mobility justice interests
- State, tribal, and local government interests
- Mobile source emission modeling interests
- Transportation and supply chain shippers

- Marine and inland port interests
- Environmental advocacy groups

EPA values and welcomes opportunities to increase diversity, equity, inclusion, and accessibility on its Federal Advisory Committees. In an effort to obtain nominations of diverse candidates, EPA encourages nominations of people from all racial and ethnic groups.

In selecting members, we will consider technical expertise, coverage of broad stakeholder perspectives, diversity, and the needs of the subcommittee.

The following criteria will be used to evaluate nominees:

- The background and experiences that would help members contribute to the diversity of perspectives on the committee (*e.g.,* geographic, economic, social, cultural, educational, and other considerations);
- Experience in policy engagement across a range of mobility source transportation topics;
- Experience working with future transportation options and shared mobility;
- Experience working with the modeling of mobile source emissions;
- Experience working with producers of passenger cars, engines and trucks, engine and equipment manufacturing;
- Experience working with fuel or renewable fuel producers;
- Experience working with oil refiners, distributors and retailers of mobile source fuels;
- Experience working with clean energy producers;
- Experience working with agricultural producers (corn and other crop products), distillers, processors and shippers of biofuels;
- Experience working with emission control manufacturers, catalyst and filter manufacturers;
- Experience working for State, tribal, or local environmental agencies or air pollution control agencies;
- Experience working for environmental advocacy groups;
- Experience working for environmental and/or community groups;
- Experience working with supply chain logistics and goods movement;
- Experience working with marine port interests;
- Experience in working at the national level on local governments issues;
- Experience in working on local issues at the national level;
- Demonstrated experience with environmental, public health, and sustainability issues;
- Executive management level experience with membership in broad-based networks;
- Excellent interpersonal, oral and written communication and consensus-building skills;
- Ability to volunteer time to attend meetings two times a year, participate in teleconference and webinar meetings, attend listening sessions with the Administrator or other senior-level officials, develop policy recommendations to the Administrator, and prepare reports and advice letters.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, email address, and daytime telephone number. Interested candidates may self-nominate.

To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity.

Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to three-year terms.

Julia Burch,

Designated Federal Officer, Office of Transportation and Air Quality, U.S. Environmental Protection Agency.

[FR Doc. 2022–10126 Filed 5–10–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 22–472; FR ID 85412]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission released a public notice announcing two meetings of the North American Numbering Council (NANC).

DATES: Tuesday, June 14, 2022, and, Monday, August 15, 2022. The meetings will come to order at 2:00 p.m.

ADDRESSES: The meetings will be conducted via video conference and available to the public via the internet at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: You may also contact Christi Shewman, Designated Federal Officer, at *christi.shewman@fcc.gov* or 202–418–0646. More information about the NANC is available at *https://www.fcc.gov/about-fcc/advisory-committees/general/north-american-numbering-council.*

SUPPLEMENTARY INFORMATION: The NANC meetings are open to the public on the internet via live feed from the FCC's web page at *http://www.fcc.gov/live.* Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the Consumer and Governmental Affairs Bureau @(202) 418–0530 (voice), (202) 418–0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at *www.fcc.gov/ecfs.* Comments to the NANC should be filed in CC Docket No. 92–237. This is a summary of the Commission's document in CC Docket No. 92–237, DA 22–22–472, released April 29, 2022.

Proposed Agenda: At the June 14 meeting, the NANC will consider and vote on recommendations from the Numbering Administration Oversight Working Group on reviewing and updating the *Statement of Work & Billing and Collection Agent Requirements,* which embodies the required functions and operations of the North American Numbering Plan's Billing and Collection Agent; the North American Numbering Plan Billing & Collection Fund Size Projections and Contributions Factor; and an evaluation of the performance of the Billing & Collection Agent, Welch LLP. The NANC will also hear a report from the Billing & Collection Agent, Welch LLP. The NANC will also consider and vote on recommendations from the Call Authentication Trust Anchor Working Group Report and Recommendation to the NANC on Steps to Encourage Adoption of Caller ID Authentication Technology and Other Techniques to Combat Robocalls by Policymakers and Providers in Countries outside of the United States. At the August 15 meeting, the NANC will consider and vote on recommendations from the Numbering Administration Oversight Working Group on the feasibility of individual telephone number pooling

trials. The NANC will also hear routine status reports from the Numbering Administration Oversight Working Group, the North American Portability Management, LLC, and the Secure Telephone Identity Governance Authority. Either of these agendas may be modified at the discretion of the NANC Chair and the Designated Federal Officer (DFO). (5 U.S.C. App 2 § 10(a)(2))

Federal Communications Commission.

Pamela Arluk,

Division Chief, Competition Policy Division, Wireline Competition Bureau.

[FR Doc. 2022–10081 Filed 5–10–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register**, and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 201385.

Agreement Name: ONE/ELJSA Slot Exchange Agreement.

Parties: Ocean Network Express Pte. Ltd. and Evergreen Line Joint Service Agreement

Filing Party: Joshua Stein, Cozen O'Connor.

Synopsis: The Agreement authorizes the parties to exchange space on their HTW and FP1 services in the trade between ports in Japan, Taiwan and The People's Republic of China on the one hand, and U.S. ports in the Pacific coast range on the other hand.

Proposed Effective Date: 6/13/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/62502.

Dated: May 6, 2022.

William Cody,

Secretary.

[FR Doc. 2022–10100 Filed 5–10–22; 8:45 am]

BILLING CODE 6730–02–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0303; Docket No. 2022–0001; Sequence No. 6]

Information Collection; General Services Administration Acquisition Regulation; Federal Supply Schedule Solicitation Information

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB information clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an information collection requirement regarding OMB Control No. 3090–0303, Federal Supply Schedule Solicitation Information.

DATES: Submit comments on or before: July 11, 2022.

ADDRESSES: Submit comments identified by ''Information Collection 3090–0303, Federal Supply Schedule Solicitation Information'' to: *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching for ''Information Collection 3090–0303, Federal Supply Schedule Solicitation Information''. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0303, Federal Supply Schedule Solicitation Information''. Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0303, Federal Supply Schedule Solicitation Information,'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite Information Collection 3090–0303, Federal Supply Schedule Solicitation Information, in all correspondence related to this collection. Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas O'Linn, Procurement Analyst, General Services Acquisition Policy Division, GSA, by phone at 202–445–0390 or by email at *thomas.olinn@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

This information requirement consists of information used by Contracting Officers awarding GSA Federal Supply Schedule (FSS) contracts in the review and evaluation of offers.

B. Annual Reporting Burden

The annual total annual public hour burden for this information collection is estimated to be 12,207 total hours. Annual reporting burdens include the estimated respondents with one (1) submission per respondent multiplied by preparation hours per response to get the total response burden hours.

GSAR clause 552.238–84, Discounts for Prompt Payment. This clause requests an offeror to identify in their offer any discounts for early payment.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–87, Delivery Prices. This clause requests an offeror to identify in their offer whether or not prices submitted cover delivery f.o.b. destination in Alaska, Hawaii, and the Commonwealth of Puerto Rico.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–95, Separate Charge for Performance Oriented Packaging (POP) **. This clause requests an offeror, if applicable, to identify any hazardous material item (*i.e.,* SIN or Descriptive Name of Article) being offered and the separate charge that applies.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–96, Separate Charge for Delivery within Consignee's Premises**. This clause requests an offeror, as applicable, to identify any separate charge(s) for shipping when the delivery is within the consignee's premises (inclusive of items that are comparable in size and weight).

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–97, Parts and Service. This clause requests an offeror, if applicable, to include in their offer the names and addresses of all supply and service points maintained in the geographic area in which the offeror would perform under the GSA FSS contract (if awarded one). Additionally, requests an offeror to indicate whether or not a complete stock of repair parts for the items being offered is carried at that point, and whether or not mechanical service is available.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–99, Delivery Prices Overseas. This clause requests an offeror to identify the intended geographic area(s)/countries/zones which are covered by their offer.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: .50 (30 minutes).

Total response burden hours: 1,526.

GSAR clause 552.238–111, Environmental Protection Agency Registration Requirement**. This clause requests offerors, if applicable, to identify the manufacturer's and/or distributor's name and EPA Registration Number for each item offered that requires registration with the EPA.

Respondents: 3,051.

Responses per respondent: 1.

Total annual responses: 3,051.

Preparation hours per response: 1.0 (1 hr.).

Total response burden hours: 3,051.

** This clause applies to specific GSA FSS Solicitation Large Categories.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether GSA's estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW, Washington, DC 20405, telephone 202–501–4755. Please cite OMB Control No. 3090–0303, Federal Supply Schedule Solicitation Information, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–10113 Filed 5–10–22; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers CMS–10108]

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 June 10, 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 a currently approved collection; *Title of Information Collection:* Medicaid Managed Care Regulations; *Use:* Information collected includes information about managed care programs, grievances and appeals, enrollment broker contracts, and managed care organizational capacity to provide health care services. Medicaid enrollees use the information collected and reported to make informed choices regarding health care, including how to access health care services and the grievance and appeal system. States use the information collected and reported as part of its contracting process with managed care entities, as well as its compliance oversight role. We use the information collected and reported in an oversight role of state Medicaid managed care programs.

Among the proposed changes, this iteration also accommodates the use of reporting templates for existing reporting requirements at 42 CFR 438.207(d) for network adequacy and access and § 438.74 for medical loss

ratio. The templates are intended to help states by articulating the specific data elements needed and by providing an easy to use format that facilitates CMS' tracking and analysis. The data gathered from these reports will enable CMS to ensure state compliance with regulatory requirements. *Form Number:* CMS–10108 (OMB control number: 0938–0920); *Frequency:* Occasionally; *Affected Public:* Individuals or households, Private sector (business or other for-profit and not-for-profit institutions), and State, local or Tribal Government; *Number of Respondents:* 609; *Total Annual Responses:* 13,742,805; *Total Annual Hours:* 1,682,411. (For policy questions regarding this collection contact Amy Gentile at 410–786–3499.)

Dated: May 5, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–10067 Filed 5–10–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–10553 and CMS–R–305]

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 July 11, 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–10553 Medicaid Managed Care Quality including Supporting Regulations

CMS–R–305 External Quality Review (EQR) of Medicaid and Children's Health Insurance

Program (CHIP) Managed Care, EQR Protocols, and Supporting Regulations

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. *Title of Information Collection:* Medicaid Managed Care Quality including Supporting Regulations; *Type of Information Collection Request:* Extension of a currently approved collection; *Use:* Medicaid beneficiaries and stakeholders use the information collected and reported to understand the state's quality improvement goals and objectives, and to understand how the state is measuring progress on its goals. States use this information to help monitor and assess the performance of their Medicaid managed care programs. This information may assist states in comparing the outcomes of quality improvement efforts and can assist them in identifying future performance improvement subjects. CMS uses this information as a part of its oversight of Medicaid programs. *Form Number:* CMS–10553 (OMB control number: 0938–1281); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits and State, Local or Tribal Governments; *Number of Respondents:* 376; *Number of Responses:* 2,655; *Total Annual Hours:* 36,010. (For questions regarding this collection contact Jennifer Maslowski at 312–886–2567.)

2. *Title of Information Collection:* External Quality Review (EQR) of Medicaid and Children's Health Insurance Program (CHIP) Managed Care, EQR Protocols, and Supporting Regulations; *Type of Information Collection Request:* Revision of a currently approved collection; *Use:* This 2022 information collection request proposes to revise the active external quality review (EQR) protocols (which were last revised in 2019). The revisions would: (1) Align the existing protocols, appendices, and worksheets with the 2020 Medicaid managed care final rule, and (2) add a new protocol, Validation of Network Adequacy (RIN 0938–AS25, CMS–2480–F). A summary of these changes includes, but is not limited to, adding three elements to 42 CFR 438.358(b)(1)(iii) to include a review of elements 438.56, 438.100, and 438.114;

establishing the first protocol for the new mandatory activity described in 438.358(b)(1)(iv) for network adequacy validation for managed care organizations (MCOs), prepaid inpatient health plans (PIHPs), and prepaid ambulatory health plans (PAHPs); and other formatting changes. *Form Number:* CMS–R–305 (OMB control number: 0938–0786); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for-profits and State, Local or Tribal Governments; *Number of Respondents:* 603; *Number of Responses:* 5,945; *Total Annual Hours:* 413,310. (For questions regarding this collection contact Jennifer Maslowski at 312–886–2567.)

Dated: May 5, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–10064 Filed 5–10–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Intent To Award a Single-Source Supplement for the Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults With a History of Trauma and Their Family Caregivers Program

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplement to the current cooperative agreement held by the Jewish Federations of North America for the project *Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers* program. The purpose of this program is to advance the development and expansion of PCTI supportive services for Holocaust survivors living in the U.S. Additionally, the project is advancing the capacity of the broader aging services network to deliver services of this type to any older adult with a history of trauma and their family caregivers. The overall goals of the program are as follows:

1. Increase the number and type of innovations in PCTI care for Holocaust survivors, older adults with a history of trauma, and their family caregivers, and

2. Expand the capacity of the Aging Network to provide PCTI care to the populations it serves.

The administrative supplement for FY 2022 will be in the amount of $987,000, bringing the total award for FY 2022 to $5,922,000.

The additional funding will not be used to begin new projects, but to permit JFNA to expand current activities. For example, to increase the number and diversity of innovations in PCTI care, the grantee will expand its National Networks Program with a focus on addressing social isolation, a leading risk factor for poor health among older adults that has become even more acute because of COVID–19, and on providing PCTI care to foreign born older adults with histories of trauma. JFNA will also promote special topics and innovations in PCTI care among subgrantees in the Expanded Critical Supports Program, including innovations that promote the safe and welcoming re-integration of Holocaust survivors and other traumatized older populations into in-person programs as COVID–19 becomes less of a risk factor and that promote resilience in older trauma survivors to reduce their risk for institutionalization. To augment project efforts and build the capacity of the Aging Network to provide PCTI care, JFNA will work with project partners to expand and enhance the online PCTI training program currently under way in the original ACL grant. This training will increase system-wide awareness and knowledge about PCTI care. Additionally, JFNA will recruit a year-long, graduate level fellow to enhance its evaluation and dissemination promising practices in PCTI care and in PCTI program evaluation.

Program Name: Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers.

Recipient: The Jewish Federations of North America.

Period of Performance: The supplement award will be issued for the third year of the five-year project period of September 1, 2020 through August 31, 2025.

Total Award Amount: $5,922,000 in FY 2022.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The Older Americans Act (OAA) of 1965, as amended, Public Law 109–365—Title 4, Section 411.

Basis for Award: The Jewish Federations of North America (JFNA) is currently funded to carry out the objectives of the project entitled *Expanding the National Capacity for Person-Centered, Trauma-Informed (PCTI) Care: Services and Supports for Holocaust Survivors and Other Older Adults with a History of Trauma and Their Family Caregivers* for the period of September 1, 2020 through August 31, 2025. Since project implementation began in late 2020, the grantee has accomplished a great deal. The supplement will enable the grantee to carry their work even further, serving more Holocaust survivors, other older adults with histories of trauma, family caregivers and to train more professionals in the principles of PCTI. The additional funding will not be used to begin new projects or activities.

The JFNA is uniquely positioned to complete the work called for under this project. JFNA's partners on this project include the National Indian Council on Aging, the Japanese American Service Committee, the National Caucus and Center on Black Aging, Inc., the New Jersey Office for Refugees International Rescue Committee, the Asociacion Nacional Pro Personas Mayores (a pioneering organization in the field of Hispanic/minority aging); SAGE (the nation's leading organization devoted to aging in the lesbian, gay, bisexual, and transgender community); and HIAS (which works around the world to protect refugees). Additional project partners include, the Caregiver Center at the Veterans Affairs Medical Center at the University of Tennessee; the Community Care Corps Program, funded by the Administration for Community Living and led by the Oasis Institute; the Caregiver Action Network, and USAging; LeadingAge, an association of 6,000 not for profit organizations across the continuum of aging services; the Center for Health Care Strategies, Inc., which advances models for organizing and financing health care delivery; and the Campaign for Trauma-Informed Policy and Practice, which promotes the building of trauma-informed communities; among others.

Establishing an entirely new grant project at this time would be potentially disruptive to the current work already well under way. More importantly, the Holocaust survivors and other older adults currently being served by this project could be negatively impacted by a service disruption, thus posing the risk of re-traumatization and further negative impacts on health and wellbeing. If this supplement is not provided, the project would be less able to address the significant unmet health and social support needs of additional Holocaust survivors and other older adults with histories of trauma.

Similarly, the project would be unable to expand its current technical assistance and training efforts in PCTI concepts and approaches, let alone reach beyond traditional providers of services to this population to train more ''mainstream'' providers of aging services.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Greg Link, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Office of Supportive and Caregiver Services: Telephone (202)–795–7386; email *greg.link@acl.hhs.gov.*

Dated: May 6, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary for Aging.

[FR Doc. 2022–10084 Filed 5–10–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Announcing the Intent To Award a Single-Source Supplement for the National Center for Benefits Outreach and Enrollment

ACTION: Notice.

SUMMARY: The Administration for Community Living (ACL) announces the intent to award a single-source supplemental to the current cooperative agreement held by the National Council on Aging (NCOA) for the National Center for Benefits Outreach and Enrollment (NCBOE). The purpose of the NCBOE is to provide technical assistance to states, Area Agencies on Aging, Aging and Disability Resource Centers and service providers who conduct outreach and low-income benefits enrollment assistance, particularly to older individuals with greatest economic need for federal and state programs. The administrative supplement for FY 2022 will be for $2,931,502, bringing the total award for FY 2022 to $14,431,502.

FOR FURTHER INFORMATION CONTACT: For further information or comments regarding this program supplement, contact Margaret Flowers, U.S. Department of Health and Human Services, Administration for Community Living, Center for Integrated Programs, Office of Healthcare Information and Counseling; telephone (202) 795–7315; email *Margaret.flowers@acl.hhs.gov.*

SUPPLEMENTARY INFORMATION: This supplemental funding will expand the NCBOE's outreach and education efforts targeting older adults with the greatest economic need, especially people from underserved communities. The NCBOE will build on current efforts to reach and assist beneficiaries, including expanding the work of the Benefits Enrollment Centers, making enhancements to the benefits eligibility and screening tool, and expanding the capacity of the benefits call center. As part of this work, the NCBOE should reflect on the equity assessment conducted in 2021 to identify specific strategies to reach and enroll beneficiaries in rural communities, who are under 65, with limited English proficiency, from tribal communities, from communities of color, and/or from other historically underserved and marginalized communities. Additionally, the NCBOE should explore ways to educate counselors and low-income beneficiaries about possible Medicare Advantage supplemental benefits.

The NCBOE maintains an information clearinghouse on best practices and cost-effective methods for finding and enrolling older individuals and people with disabilities with greatest economic need. This clearinghouse includes research that could help inform and support the work done by the network. The NCBOE should consider new research topics, such as exploring the impact COVID–19 had on their health and finances or predictors of Medicaid utilization, to help agencies better understand the populations served. The NCBOE should also build on the work done to date to educate individuals who are dually eligible by conducting an evaluation of the My Care, My Choice decision support tool and its usage by beneficiaries and/or counselors.

Program Name: The National Center for Benefits Outreach and Enrollment (NCBOE).

Recipient: National Council on Aging (NCOA).

Period of Performance: The award will be issued for the current project period of September 1, 2022 through August 31, 2023.

Total Award Amount: $14,431,502 in FY 2022.

Award Type: Cooperative Agreement Supplement.

Statutory Authority: The statutory authority is contained in the 2006 Reauthorization of the Older Americans Act and the Medicare Improvements for Patients and Providers Act of 2008, as amended by the Patient Protection and Affordable Care Act of 2010, and reauthorized by the American Taxpayer Relief Act of 2012, Protecting Access to Medicare Act of 2014, Bipartisan Budget Act of 2018, and Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, and Consolidated Appropriations Act of 2021.

Basis for Award: The National Council on Aging (NCOA) is currently funded to carry out the NCBOE Project for the period of September 1, 2020 through August 31, 2025. Much work has already been completed and further tasks are currently being accomplished. It would be unnecessarily time consuming and disruptive to the NCBOE project and the beneficiaries being served for the ACL to establish a new grantee at this time when critical services are presently being provided in an efficient manner.

NCOA is uniquely placed to complete the work under the NCBOE grant. Since 2001, NCOA has been the national leader in improving benefits access to vulnerable older adults. They have an unparalleled history of working with community-based organizations to develop and replicate outreach and enrollment solutions, while maintaining and enhancing technology to make it easier and more efficient to find benefits. NCOA through NCBOE accomplishes its mission by developing and sharing tools, resources, best practices, and strategies for benefits outreach and enrollment via its online clearinghouse, electronic and print publications, webinars, and training and technical assistance.

In addition, NCOA has BenefitsCheckUp which is, by far, the nation's most comprehensive and widely-used web-based service that screens older and disabled adults with limited incomes and resources and informs them about public and private benefits for which they are very likely to be eligible. Since the BenefitsCheckUp was launched in 2001, nearly 9.9 million people have discovered $42.7 billion in benefits. In addition to the focus on Low-Income Subsidy and Medicare Savings Programs, BenefitsCheckUp also includes more than 2,500 benefits programs from all 50 states and DC, including over 50,000 local offices for people to apply for benefits; and more than 1,500 application forms in every language in which they are available.

NCOA is successfully meeting all programmatic goals under the current NCBOE grant.

Dated: May 6, 2022.

Alison Barkoff,

Acting Administrator and Assistant Secretary.

[FR Doc. 2022–10094 Filed 5–10–22; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–N–0619]

Advisory Committee; Gastrointestinal Drugs Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of the Gastrointestinal Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Gastrointestinal Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the March 3, 2024, expiration date.

DATES: Authority for the Gastrointestinal Drugs Advisory Committee will expire on March 3, 2024, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Rhea Bhatt, Division of Advisory Committee and Consultant Management, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2434, Silver Spring, MD 20993–0002, 301–796–9001, email: *GIDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Gastrointestinal Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of gastrointestinal diseases and makes appropriate recommendations to the Commissioner.

The Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of gastroenterology, endocrinology, surgery, clinical pharmacology, physiology, pathology, liver function, motility, esophagitis, and statistics. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/gastrointestinal-drugs-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to The Committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app.). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: May 4, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–10040 Filed 5–10–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1992]

Marwan Massouh; Denial of Hearing; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is denying Marwan Massouh's (Dr. Massouh's) request for a hearing and issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarring Dr. Massouh for 3 years from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Massouh was convicted of a misdemeanor under Federal law for causing the introduction or delivery for introduction into interstate commerce of drugs that were misbranded under the FD&C Act. Additionally, FDA finds that the conduct underlying Dr. Massouh's conviction undermines the process for the regulation of drugs. In determining the appropriateness and period of Dr. Massouh's debarment, FDA considered the relevant factors listed in the FD&C Act. Dr. Massouh failed to file with the Agency information and analyses sufficient to create a basis for a hearing concerning this action.

DATES: This order is applicable May 11, 2022.

ADDRESSES: Any application for termination of debarment by Dr. Massouh under section 306(d) of the FD&C Act (application) may be submitted as follows:

Electronic Submissions

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. An application submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your application will be made public, you are solely responsible for ensuring that your application does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your application, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an application with confidential information that you do not wish to be made available to the public, submit the application as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets

Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

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

Instructions: All applications must include the Docket No. FDA–2018–N–1992. An application will be placed in the docket and, unless submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

Docket: For access to the docket, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852 between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500. Publicly available submissions may be seen in the docket.

FOR FURTHER INFORMATION CONTACT: Rachael Vieder Linowes, Office of Scientific Integrity, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 1, Rm. 4206, Silver Spring, MD 20993, 240–402–5931.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(b)(2)(B)(i)(I) of the FD&C Act (21 U.S.C. 335a(b)(2)(B)(i)(I)) permits FDA to debar an individual if FDA finds that (1) the individual has been convicted of a misdemeanor under Federal law for conduct relating to the regulation of drug products under the FD&C Act, and (2) the conduct underlying the conviction undermines the process for the regulation of drugs.

In September 2013, Dr. Massouh pled guilty to a misdemeanor for introducing a misbranded drug into interstate commerce, in violation of section 301(a) of the FD&C Act (21 U.S.C. 331(a)). On October 16, 2013, the U.S. District Court for the Northern District of Ohio entered a judgment of conviction against Dr. Massouh for his violation of section 301(a) and sentenced him to 1 year of probation. According to the criminal information to which Dr. Massouh pled guilty, between January 3, 2006, and March 31, 2009, Dr. Massouh, an oncologist, purchased and received oncology drugs from a drug distributor located in Canada. Dr. Massouh's actions caused the introduction into interstate commerce of drugs that were misbranded under section 502(f)(1) of the FD&C Act (21 U.S.C. 352(f)(1)) because their labeling did not bear adequate directions for use.

By letter dated July 13, 2018, FDA's Office of Regulatory Affairs (ORA) notified Dr. Massouh of a proposal to debar him for 3 years from providing services in any capacity to a person that has an approved or pending drug product application. The proposal explained that FDA based the proposed debarment on his misdemeanor conviction. The proposal outlined findings concerning the four relevant factors that ORA considered in determining the appropriateness and period of debarment, as provided in section 306(c)(3) of the FD&C Act: (1) The nature and seriousness of the offense under section 306(c)(3)(A); (2) the nature and extent of management participation in the offense under section 306(c)(3)(B); (3) the nature and extent of voluntary steps to mitigate the impact on the public under section 306(c)(3)(C); and (4) prior convictions under the FD&C Act or other acts involving matters within FDA's jurisdiction under section 306(c)(3)(F). ORA found that the first two were unfavorable factors and the last two were favorable factors for Dr. Massouh. The notice concluded that ''the unfavorable factors cumulatively outweigh the favorable factors and that debarment is appropriate.''

The proposal offered Dr. Massouh the opportunity to request a hearing and provided him 30 days from the date of receipt of the letter to file the request and 60 days from the date of receipt of the letter to support his request with information sufficient to justify a hearing. In a submission dated August 17, 2018, through counsel, Dr. Massouh ''request[ed] a hearing relative to the Food and Drug Administration's Notice of Opportunity for Hearing'' but did not include information to support his request. Further, Dr. Massouh did not state whether information justifying the hearing request would be forthcoming. However, more than 60 days have elapsed since Dr. Massouh's receipt of ORA's letter, and he has not filed any information, or any legal or policy arguments, to support his request.

Under the authority delegated to her by the Commissioner of Food and Drugs, the Acting Chief Scientist has considered Dr. Massouh's request for a hearing. Hearings will not be granted on issues of policy or law, on mere allegations, denials, or general descriptions of positions and contentions, or on data and information insufficient to justify the factual determination urged (see 21 CFR 12.24(b)).

Inasmuch as Dr. Massouh has not presented any information to support his hearing request, the Acting Chief Scientist concludes that Dr. Massouh has failed to raise a genuine and substantial issue of fact requiring a hearing. Therefore, the Acting Chief Scientist denies Dr. Massouh's request for a hearing. Further, Dr. Massouh has not presented any arguments concerning whether debarment is appropriate for his conviction or whether the proposed debarment period is appropriate. Based on the factual findings in the proposal to debar, the Acting Chief Scientist finds that a 3-year debarment period is appropriate.

II. Findings and Order

Therefore, the Acting Chief Scientist, under section 306(b)(2)(B)(i)(I) of the FD&C Act and under the authority delegated to her by the Commissioner of Food and Drugs, finds that (1) Dr. Massouh has been convicted of a misdemeanor under Federal law for causing the introduction into interstate commerce of prescription drugs that were misbranded under the FD&C Act and (2) that the conduct underlying the conviction undermines the process for the regulation of drugs. FDA considered

the applicable factors listed in section 306(c)(3) of the FD&C Act and determined that a 3-year debarment is appropriate.

As a result of the foregoing findings, Dr. Massouh is debarred for 3 years from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (DATE of NOTICE), (see 21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(iii) and 21 U.S.C. 321(dd)). Any person with an approved or pending drug application who knowingly uses the services of Dr. Massouh, in any capacity during his debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Dr. Massouh, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the FD&C Act). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Dr. Massouh during his period of debarment (section 306(c)(1)(B) of the FD&C Act).

Dated: April 21, 2022.

Jacqueline A. O'Shaughnessy,

Acting Chief Scientist.

[FR Doc. 2022–10096 Filed 5–10–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: June 1–3, 2022.

Time: 10:00 a.m. to 8:30 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: Aruna K. Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, (301) 435–6809, *beheraak@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies Integrated Review Group; Interdisciplinary Clinical Care in Specialty Care Settings Study Section.

Date: June 2–3, 2022.

Time: 9:00 a.m. to 7:00 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: Abu Saleh Mohammad Abdullah, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827–4043, *abuabdullah.abdullah@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Kidney, Nutrition, Obesity and Diabetes Study Section.

Date: June 2–3, 2022.

Time: 10:00 a.m. to 8:00 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: Steven Michael Frenk, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3141, Bethesda, MD 20892, (301) 480–8665, *frenksm@mail.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Addiction Risks and Mechanisms Study Section.

Date: June 6–7, 2022.

Time: 10:00 a.m. to 8:00 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: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, (301) 496–0726, *prenticekj@mail.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Arthritis, Connective Tissue and Skin Study Section.

Date: June 8–9, 2022.

Time: 9:30 a.m. to 7:00 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: Robert Gersch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 867–5309, *robert.gersch@nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Development—1 Study Section.

Date: June 8–9, 2022.

Time: 10:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Zubaida Saifudeen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20817, (301) 827–3029, *zubaida.saifudeen@nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Atherosclerosis and Vascular Inflammation Study Section.

Date: June 9–10, 2022.

Time: 9:00 a.m. to 9:00 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: Natalia Komissarova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5207, MSC 7846, Bethesda, MD 20892, (301) 435–1206, *komissar@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Intercellular Interactions, Cell Signaling, and Aging.

Date: June 9, 2022.

Time: 11:00 a.m. to 8:00 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: Thomas Y. Cho, Ph.D., Scientific Review Officer, Center for Scientific Review, 6701 Rockledge Drive, Rm. 5144, MSC 7840, Bethesda, MD 20892, (301) 402–4179, *thomas.cho@nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 9–10, 2022.

Time: 1:00 p.m. to 7:00 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: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–20–

211: Biobehavioral Regulation, Learning and Ethology Research Career Enhancement.

Date: June 9, 2022.

Time: 1:00 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: Sara Louise Hargrave, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, Bethesda, MD 20892, (301) 443–7193, *hargravesl@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: May 5, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10061 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, June 08, 2022, 10:00 a.m. to June 09, 2022, 06:00 p.m., National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, which was published in the **Federal Register** on May 02, 2022, 309841.

Dr. Roy wanted to correct the title of the meeting to ''Place-based Health Inequalities in Mid-life''. The meeting is closed to the public.

Dated: May 5, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10059 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; RFA–DK–21–004: The Autoantigens and Neoantigens Function in the Etiology and Pathophysiology of T1D.

Date: June 10, 2022.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy Two, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lan Tian, Ph.D., Scientific Review Officer, Review Branch, Division Of Extramural Activities, NIDDK, National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–7050, *tianl@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10058 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Special Emphasis Panel; Nucleic Acid Sequencing Technologies.

Date: June 1, 2022.

Time: 12:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (301) 435–1580, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: May 6, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10123 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; R43/R44: Technologies for Assessment of Risk and Early Diagnosis of T1D.

Date: July 11, 2022.

Time: 1:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIDDK, Democracy Two, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lan Tian, Ph.D., Scientific Review Officer, Review Branch, Division of Extramural Activities, NIDDK, National Institutes of Health, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 496–7050, *tianl@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10057 Filed 5–10–22; 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 Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Macromolecular Structure and Function C Study Section.

Date: June 9–10, 2022.

Time: 9:00 a.m. to 8:00 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: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: June 9–10, 2022.

Time: 10:00 a.m. to 7:00 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: Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, 301–827–7490, *brianscott@mail.nih.gov.*

Name of Committee: Oncology 1-Basic Translational Integrated Review Group; Cancer Genetics Study Section.

Date: June 13–14, 2022.

Time: 9:30 a.m. to 8:00 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: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4158, MSC 7806, Bethesda, MD 20892, 301–435–1256, *biesj@mail.nih.gov.*

Name of Committee: Applied Immunology and Disease Control Integrated Review Group; Vector Biology Study Section.

Date: June 13–14, 2022.

Time: 10:00 a.m. to 6:00 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: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Basic Mechanisms in Cancer Health Disparities.

Date: June 15–16, 2022.

Time: 9:00 a.m. to 8:00 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: Sulagna Banerjee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, 612–309–2479, *sulagna.banerjee@nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group Surgery, Anesthesiology and Trauma Study Section.

Date: June 15–16, 2022.

Time: 9:30 a.m. to 8:00 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: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 6, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10122 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Population Sciences Study Section.

Date: June 7, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2121B, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Christiane M. Robbins, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Rm. 2121B, Bethesda, MD 20892, (301) 451–4989, *crobbins@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Study Section.

Date: June 10, 2022.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2121B, Bethesda, MD 20892 (Video Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., Scientific Review Officer, Scientific Review

Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, National Institutes of Health, 6710B Rockledge Drive, Room 2131B, Bethesda, MD 20892, (301) 827–8231, *Luis.Dettin@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 6, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10120 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Closed Meeting

Notice is hereby given of a meeting of the HEAL (Helping to End Addiction Long-Term) Multi-Disciplinary Working Group

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 program documents and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the program documents, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: HEAL Multi-Disciplinary Working Group; (MDWG) Meeting.

Date: May 16, 2022.

Time: 10:00 a.m. to 12:30 p.m.

Agenda: To review and evaluate Helping to End Addiction Long-Term (HEAL) Initiative projects and obtain expertise from MDWG relevant to the NIH HEAL Initiative and to specific HEAL projects.

Place: National Institutes of Health, Building 1, Wilson Hall, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rebecca G. Baker, Ph.D., Office of the Director, National Institutes of Health, 1 Center Drive, Room 103A, Bethesda, MD 20892, (301) 402–1994, *Rebecca.baker@nih.gov.*

Information is available on the Office of the Director for the NIH HEAL Initiative website: *https://heal.nih.gov/news* where an agenda and any additional information for the meeting will be posted when available.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 5, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10078 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public via NIH Videocast. The URL link to this meeting is: *https://videocast.nih.gov/watch=45264.* Individuals who need special assistance or reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: June 23, 2022.

Time: 12:00 p.m. to 4:30 p.m.

Agenda: The sixtieth meeting of the Office of AIDS Research Advisory Council (OARAC) will include the OAR Director's Report; updates from the Clinical Guidelines Working Groups of OARAC; updates from NIH HIV-related advisory councils; presentation and discussions on Data Science, and NIH-wide programs and initiatives; and public comment.

Place: Office of AIDS Research, National Institutes of Health, 5601 Fishers Lane, Room 2E61, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Corette Byrd, RN, Health Science Policy Analyst, Office of AIDS Research, Office of the Director, National Institutes of Health, 5601 Fishers Lane, Room 2E61, Rockville, MD 20852, (301) 496–0357, *OARACinfo@nih.gov.*

Any interested person may file written comments with the committee within 15 days of the meeting by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *www.oar.nih.gov,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 5, 2022.

M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10079 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Acute Renal Injury Sequelae in NICU Graduates (ARISING).

Date: June 30, 2022.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NIDDK, Democracy Two, 6707 Democracy Blvd., Bethesda, MD 20892 (Telephone Meeting).

Contact Person: Paul A. Rushing, Ph.D., Scientific Review Officer Review Branch, DEA, NIDDK, National Institutes of Health, Room 7345, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8895, *rushingp@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research;

93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 5, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10056 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute on Aging Special Emphasis Panel, which was published in the **Federal Register** on May 02, 2022, 309939.

Dr. Prasad changed the date from 05/06/22 to 05/05/22. The meeting is closed to the public.

Dated: May 5, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–10055 Filed 5–10–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0063]

Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: National Interest Waiver; Supplemental Evidence to I–140 and I–485

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 10, 2022.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at *http://www.regulations.gov* under e-Docket ID number USCIS–2008–0003. All submissions received must include the OMB Control Number 1615–0063 in the body of the letter, the agency name and Docket ID USCIS–2008–0003.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, Telephone number (240) 721–3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *http://www.uscis.gov,* or call the USCIS Contact Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

The information collection notice was previously published in the **Federal Register** on January 19, 2022, at 87 FR 2892, allowing for a 60-day public comment period. USCIS received one comment in connection with the 60-day notice.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–2008–0003 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* National Interest Waiver; Supplemental Evidence to I–140 and I–485.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* No form number; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The supplemental documentation will be used by the U.S. Citizenship and Immigration Services to determine eligibility for national interest waiver requests and to finalize the request for adjustment to lawful permanent resident status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection of the National Interest Waiver is 8,000 who are required to submit the information twice, at the second- and sixth-year anniversaries of the USCIS Form I–140 approval, and the estimated hour burden per response is 1 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 16,000 hours.

(7) *An estimate of the total public burden (in cost) associated with the*

collection: The estimated total annual cost burden associated with this collection of information is $0. Costs for this collection of information are included in those reported for USCIS Form I–485 (OMB Control Number 1615–0023) and USCIS Form I–140 (OMB Control Number 1615–0015).

Dated: May 2, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–10062 Filed 5–10–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[223.LLAK941200.L1440000.ET0000; A–023002]

Public Land Order No. 7907; Extension of Public Land Order No. 6244, as Extended by Public Land Order No. 7514; Davis Range Tract M, Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This Public Land Order (PLO) extends the withdrawal created by PLO No. 6244, as extended by PLO No. 7514, which would otherwise expire on May 12, 2022, for an additional 20-year term. PLO No. 6244 withdrew approximately 3,264.32 acres of public land, known as the Davis Range Tract M, from operation of surface land and mining laws, but not mineral leasing, and reserved for use by the Department of the Air Force for cold weather survival and infantry tactical training purposes in Fort Richardson, Alaska. PLO No. 7514 extended PLO No. 6244 for an additional 20-year term. This PLO also corrects the acreage in PLO 6244 and gives effect to the 2005 Base Realignment and Closure (BRAC) recommendation and subsequent creation of Joint Base Elmendorf-Richardson in 2010, with the Department of the Air Force as the supporting agency.

DATES: This PLO takes effect on May 13, 2022.

FOR FURTHER INFORMATION CONTACT: Chelsea Kreiner, Bureau of Land Management Alaska State Office, 222 West Seventh Avenue, Mailstop 13, Anchorage, AK 99513–7504, 907–271–4205, or *ckreiner@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The purpose for which the withdrawal was first made requires this extension to continue the military training use of Davis Range Tract M.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714, it is ordered as follows:

Public Land Order No. 6244, (47 FR 20590 (1982)), as extended by Public Land Order No. 7514 (67 FR 10433 (2002)), which withdrew approximately 3,264.32 acres of public land from settlement, sale, location, entry selection, or other disposal under the public land laws, including the Alaska Native Claims Settlement Act of December 18, 1971, 85 Stat. 688, the Alaska Statehood Act, 72 Stat. 339, and the mining laws, 30 U.S.C. Ch. 2, but not the mineral leasing laws, and reserved it for military use by the Department of the Air Force, subject to valid existing rights, is hereby extended for an additional 20-year period.

The May 13, 1982, **Federal Register** publication (47 FR 20590) identified 3,340 acres of public lands for the Davis Range Tract M withdrawal. Supplemental plats of survey delineating the boundaries of the lands withdrawn by PLO No. 6244 were officially filed on April 21, 2020. The revised legal description and acreage set forth herein are consistent with the Specifications for Descriptions of Lands (2017) and are used in place of the land description in the application and the original PLO issued in 1982. The Alaska Chief Cadastral Surveyor reviewed the legal description and plats within the withdrawal boundary against all records of survey, and determined the acreage to be 3,264.32, a difference of 75.68 acres from the PLO issued in 1982. For the purpose of this withdrawal extension, the withdrawal boundary remains unchanged, and the total acreage reflects the more accurate calculation of 3,264.32 acres, which are described as:

Seward Meridian, Alaska

T. 12 N., R. 1 W.,
- Sec. 6, lots 3 thru 7, SE1/4NW1/4, and E1/2SW1/4;
- Sec. 7, lots 1 thru 4, E1/2NW1/4, and E1/2SW1/4;
- Sec. 18, lots 1 and 6, NE1/4NW1/4, and N1/2SE1/4NW1/4.

T. 12 N., R. 2 W.,
- Secs. 1 and 2;
- Sec. 3, lots 1 and 2, and SE1/4NE1/4;
- Sec. 11, NE1/4, NE1/4NW1/4, and NE1/4SE1/4;
- Sec. 12;
- Sec. 13, N1/2NE1/4, N1/2SW1/4NE1/4, N1/2SE1/4NE1/4, N1/2NW1/4, and N1/2SE1/4NW1/4;
- tract F;
- tract G.

The area described contains 3,264.32 acres.

2. The withdrawal extended by this Order will expire on May 12, 2042, unless as a result of a review conducted prior to the expiration date, pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f), the Secretary determines that the withdrawal shall be further extended.

Robert T. Anderson,

Solicitor.

[FR Doc. 2022–10128 Filed 5–10–22; 8:45 am]

BILLING CODE 4310–JA–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–667 and 731–TA–1559 (Final)]

Organic Soybean Meal From India

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that an industry in the United States is materially injured by reason of imports of organic soybean meal from India, provided for in subheadings 1208.10.00 and 2304.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (''Commerce'') to be sold in the United States at less than fair value (''LTFV''), and to be subsidized by the government of India.[2]

Background

The Commission instituted these investigations effective March 31, 2021 following receipt of petitions filed with the Commission and Commerce by the Organic Soybean Processors of America, Washington, DC, American Natural Processors, LLC, Dakota Dunes, South Dakota, Organic Production Services, LLC, Weldon, North Carolina, Professional Proteins Ltd., Washington, Iowa, Sheppard Grain Enterprises, LLC,

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 87 FR 16453 and 87 FR 16458 (March 23, 2022).

Phelps, New York, Simmons Grain Co., Salem, Ohio, Super Soy, LLC, Brodhead, Wisconsin, and Tri-State Crush, Syracuse, Indiana. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by Commerce that imports of organic soybean meal from India were subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and sold at LTFV within the meaning of 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 19, 2021 (86 FR 64956). The Commission conducted its hearing on March 16, 2022. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 705(b) and 735(b) of the Act (19 U.S.C. 1671d(b) and 19 U.S.C. 1673d(b)). It completed and filed its determinations in these investigations on May 5, 2022. The views of the Commission are contained in USITC Publication 5321 (May 2022), entitled *Organic Soybean Meal from India: Investigation Nos. 701–TA–667 and 731–TA–1559 (Final).*

By order of the Commission.

Issued: May 5, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–10052 Filed 5–10–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 10, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0026 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2022–0026.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*.
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–011–M.

Petitioner: Nevada Gold Mines, LLC, 1655 Mountain City Highway, Elko, Nevada, 89801.

Mine: Goldrush Mine, MSHA ID No. 26–02822, located in Eureka County, Nevada.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of sealed purified drinking water in lieu of providing potable water through waterlines in the existing refuge chambers and future refuge chambers and locations.

The petitioner states that:

(a) The mine is an underground portal gold mine with three refuge chambers located throughout the underground portion of the mine. In the refuge areas, drinkable water is supplied via commercially purchased water in sealed pouches.

(b) The refuge chambers are MineARC refuge chambers and are made out of steel.

(c) The refuge chambers are equipped for a maximum capacity of 16 miners each. The capacity of the three underground refuge chambers exceeds the normal work crew of approximately 40 miners underground on any shift.

(d) Each refuge chamber is provided with a waterline. The water flowing through these lines is not potable due to the configuration of the waterlines and the water source. Installing waterlines to provide potable drinking water to each refuge chamber is not feasible due to the lack of essential infrastructure.

(e) The waterlines are susceptible to damage during an emergency and under normal working conditions. The water supply could be cut off completely.

(f) In an emergency, there can be no guarantee of potable drinking water via the waterline for miners using the refuge area. Application of the standard could adversely impact the safety of the affected miners if they were to rely on waterlines running from the portal to the refuge chambers, as these lines are subject to interruption and are inherently less safe than sanitary sealed water pouches located inside the refuge chambers. Sealed water stored inside each refuge chamber ensures that affected miners will have sanitary drinking water available to them in an emergency.

(g) The refuge chambers at the mine are portable. Allowing the use of refuge chambers which do not have to be connected to waterlines provides greater flexibility in the location of the refuge chambers. Refuge chambers can be located in direct relation to where miners are working and relocated quickly to working areas as needed for the protection of miners.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed containers. The water is supplied by the case and packaged into 4.227 fluid ounce/125 milliliter portions with 50 individual portion sizes per case.

(b) At a minimum, the refuge chamber will be supplied with 2.25 quarts of water per day per person for 36 hours. A minimum of 52 liters of water will be provided.

(c) The water will have a maximum shelf life of 3.5 years. The operator will replace the existing water supply with fresh water before the water's expiration date. The condition and quantity of water will be confirmed by inspection on no less than a monthly basis.

(d) Written instructions for conservation of water will be provided with the refuge chamber supplies.

(e) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(f) The refuge chamber will be inspected monthly and documented by the Mine Manager or the Manager's designee.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–10118 Filed 5–10–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petitions must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 10, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0023 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2022–0023.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov*.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–010–M.

Petitioner: Nevada Gold Mines, LLC, 1655 Mountain City Highway, Elko, Nevada, 89801.

Mine: Cortez District-Underground Mine, MSHA ID No. 26–02573, located in Lander County, Nevada.

Regulation Affected: 30 CFR 57.11052(d), Refuge areas.

Modification Request: The petitioner requests a modification of 30 CFR 57.11052(d) to permit the use of sealed purified drinking water in lieu of providing potable water through waterlines in the existing refuge chambers and future refuge chambers and locations.

The petitioner states that:

(a) The mine is an underground portal gold mine with eight refuge chambers located throughout the underground portion of the mine. In the refuge areas, drinkable water is supplied via commercially purchased water in sealed pouches.

(b) Seven of the eight refuge chambers are MineARC refuge chambers and are made out of steel. One refuge chamber is built into the rock underground and is encased in shotcrete.

(c) Seven chambers are equipped for a maximum capacity of 16 miners each, and the remaining one chamber is equipped for a maximum capacity of 40 miners. The total capacity of the eight refuge chambers exceeds the normal work crew of approximately 75 miners underground on any shift.

(d) Each refuge chamber is provided with a waterline. The water flowing through these lines is not potable due to the configuration of the waterlines and the water source. Installing waterlines to provide potable drinking water to each refuge chamber is not feasible due to the lack of essential infrastructure.

(e) The waterlines are susceptible to damage during an emergency and under normal working conditions. The water supply could be cut off completely.

(f) In an emergency, there can be no guarantee of potable drinking water via the waterline for miners using the refuge area. Application of the standard could adversely impact the safety of the affected miners if they were to rely on waterlines running from the portal to the refuge chambers, as these lines are subject to interruption and are inherently less safe than sanitary sealed water pouches located inside the refuge chambers. Sealed water stored inside each refuge chamber ensures that affected miners will have sanitary drinking water available to them in an emergency.

(g) Seven of the refuge chambers at the mine are portable. Allowing the use of refuge chambers that do not have to be connected to waterlines provides greater flexibility in the location of the refuge chambers. Refuge chambers can be located in direct relation to where miners are working and relocated quickly to working areas as needed for the protection of miners.

The petitioner proposes the following alternative method:

(a) Drinking water will be supplied via commercially purchased water in sealed containers.

(b) At a minimum, the refuge chamber will be supplied with 2.25 quarts of water per day per person for 36 hours. The total amount of water provided will vary depending on the maximum capacity of the refuge chamber. In a 16-person refuge chamber, a minimum of 52 liters of water will be provided. In the 40-person refuge chamber, a minimum of 128 liters of water will be provided.

(c) The water will have a maximum shelf life of 3.5 years. The operator will replace the existing water supply with fresh water before the water's expiration date. The condition and quantity of water will be confirmed by inspection on no less than a monthly basis.

(d) Written instructions for conservation of water will be provided with the refuge chamber supplies.

(e) All miners affected will receive training in the operation of the refuge chamber and will receive refresher training annually.

(f) The refuge chamber will be inspected monthly and documented by the Mine Manager or the Manager's designee.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–10117 Filed 5–10–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 10, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0022 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2022–0022.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov*.
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452,

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–007–C.

Petitioner: Century Mining, LLC, 200 Chapel Brook Drive, Bridgeport, West Virginia, 26330.

Mine: Longview Mine, MSHA ID No. 46–09447 located in Barbour County, West Virginia.

Regulation Affected: 30 CFR 75.802(c), Protection of high-voltage circuits extending underground.

Modification Request: The petitioner requests a modification of 30 CFR 75.802(c) to permit the use of visible disconnect switches in the resistance-grounded substation at the surface area of the underground mine, approximately 1,100 feet from a vertical bore hole.

The petitioner states that:

(a) The mine is currently under construction.

(b) The mine will utilize the room and pillar and longwall mining methods to extract coal and will employ approximately 375 coal miners.

The petitioner proposes the following alternative method:

(a) Use the solid blade disconnect switches (hook switches) to disconnect the high voltage circuits entering the underground mine. The solid blade disconnect switches are located in the resistance-grounded substation on the surface area of the underground mine—approximately 1,100 feet from the surface bore hole.

(b) Use a continuous, fully insulated, mine power feeder cable extending from the resistance grounded substation, down the bore hole, and into the underground mine workings. The mine power feeder cable is hung on insulated hangers and supported on extra high strength messenger cable on the surface between wooden power poles. The continuous nature of this cable eliminates additional connections at the surface bore hole where there will be increased risks of voltage tracking, connection failures, and exposure to lightning.

(c) Leave the mine power feeder cable connected to lightning arrestors in the resistance-grounded substation, even when the visible disconnect switches (hook switches) in the station are open.

(d) Install an underground switch house in the mine, within 50 feet of the underground bore hole where the mine power feeder enters the mine. The switch house provides the mine personnel a load break vacuum circuit breaker (VCB), visible disconnect, grounding switch, and lock out station in-mine. This arrangement eliminates the need for a miner to travel to the surface to remove power while doing in-mine power work.

(e) The switch house has a high voltage VCB with an integral visible disconnect and an output grounding switch. The visible disconnect is interlocked with the VCB to ensure the VCB removes the load before the visible disconnect is opened. A lockout means is provided at the switch house for the

outgoing high voltage circuit. To complete work on the inby power system, the switch house will be utilized to disconnect and ground the inby circuits.

(f) The switch house has protective relaying for overcurrent, short circuit, and grounded phase protection. A high voltage ground monitor is provided in the switch house to monitor the inby high voltage circuit. A test circuit for secondary current injection is provided so mine personnel can complete required protective relay testing, helping to ensure proper operation of the inby high voltage circuits.

(g) Within 60 days after the Proposed Decision and Order (PDO) becomes final, the petitioner will submit proposed revisions for its approved part 48 training plan to the District Manager. The proposed revisions will include initial and refresher training regarding compliance with the terms and conditions of the PDO.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–10114 Filed 5–10–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[OMB Control No. 1219–0054]

Proposed Extension of Information Collection; Fire Protection (Underground Coal Mines)

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Request for public comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to assure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments on the information collection for Fire Protection (Underground Coal Mines).

DATES: All comments must be received on or before July 11, 2022.

ADDRESSES: Comments concerning the information collection requirements of this notice may be sent by any of the methods listed below.

- *Federal E-Rulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments for docket number MSHA–2022–0024.
- *Mail/Hand Delivery:* Mail or visit DOL–MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, VA 22202–5452. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.
- MSHA will post your comment as well as any attachments, except for information submitted and marked as confidential, in the docket at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances, MSHA, at *MSHA.information.collections@dol.gov* (email); 202–693–9440 (voice); or 202–693–9441 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Fire protection standards for underground coal mines are based on section 311(a) of the Federal Mine Safety and Health Act of 1977 (Mine Act).

30 CFR 75.1100 requires that each coal mine be provided with suitable firefighting equipment adapted for the size and conditions of the mine, and that the Secretary of Labor shall establish minimum requirements of the type, quality, and quantity of such equipment.

30 CFR 75.1100–3 requires that chemical fire extinguishers be examined every 6 months and that the date of the examination be recorded on a permanent tag attached to the extinguisher.

30 CFR 75.1103–5(a)(2)(ii) requires that a map or schematic be updated within 24 hours of any change in the locations of automatic fire warning sensors and the intended air flow direction at these locations. This map or schematic would be kept at a manned surface location where personnel have an assigned post of duty.

30 CFR 75.1103–8(a) requires that a qualified person examine the automatic fire sensor and warning device systems on a weekly basis and conduct a functional test of the complete system at least once every 7 days.

Section 75.1103–8(b) requires that a record of the weekly automatic fire sensor functional tests be maintained by the mine operator and kept for a period of 1 year.

30 CFR 75.1103–8(c) requires that sensors be calibrated in accordance with the manufacturer's calibration instructions at intervals not to exceed 31 days. Records of the sensor calibrations must be maintained by the operator and kept for a period of 1 year.

30 CFR 75.1103–11 requires that each fire hydrant and hose be tested at least once a year and the records of those tests be maintained at an appropriate location.

30 CFR 75.1501(a)(3) requires the operator to certify that each responsible person is trained and that the certification is maintained at the mine for at least 1 year.

30 CFR 75.1502 requires each mine operator to adopt and follow a mine evacuation and firefighting program of instruction that addresses all mine emergencies created as a result of a fire, an explosion, or a gas or water inundation. In addition, this section requires mine operators to submit this program of instruction, and any revisions, to MSHA for its approval and to train miners regarding the use of the program of instruction, and any revisions to such program of instruction, after it is approved by MSHA.

II. Desired Focus of Comments

MSHA is soliciting comments concerning the proposed information collection related to Fire Protection (Underground Coal Mines). MSHA is particularly interested in comments that:

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;
- Evaluate the accuracy of MSHA's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

The information collection request will be available on *http://www.regulations.gov.* MSHA cautions the commenter against providing any information in the submission that should not be publicly disclosed. Full comments, including personal information provided, will be made available on *www.regulations.gov* and *www.reginfo.gov.*

The public may also examine publicly available documents at DOL–MSHA, 201 12th South, Suite 4E401, Arlington, VA 22202–5452. Sign in at the receptionist's desk on the 4th floor via the East elevator. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

Questions about the information collection requirements may be directed to the person listed in the **FOR FURTHER INFORMATION** section of this notice.

III. Current Actions

This request for collection of information contains provisions for Fire Protection (Underground Coal Mines). MSHA has updated the data with respect to the number of respondents, responses, burden hours, and burden costs supporting this information collection request.

Type of Review: Revision of a currently approved collection.

Agency: Mine Safety and Health Administration.

OMB Number: 1219–0054.

Affected Public: Business or other for-profit.

Number of Respondents: 156.

Frequency: On occasion.

Number of Responses: 145,516.

Annual Burden Hours: 16,254 hours.

Annual per Respondent or Recordkeeper Cost: $67.

Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Song-ae Aromie Noe,

Certifying Officer.

[FR Doc. 2022–10115 Filed 5–10–22; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before June 10, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–0019 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–0019.
2. *Fax:* 202–693–9441.
3. *Email: petitioncomments@dol.gov.*
4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. Before visiting MSHA in person, call 202–693–9455 to make an appointment, in keeping with the Department of Labor's COVID–19 policy. Special health precautions may be required.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or
2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–005–C.

Petitioner: Ramaco Resources, LLC, P.O. Box 219, Verner, West Virginia, 25650.

Mine: Berwind Deep Mine, MSHA ID No. 46–09533 located in McDowell County, West Virginia.

Regulation Affected: 30 CFR 75.364(b)(2), Weekly examination.

Modification Request: The petitioner requests a modification of 30 CFR 75.364(b)(2) to permit an alternative method of examining the return air course in its entirety.

The petitioner states that:

(a) The current standard would require miners to traverse a ladder, staircase, or other similar means of travel for approximately 70 feet vertically, which creates unnecessary slip, trip and fall hazards that could result in a serious injury.

The petitioner proposes the following alternative method:

(a) The operator will install a return air shaft that will connect the Pocahontas 4 Seam (mined above) return air course to the Pocahontas 3 Seam (mined below) return air course. The air shaft will be approximately 70 feet in length and will connect to the two seams without intermixing with any other mined-out areas or air courses. No additional mine voids will be connected throughout the development of this shaft.

(b) Once the air shaft is completed, a certified person designated by the operator for the purposes of conducting examinations under Subpart D—Ventilation of 30 CFR part 75 will travel the return airway from the section to a location near the top of the air shaft (Pocahontas 4 Seam) and will take air readings to determine the quantity of air entering the air shaft and will take a reading with a MSHA-approved multi-gas detector to determine the quality of air entering the shaft. The certified person will also complete the weekly examinations required by 30 CFR 75.364(b)(8).

(c) The remainder of the return air course examination will be conducted beginning at the bottom of the shaft (Pocahontas 3 Seam) and continuing throughout the return air course to the surface. The examination will include air quality readings near the bottom of the shaft.

(d) The examination of the return airway will be conducted weekly with the examination results recorded in the logbook located on the surface.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–10116 Filed 5–10–22; 8:45 am]

BILLING CODE 4520–43–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–56 and CP2022–61]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* May 13, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–56 and CP2022–61; *Filing Title:* USPS Request to Add Priority Mail Contract 740 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* May 5, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* May 13, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–10095 Filed 5–10–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 5, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 740 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–56, CP2022–61.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–10109 Filed 5–10–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 4, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 739 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–55, CP2022–60.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–10108 Filed 5–10–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express and Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on May 2, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express & Priority Mail Contract 132 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–54, CP2022–59.

Sean Robinson,

Attorney, Corporate and Postal Business Law.

[FR Doc. 2022–10107 Filed 5–10–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–94853; File No. SR–NASDAQ–2021–066]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Order Granting Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Shares of the Valkyrie XBTO Bitcoin Futures Fund Under Nasdaq Rule 5711(g)

May 5, 2022.

I. Introduction

On August 23, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to list and trade shares (''Shares'') of the Valkyrie XBTO Bitcoin Futures Fund (''Trust'') under Nasdaq Rule 5711(g) (Commodity Futures Trust Shares). On August 25, 2021, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on September 9, 2021.[3]

On September 29, 2021, pursuant to Section 19(b)(2) of the Exchange 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 7, 2021, the Commission instituted proceedings under Section 19(b)(2)(B) of the Exchange Act [6] to determine whether to approve or disapprove the proposed rule change.[7] On February 25, 2022, the Commission designated a longer period for Commission action on the proposed rule change.[8] On April 12, 2022, the Exchange filed partial Amendment No. 2 to the proposed rule change.[9] The Commission has received no comments on the proposed rule change.

When an exchange files a proposed rule change,[10] the Commission must determine whether the proposed rule change is consistent with the statutory provisions, and the rules and regulations, that apply to national securities exchanges.[11] As discussed further below, the Commission is approving the proposed rule change, as modified by Amendment Nos. 1 and 2. In approving this proposed rule change, however, the Commission emphasizes—as it has with previous orders regarding bitcoin-related ETPs [12]—that its action does not rest on an evaluation of whether bitcoin, or blockchain technology more generally, has utility or value as an innovation or an investment.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

As described in more detail in the Notice and Amendment No. 2,[13] the Exchange proposes to list and trade the Shares of the Trust under Nasdaq Rule 5711(g), which governs the listing and trading of Commodity Futures Trust Shares on the Exchange.

The investment objective of the Trust is for the Shares to reflect the performance of bitcoin [14] as represented by the CME CF Bitcoin Reference Rate (''CME CF BRR''), less the Trust's liabilities and expenses.[15] The CME CF BRR aggregates the trade flow of major bitcoin spot platforms during a specific calculation window into a one-a-day reference rate of the U.S. dollar price of bitcoin.[16] The Trust will pursue its investment objective by holding bitcoin futures that are cash-settled and traded on the Chicago Mercantile Exchange, Inc. (the ''CME''), which was self-certified with the Commodity Futures

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92865 (Sept. 2, 2021), 86 FR 50570 (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93172, 86 FR 55071 (Oct. 5, 2021).

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Securities Exchange Act Release No. 93731, 86 FR 70882 (Dec. 13, 2021).

[8] *See* Securities Exchange Act Release No. 94316, 87 FR 12211 (Mar. 3, 2022).

[9] In Amendment No. 2, the Exchange clarified, among other things, that under no circumstances will the Trust hold and/or invest in any assets other than bitcoin futures contracts traded on the Chicago Mercantile Exchange, Inc., cash, and Money Market Instruments (as defined below), and provided additional representations that are commonly made by and/or required for futures-based exchange-traded products listed under Nasdaq Rule 5711(g) (Commodity Futures Trust Shares). Because Amendment No. 2 does not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. The full text of Amendment No. 2 is available on the Commission's website at: *https://www.sec.gov/comments/sr-nasdaq-2021-066/srnasdaq2021066-20125377-284868.pdf* (''Amendment No. 2'').

[10] Such filings are made under Section 19(b)(1) of the Exchange Act, 15 U.S.C. 78s(b)(1), and Exchange Act Rule 19b–4, 17 CFR 240.19b–4.

[11] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 78s(b)(2)(C).

[12] *See, e.g.,* Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To Amend NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares) and To List and Trade Shares of the United States Bitcoin and Treasury Investment Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 88284 (Feb. 26, 2020), 85 FR 12595, 12597 (Mar. 3, 2020) (SR–NYSEArca–2019–39) (''USBT Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the NYDIG Bitcoin ETF Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 94395 (Mar. 10, 2022), 87 FR 14932, 14934 (Mar. 16, 2022) (SR–NYSEArca–2021–57) (''NYDIG Order'').

[13] *See* Notice, *supra* note 3; Amendment No. 2, *supra* note 9.

[14] Bitcoins are digital assets that are issued and transferred via a decentralized, open-source protocol used by a peer-to-peer computer network through which transactions are recorded on a public transaction ledger known as the ''bitcoin blockchain.'' The bitcoin protocol governs the creation of new bitcoins and the cryptographic system that secures and verifies bitcoin transactions. *See, e.g.,* Notice, 86 FR at 50571.

[15] *See id.* at 50574. Valkyrie Funds LLC (''Sponsor'') serves as the Trust's sponsor and commodity pool operator; Vident Investment Advisory, LLC (''Sub-Advisor'') serves as the Trust's sub-advisor and commodity trading advisor; and XBTO Trading, LLC is the research provider for the Sponsor and the Sub-Advisor. Delaware Trust Company serves as the trustee for the Trust. The Sponsor is currently considering third-party service providers for the roles of administrator, transfer agent, custodian, and marketing agent. *See id.* at 50571.

[16] *See id.* at 50573 n.8. According to the Exchange, calculation rules are geared toward maximum transparency and real-time replicability in underlying spot markets, including Bitstamp, Coinbase, Gemini, itBit, and Kraken. *See id.*

Trading Commission (the ''CFTC'').[17] The Trust will not invest in or hold spot bitcoin.[18] In addition to the Trust's investments in CME bitcoin futures, the Trust expects to have significant holdings of cash and high-quality, short-term debt instruments that have remaining terms-to maturity of less than 397 days, and include only U.S. Treasury securities and repurchase agreements (''Money Market Instruments'').[19]

The net asset value (''NAV'') of the Trust will be determined in accordance with Generally Accepted Accounting Principles. The NAV per Share will be determined by dividing the NAV of the Trust by the number of Shares outstanding. The NAV of the Trust is typically determined as of 4:00 p.m. E.T. on each day the Shares trade on the Exchange (''Business Day''). The Trust's daily activities are generally not reflected in the NAV determined for the Business Day on which the transactions are effected (the trade date), but rather on the following Business Day.[20]

The Trust will issue and redeem Shares on a continuous basis at NAV per Share in large, specified blocks of Shares (''Creation Units'') in transactions with broker-dealers and large institutional investors that have entered into participation agreements (''Authorized Participants''). The Exchange currently anticipates that a Creation Unit will consist of 50,000 Shares, although this number may change from time to time.[21] In addition, the Shares will generally be created and redeemed in cash.[22]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the Exchange Act and rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission finds that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Exchange Act,[24] which requires, among other things, that the Exchange's rules be designed to ''prevent fraudulent and manipulative acts and practices,'' 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 Commission also finds, with respect to the dissemination of quotation and last trade information for the proposed ETP, that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 11A(a)(1)(C)(iii) of the Exchange Act,[25] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

When considering whether Nasdaq's proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, the Commission applies the same standard it used in orders considering previous proposals to list bitcoin-based commodity trusts and bitcoin-based trust issued receipts.[26] As the Commission has explained, an exchange that lists bitcoin-based exchange-traded products (''ETPs'') can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying or reference bitcoin assets.[27] The Winklevoss Order

[17] *See id.* at 50574.

[18] *See* Amendment No. 2, *supra* note 9, at 3.

[19] *See id.;* Notice, 86 FR at 50574.

[20] *See* Notice, 86 FR at 50574.

[21] *See id.* at 50579–80. Upon the request of an Authorized Participant made at the time of a redemption order, the Sponsor at its sole discretion may determine, in addition to delivering redemption proceeds, to transfer futures contracts to the Authorized Participant pursuant to an exchange of a futures contract for a related position or to a block trade sale of futures contracts to the Authorized Participant. *See id.* at 50580.

[22] *See* Amendment No. 2, *supra* note 9, at 4.

[23] In approving this proposed rule change, as modified by Amendment Nos. 1 and 2, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[26] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579 (Aug. 1, 2018) (SR–BatsBZX–2016–30) (''Winklevoss Order''); USBT Order, 85 FR 12595; Order Disapproving 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, Securities Exchange Act Release No. 93700 (Dec. 1, 2021), 86 FR 69322 (Dec. 7, 2021) (SR–CboeBZX–2021–024) (''WisdomTree Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Kryptoin Bitcoin ETF Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93860 (Dec. 22, 2021), 86 FR 74166 (Dec. 29, 2021) (SR–CboeBZX–2021–029) (''Kryptoin Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Valkyrie Bitcoin Fund Under NYSE Arca Rule 8.201–E (Commodity-Based Trust Shares), Securities Exchange Act Release No. 93859 (Dec. 22, 2021), 86 FR 74156 (Dec. 29, 2021) (SR–NYSEArca–2021–31) (''Valkyrie Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the First Trust SkyBridge Bitcoin ETF Trust Under NYSE Arca Rule 8.201–E, Securities Exchange Act Release No. 94006 (Jan. 20, 2022), 87 FR 3869 (Jan. 25, 2022) (SR–NYSEArca–2021–37) (''Skybridge Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the Wise Origin Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94080 (Jan. 27, 2022), 87 FR 5527 (Feb. 1, 2022) (SR–CboeBZX–2021–029) (''Wise Origin Order''); NYDIG Order, 87 FR 14932; Order Disapproving a Proposed Rule Change To List and Trade Shares of the Global X Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94396 (Mar. 10, 2022), 87 FR 14912 (Mar. 16, 2022) (SR–CboeBZX–2021–052) (''Global X Order''); Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, To List and Trade Shares of the ARK 21Shares Bitcoin ETF Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 94571 (Mar. 31, 2022), 87 FR 20014 (Apr. 6, 2022) (SR–CboeBZX–2021–051) (''ARK 21Shares Order''). *See also* Order Disapproving a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the SolidX Bitcoin Trust Under NYSE Arca Equities Rule 8.201, Securities Exchange Act Release No. 80319 (Mar. 28, 2017), 82 FR 16247 (Apr. 3, 2017) (SR–NYSEArca–2016–101) (''SolidX Order''). The Commission also notes that orders were issued by delegated authority on the following matters: Order Disapproving a Proposed Rule Change To List and Trade the Shares of the ProShares Bitcoin ETF and the ProShares Short Bitcoin ETF, Securities Exchange Act Release No. 83904 (Aug. 22, 2018), 83 FR 43934 (Aug. 28, 2018) (SR–NYSEArca–2017–139) (''ProShares Order''); Order Disapproving a Proposed Rule Change To List and Trade the Shares of the GraniteShares Bitcoin ETF and the GraniteShares Short Bitcoin ETF, Securities Exchange Act Release No. 83913 (Aug. 22, 2018), 83 FR 43923 (Aug. 28, 2018) (SR–CboeBZX–2018–001) (''GraniteShares Order''); Order Disapproving a Proposed Rule Change To List and Trade Shares of the VanEck Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares, Securities Exchange Act Release No. 93559 (Nov. 12, 2021), 86 FR 64539 (Nov. 18, 2021) (SR–CboeBZX–2021–019) (''VanEck Order''); Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To List and Trade Shares of the Teucrium Bitcoin Futures Fund Under NYSE Arca Rule 8.200–E, Commentary .02 (Trust Issued Receipts), Securities Exchange Act Release No. 94620 (Apr. 6, 2022), 87 FR 21676 (Apr. 12, 2022) (SR–NYSEArca–2021–053) (''Teucrium Order'').

[27] *See* USBT Order, 85 FR at 12596. In the context of derivative securities products such as commodity-trust ETPs, the Commission has long recognized the importance of comprehensive surveillance-sharing agreements to detect and deter fraudulent and manipulative activity. *See, e.g.,* streetTRACKS Gold Shares, Securities Exchange Act Release No. 50603 (Oct. 28, 2004), 69 FR 64614, 64618–19 (Nov. 5, 2004) (SR–NYSE–2004–22); iShares Silver Trust, Securities Exchange Act Release No. 53521 (Mar. 20, 2006), 71 FR 14967, 14968, 14973–74 (Jan 26, 2005) (SR–Amex–2004–38); JPM XF Physical Copper Trust, Securities Exchange Act Release No. 68440 (Dec. 14, 2012), 77 FR 75468, 75469–70, 75272, 75485–86 (Dec. 20, 2012) (SR–NYSEArca–2012–28). *See also* Winklevoss Order, 83 FR at 37592 n.202 and accompanying text (discussing previous Commission approvals of commodity-trust ETPs). And the Commission's approval orders for commodity-futures ETPs consistently note the

Continued

applied this standard to a commodity-trust ETP based on spot bitcoin, and the Commission has found that this standard is also appropriate for, and has applied the standard to, proposed ETPs based on bitcoin futures.[28]

In the analysis below, the Commission examines whether the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with Section 6(b)(5) of the Exchange Act by addressing: in Section III.A whether Nasdaq has entered into a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets (here, CME bitcoin futures contracts); in Section III.B assertions that allowing investors to obtain exposure to bitcoin futures contracts through a bitcoin futures-based ETP would be beneficial; and in Section III.C whether the proposed ETP is consistent with other standards for commodity-futures ETPs. Based on its analysis, the Commission concludes that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the statutory requirements of Exchange Act Sections 6(b)(5) and 11A(a)(1)(C)(iii).

As discussed in more detail below, the approval is based on a finding that the CME is a ''significant market'' *related to CME bitcoin futures contracts,* which would be the exclusive non-cash holdings of the proposed ETP. The Commission emphasizes that its approval of this proposal is based on the specific facts and circumstances of the proposal.[29]

A. Comprehensive Surveillance-Sharing Agreement With a Regulated Market of Significant Size Related to CME Bitcoin Futures Contracts

As stated above, an exchange that lists a bitcoin-based ETP can meet its obligations under Exchange Act Section 6(b)(5) by demonstrating that the exchange has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to the underlying bitcoin assets.[30] When disapproving the earliest proposals for bitcoin-based ETPs, the Commission recognized that ''regulated bitcoin-related markets are in the early stages of their development,'' but that ''[o]ver time, regulated bitcoin-related markets may continue to grow and develop'' in a way that would make it possible for a bitcoin-based ETP to satisfy the requirements of the Exchange Act.[31] The Commission previously stated that, for example, ''existing or newly created bitcoin futures markets'' that are regulated may achieve significant size, and an ETP listing exchange may be able to demonstrate in a proposed rule change that it will be able to address the risk of fraud and manipulation by entering into a surveillance-sharing agreement with a regulated market of significant size.[32]

With respect to the proposed ETP, the underlying bitcoin assets are CME bitcoin futures contracts. The relevant analysis, therefore, is whether Nasdaq has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts. As discussed below, taking into consideration the direct relationship between the regulated market with which Nasdaq has a surveillance-sharing agreement and the assets held by the proposed ETP—including the current state of the CME bitcoin futures market and the trading of exchange-traded funds registered under the Investment Company Act of 1940 (''1940 Act'') that hold CME bitcoin futures (''Bitcoin Futures ETFs'')—the Commission concludes that the Exchange has the requisite surveillance-sharing agreement. The Commission notes that in the Teucrium Order it recently approved NYSE Arca, Inc.'s proposal to list and trade shares of an ETP that similarly would hold CME bitcoin futures contracts as its only non-cash holdings.[33]

Comprehensive Surveillance-Sharing Agreements With the CME, a Regulated Market

The Commission has emphasized that it is essential for an exchange listing a derivative securities product to enter into a surveillance-sharing agreement with markets trading the underlying assets for the listing exchange to have the ability to obtain information necessary to detect, investigate, and deter fraud and market manipulation, as well as violations of exchange rules and applicable federal securities laws and rules.[34] Comprehensive surveillance-sharing agreements ''provide a necessary deterrent to manipulation because they facilitate the availability of information needed to fully investigate a manipulation if it were to occur.''[35] The hallmarks of a surveillance-sharing agreement are that the agreement provides for the sharing of information about market trading activity, clearing activity, and customer identity; that the parties to the agreement have reasonable ability to obtain access to and produce requested information; and that no existing rules, laws, or practices would impede one party to the agreement from obtaining this information from, or producing it to, the other party.[36]

As the Commission has stated, it considers two markets to have a comprehensive surveillance-sharing agreement with one another if they are both members of the Intermarket Surveillance Group (''ISG''), even if they do not have a separate bilateral surveillance-sharing agreement.[37] Accordingly, based on the common membership of Nasdaq and the CME in the ISG,[38] Nasdaq has the equivalent of a comprehensive surveillance-sharing agreement with the CME. Moreover, as the Commission has previously recognized, the CFTC regulates the CME futures market, including the CME bitcoin futures market, and thus that market is ''regulated.''[39]

ability of an ETP listing exchange to share surveillance information either through surveillance-sharing agreements or through membership by the listing exchange and the relevant futures exchange in the Intermarket Surveillance Group. *See, e.g.,* Securities Exchange Act Release No. 53105 (Jan. 11, 2006), 71 FR 3129, 3136 (Jan. 19, 2006) (SR–Amex–2005–059); Securities Exchange Act Release No. 53582 (Mar. 31, 2006), 71 FR 17510, 17518 (Apr. 6, 2006) (SR–Amex–2005–127); Securities Exchange Act Release No. 54013 (June 16, 2006), 71 FR 36372, 36378–79 (June 26, 2006) (SR–NYSE–2006–17). *See also* GraniteShares Order, 83 FR at 43925–27 nn.35–39 and accompanying text (discussing previous Commission approvals of commodity-futures ETPs).

[28] *See* ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43925; Teucrium Order, 87 FR at 21677.

[29] The Commission is not suggesting that either the development of the CME bitcoin futures market or the approval of this proposal would require the Commission to approve a proposed rule change seeking to list and trade shares of an ETP holding spot bitcoin as an asset or ETPs related to other digital assets. *See, e.g.,* GraniteShares Order, 83 FR at 43931. Other proposed ETPs will continue to be assessed on their particular facts and circumstances and on whether those proposals are consistent with the requirements of the Exchange Act.

[30] *See supra* note 27.

[31] *See* Winklevoss Order, 83 FR at 37580.

[32] *See id.;* USBT Order, 85 FR at 12598.

[33] *See* Teucrium Order, 87 FR at 21676.

[34] *See* Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952, 70959 (Dec. 22, 1998).

[35] *Id. See also* Winklevoss Order, 83 FR at 37594; ProShares Order, 83 FR at 43936; GraniteShares Order, 83 FR at 43924; USBT Order, 85 FR at 12596.

[36] *See* Winklevoss Order, 83 FR at 37592–93 (discussing Letter from Brandon Becker, Director, Division of Market Regulation, Commission, to Gerard D. O'Connell, Chairman, Intermarket Surveillance Group (June 3, 1994), available at *http://www.sec.gov/divisions/marketreg/mr-noaction/isg060394.htm*).

[37] *See id.* at 37580 n.19.

[38] *See* Notice, 86 FR at 50576.

[39] *See, e.g.,* WisdomTree Order, 86 FR at 69330; Wise Origin Order, 87 FR at 5534.

Whether the CME Is a Market of Significant Size Related to CME Bitcoin Futures Contracts

In the Winklevoss Order, the Commission stated that the term ''significant market'' or ''market of significant size'' includes a market (or group of markets) as to which (1) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (2) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[40] The Commission explained that this definition is illustrative and not exclusive, and that there could be other types of ''significant markets'' and ''markets of significant size.''[41]

(1) Prong 1

The first prong of the analysis addresses whether the surveillance-sharing agreement on which the ETP listing exchange proposes to rely would assist in detecting and deterring fraudulent or manipulative misconduct related to the assets held by the ETP. In the present proposal, the proposed ETP's only non-cash holdings will be CME bitcoin futures contracts. Moreover, the proposed ''significant'' regulated market (*i.e.,* the CME) with which the listing exchange has a surveillance-sharing agreement is the same market on which these assets trade. As the Commission previously recognized in the Teucrium Order, the CME's surveillance can reasonably be relied upon to capture the effects on the CME bitcoin futures market caused by a person attempting to manipulate the proposed futures ETP by manipulating the price of CME bitcoin futures contracts, whether that attempt is made by directly trading on the CME bitcoin futures market or indirectly by trading outside of the CME bitcoin futures market, such that when the CME shares its surveillance information with Nasdaq, the information would assist in detecting and deterring fraudulent or manipulative misconduct related to the non-cash assets held by the proposed ETP.[42] Accordingly, for the present proposal, it is unnecessary for Nasdaq to establish a reasonable likelihood that a would-be manipulator would have to trade on the CME itself to manipulate the proposed ETP.[43]

Nasdaq, however, makes several arguments in support of its assertion that it is reasonably likely that a person attempting to manipulate the proposed ETP would have to trade on the CME bitcoin futures market to successfully manipulate the proposed ETP.[44] First, Nasdaq states that the CME bitcoin futures market has grown considerably since Commission disapprovals of a bitcoin futures ETP in August 2018 and a spot bitcoin ETP in January 2020, as evidenced by empirical data on trading volume and open interest.[45] Nasdaq further states that ''because the [CME bitcoin futures] market has grown to resemble other futures markets, a lead-lag relationship that exists in other mature futures markets has also likely developed between the [CME bitcoin futures] market and the bitcoin spot market.''[46] Second, Nasdaq argues that observations made by the Staff of the Commission's Division of Investment Management regarding the maturity of the bitcoin futures market ''is strong evidence that concerns previously raised regarding price manipulation in that market have been significantly reduced.''[47] Finally, Nasdaq argues that the majority of academic literature concerning the lead-lag relationship between the bitcoin futures market and the spot bitcoin market, including studies with more recent data, ''supports the proposition that price discovery does take place in the [CME bitcoin futures] market and therefore a lead-lag relationship exists between the spot and futures markets.''[48] Nasdaq discusses two more recent studies,[49] and concludes that this research ''build[s] upon the already emerging academic consensus . . . that the [CME bitcoin futures] market does lead the spot market such that a would-be manipulator would necessarily conclude that it must trade in the futures market to successfully manipulate the spot price of bitcoin.''[50]

The Commission disagrees with much of Nasdaq's reasoning. Nasdaq's assertions about the general upward trends in trading volume and open interest of CME bitcoin futures do not establish whether it is reasonably likely that a would-be manipulator would

[40] *See* Winklevoss Order, 83 FR at 37594.

[41] *See id.*

[42] *See* Teucrium Order, 87 FR at 21679. *See also* Notice, 86 FR at 50574 (stating that ''[l]ike other futures products on the CME, [CME bitcoin futures] are subject to oversight by the CFTC, and the CME itself is empowered to enforce its own rulebook as it relates to the [CME bitcoin futures]'' and ''has a surveillance team that monitors the trading of [CME bitcoin futures] at all times''); 50579 (stating that as a Designated Contract Market (''DCM''), the CME must ''certify that it has the ability to prevent manipulation, price distortion, and disruptions of the cash-settlement process through market surveillance, compliance, and enforcement practices and procedures''). This reasoning, however, does not extend to spot bitcoin ETPs. Spot bitcoin markets are not currently ''regulated.'' *See, e.g.,* USBT Order, 85 FR at 12604; NYDIG Order, 87 FR at 14936 nn.65–67. If an exchange seeking to list a spot bitcoin ETP relies on the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, because the assets held by a spot bitcoin ETP would not be traded on the CME, that proposal would be significantly different from the current proposal. Because of this important difference, with respect to a spot bitcoin ETP, there would be reason to question whether a surveillance-sharing agreement with the CME would, in fact, assist in detecting and deterring fraudulent and manipulative misconduct affecting the price of the spot bitcoin held by that ETP. If, however, an exchange proposing to list and trade a spot bitcoin ETP identifies the CME as the regulated market with which it has a comprehensive surveillance-sharing agreement, the exchange could overcome the Commission's concern by demonstrating that there is a reasonable likelihood that a person attempting to manipulate the spot bitcoin ETP would have to trade *on the CME* in order to manipulate the ETP, because such demonstration would help establish that the exchange's surveillance-sharing agreement with the CME would have the intended effect of aiding in the detection and deterrence of fraudulent and manipulative misconduct related to the spot bitcoin held by the ETP. *See* Teucrium Order, 87 FR at 21679 n.46.

[43] In addition, when considering past proposals for spot bitcoin ETPs, the Commission has discussed whether there is a lead-lag relationship between the regulated market (*e.g.,* the CME) and the market on which the assets held by the ETP would have traded (*i.e.,* spot bitcoin platforms), as part of an analysis of whether a would-be manipulator of the spot bitcoin ETP would need to trade on the regulated market to effect such manipulation. *See, e.g.,* USBT Order, 85 FR at 12612. For the present proposal, because of the direct relationship between the regulated market (*i.e.,* the CME) and the only non-cash assets held by the proposed ETP (*i.e.,* CME bitcoin futures contracts) establishing a ''lead-lag'' relationship between the CME and non-CME markets is also unnecessary. *See* Teucrium Order, 87 FR at 21679 n.47.

[44] *See* Notice, 86 FR at 50575–78.

[45] *See id.* at 50576.

[46] *Id.* at 50577.

[47] *Id.* (citing Staff Statement on Funds Registered Under the Investment Company Act Investing in the Bitcoin Futures Market (May 11, 2021), *available at: https://www.sec.gov/news/public-statement/staff-statement-investing-bitcoin-futures-market#_ftnref5*) (''Staff Statement'').

[48] *Id.*

[49] *See id.* at 50577–78 (discussing Y. Hu, Y. Hou & L. Oxley, *What role do futures markets play in Bitcoin pricing? Causality, cointegration and price discovery from a time-varying perspective,* 72 Int'l Rev. of Fin. Analysis 101569 (2020) (''Hu, Hou & Oxley''); and J. Wu, K. Xu, X. Zheng & J. Chen, *Fractional cointegration in bitcoin spot and futures markets,* 41 J. Futures Mkts. 1478 (2021) (''Wu et al.'')).

[50] *Id.* at 50578 (citing B. Kapar & J. Olmo, *An analysis of price discovery between Bitcoin futures and spot markets,* 174 Econ. Letters 62 (2019) (''Kapar & Olmo''); E. Akyildirim, S. Corbet, P. Katsiampa, N. Kellard & A. Sensoy, *The development of Bitcoin futures: Exploring the interactions between cryptocurrency derivatives,* 34 Fin. Res. Letters 101234 (2020) (''Akyildirim et al.''); A. Chang, W. Herrmann & W. Cai, *Efficient Price Discovery in the Bitcoin Markets,* Wilshire Phoenix, Oct. 14, 2020, *available at: https://www.wilshirephoenix.com/efficient-price-discovery-in-the-bitcoin-markets/* (''Wilshire Phoenix''). *See also id.* at 50577 (citing J. Hung, H. Liu & J. Yang, *Trading activity and price discovery in Bitcoin futures markets,* 62 J. Empirical Finance 107 (2021) (''Hung, Liu & Yang'').

have to trade on the CME to successfully manipulate the proposed ETP.[51] In addition, as Nasdaq recognized, the Staff Statement did not reach a conclusion that the CME bitcoin futures market is a ''significant market'' or a ''market of significant size'' related to bitcoin in the context of the requirements of Section 6(b)(5) of the Exchange Act,[52] nor did it even undertake such an assessment. Moreover, the evidence in the record for this proposal does not support a finding that the CME leads bitcoin price discovery.[53] As Nasdaq recognizes, studies indicate that price discovery takes place in the bitcoin spot market.[54] Moreover, the literature discussed by Nasdaq in its filing has been previously considered by the Commission.[55] As discussed in past Commission orders, the ''mixed results'' of price discovery analyses, including the studies discussed by Nasdaq in its filing, fail to demonstrate that the CME bitcoin futures market constitutes a market of significant size vis-à-vis the bitcoin spot market.[56]

However, none of these deficiencies in Nasdaq's arguments concerning whether there is a reasonable likelihood that a would-be manipulator of the proposed ETP would have to trade on the CME conflicts with the Commission's determination that, because the only non-cash assets held by the proposed ETP (*i.e.,* CME bitcoin futures contracts) are traded on the CME itself, Nasdaq's surveillance-sharing agreement with the CME can reasonably be relied upon to assist in detecting and deterring fraudulent or manipulative misconduct related to those assets. Thus the first prong of the standard for ''market of significant size'' has been established.

(2) Prong 2

As discussed above, in determining whether the CME bitcoin futures market constitutes a ''market of significant size'' related to CME bitcoin futures contracts, the Commission has also considered as a second prong of the analysis whether trading in the proposed ETP would be unlikely to be the predominant influence on prices in the CME bitcoin futures market.[57] Based on the facts and circumstances here, the Commission finds that this second prong has been satisfied.

Nasdaq asserts that trading in the Shares would not be the predominant force on prices in the CME bitcoin futures market (or spot market) because of the significant volume in the CME bitcoin futures market, the size of bitcoin's market capitalization, which is approximately $1 trillion, and the significant liquidity available in the spot market.[58] Nasdaq states that, since the GraniteShares Order and the USBT Order were issued, there has been steady and robust growth observed in the CME bitcoin futures market.[59] For example, according to Nasdaq, the daily average trading volume for CME bitcoin futures was $117 million or 3,629 contracts for the week including August 24, 2018, as compared to $354.75 million or 7,731 contracts for the week including February 26, 2020, and to $2.412 billion or 12,610 contracts for the week ending May 28, 2021.[60] Additionally, according to Nasdaq, the daily average open interest in CME bitcoin futures was $95.4 million or 2,956 contracts for the week including August 24, 2018, as compared to $250.25 million or 5,407 contracts for the week including February 26, 2020, and to $1.6626 billion or 8,677 contracts for the week ending May 28, 2021.[61]

Nasdaq also states that the spot market for bitcoin is very liquid.[62] According to Nasdaq, in February 2021, for example, the cost to buy or sell $5 million worth of bitcoin averaged roughly 10 basis points, with a market impact of 30 basis points.[63] For a $10 million market order, the cost to buy or sell was roughly 20 basis points, with a market impact of 50 basis points.[64] Stated another way, Nasdaq provides that a market participant could enter a market buy or sell order for $10 million and only move the market 0.5%.[65] Nasdaq further asserts that more strategic purchases or sales (such as using limit orders and executing through OTC bitcoin desks) would likely have a less obvious impact on the market, which Nasdaq states is consistent with the ability of MicroStrategy, Tesla, and Square to collectively purchase billions of dollars in bitcoin without resulting in significant price movements.[66]

Nasdaq also provides the results from a study conducted by CF Benchmarks (''CF Benchmarks Analysis'') to determine the extent of ''slippage'' (*i.e.,* the difference between the expected price of a trade and the price at which the trade was actually executed), which, according to the Exchange, offers further evidence that trading in the Shares in unlikely to be the predominant influence in either the bitcoin spot or futures market.[67] According to Nasdaq, the CF Benchmarks Analysis simulates the purchase of 50 bitcoins a day for 686 days (an amount chosen, according to the Exchange, specifically to replicate hypothetical trades by a bitcoin ETP) and found that the maximum amount of slippage on a particular day was 0.3%, with the remainder of values between 0% and 0.15%.[68] According to Nasdaq, the CF Benchmarks Analysis demonstrates that, during the observation period, the slippage was largely negligible or, at most, minor.[69] Nasdaq argues that, while the CF Benchmarks Analysis focuses on the

[51] The Commission has previously considered and rejected similar arguments in the context of spot bitcoin ETPs. *See, e.g.,* USBT Order, 85 FR at 12612; GlobalX Order, 87 FR at 14919; NYDIG Order, 87 FR at 14938.

[52] *See* Notice, 86 FR at 50577.

[53] *See also* USBT Order, 85 FR at 12612; WisdomTree Order, 86 FR at 69331; Wise Origin Order, 87 FR at 5535; GlobalX Order, 87 FR at 14920; NYDIG Order, 87 FR at 14938; Teucrium Order, 87 FR at 21679.

[54] *See* Notice, 86 FR at 50577 (citing Hung, Liu & Yang). *See also* C. Alexander & D. Heck, *Price discovery in Bitcoin: The impact of unregulated markets,* 50 J. Financial Stability 100776 (2020) (finding that, in a multi-dimensional setting, including the main price leaders within futures, perpetuals, and spot markets, CME bitcoin futures have a very minor effect on price discovery; and that faster speed of adjustment and information absorption occurs on the unregulated spot and derivatives platforms than on CME bitcoin futures).

[55] *See supra* notes 49–50 and accompanying text.

[56] *See, e.g.,* GlobalX Order, 87 FR at 14920 n.119 (concluding that papers on the lead-lag relationship and price discovery between bitcoin spot and futures markets, including the Wu et al. paper, the Hung, Liu & Yang paper, and the Akyildirim et al. paper, show that the academic literature is unsettled); NYDIG Order, 87 FR at 14938 (stating that Hu, Hou & Oxley's Granger causality analysis had findings that are ''concededly mixed'' and that issues the Commission previously raised in the USBT Order about an unpublished version of that paper had not been addressed). *See also* USBT Order, 85 FR at 12613 n.244 (discussing that the use of daily price data, as opposed to intraday prices, by Kapar & Olmo and Hu, Hou & Oxley (in an unpublished version of the paper) may not be able to distinguish which market incorporates new information faster); WisdomTree Order, 86 FR at 69331 n.143 (concluding that the papers cited by a commenter, including the Wilshire Phoenix working paper, evidence the unsettled nature of the academic literature).

[57] *See* Winklevoss Order, 83 FR at 37594; USBT Order, 85 FR at 12596–97.

[58] *See* Notice, 86 FR at 50578.

[59] *See id.* at 50576.

[60] *See id.*

[61] *See id.*

[62] *See id.* at 50578.

[63] *See id.* According to Nasdaq, these statistics are based on samples of bitcoin liquidity in U.S. dollars (excluding stablecoins or Euro liquidity) based on executable quotes on Coinbase Pro, Gemini, Bitstamp, Kraken, LMAX Exchange, Binance US, and OK Coin during February 2021. *See id.* at 50578 n.47.

[64] *See id.* at 50578.

[65] *See id.*

[66] *See id.*

[67] *See id.* (citing CF Benchmarks, ''An Analysis of the Suitability of the CME CF BRR for the Creation of Regulated Financial Products,'' December 2020 (*available at: https://docsend.com/view/kizk7rarzaba6jxf*)).

[68] *See id.*

[69] *See id.*

impact of a hypothetical ETP in the bitcoin spot market, arbitrage mechanisms in the spot and futures market dictate that it would be unlikely for a bitcoin futures ETP such as the Trust to overrun the CME bitcoin futures market without also overrunning the bitcoin spot market. Accordingly, the Exchange explains that the CF Benchmarks Analysis further bolsters its contention that the Trust and other similar ETPs would be unlikely to overrun the market.[70] Nasdaq finally concludes that the combination of CME bitcoin futures leading price discovery, the overall size of the bitcoin market, and the ability for market participants, including authorized participants creating and redeeming in-kind with the Trust, to buy or sell large amounts of bitcoin without significant market impact will help prevent the Shares from becoming the predominant force on pricing in either the bitcoin spot or CME bitcoin futures markets.[71]

The Commission has considered and rejected nearly identical arguments as provided above in past disapproval orders of spot bitcoin ETPs.[72] Moreover, as stated in the Teucrium Order, the Commission finds arguments centered around the relationship between the bitcoin spot market and the CME bitcoin futures market to be inapposite where, as here, the proposed ''significant'' market (*i.e.,* the CME bitcoin futures market) is the same as the market on which the proposed ETP's only non-cash assets (*i.e.,* CME bitcoin futures contracts) trade.[73]

Nonetheless, the Commission concludes that it is unlikely that trading in the proposed ETP would be the predominant influence on prices in the CME bitcoin futures market. In the Teucrium Order, the Commission stated that the CME bitcoin futures market has sufficiently developed to support ETPs seeking exposure to bitcoin by holding CME bitcoin futures contracts.[74] As the order explained, the maturation of the CME bitcoin futures market since its inception in 2017—including, but not limited to, its overall size, volume, and liquidity, as well as number of years since its commencement—and evidence from the recent introduction of the 1940 Act-registered Bitcoin Futures ETFs help support the conclusion that trading in an ETP that would hold CME bitcoin futures is not likely to be the predominant influence on prices in the CME bitcoin futures market. [75] Here, the proposed ETP also holds CME bitcoin futures contracts as its only non-cash holdings. The Commission, therefore, reaches the same conclusion—that trading in the proposed ETP is not likely to be the predominant influence on prices in the CME bitcoin futures market. Thus the second prong of the standard for ''market of significant size'' has been established.

The Commission, accordingly, concludes that the CME is a ''significant market'' related to CME bitcoin futures contracts, and thus that the Exchange has entered into the requisite surveillance-sharing agreement. Nasdaq may, therefore, rely on this surveillance-sharing agreement to demonstrate that its proposal to list and trade the Shares is designed to prevent fraudulent and manipulative acts and practices, as required by Section 6(b)(5) of the Exchange Act.[76]

B. Exposure to Bitcoin Futures Contracts Through a Bitcoin Futures-Based ETP

Nasdaq states that, despite growing investor interest in bitcoin, the primary means for investors to gain access to bitcoin exposure remains either through CME bitcoin futures or a direct investment through bitcoin platforms or over-the-counter trading.[77] Nasdaq asserts that, for regular investors simply wishing to express an investment view in bitcoin, investment through CME bitcoin futures is complex and requires active management. Moreover, direct investment in bitcoin brings with it significant inconvenience, complexity, expense, and risk.[78] Directly holding bitcoin requires investors to retain and protect their private keys, which, if lost or compromised, renders their bitcoin unavailable.[79] According to Nasdaq, investment vehicles that invest directly in bitcoin, or investors that hold bitcoin through digital wallets or other storage mechanisms, must take extraordinary steps in order to protect their bitcoin, such as placing the bitcoin in ''cold storage.'' [80]

Nasdaq asserts that the Shares, instead, would represent a significant innovation in the bitcoin market by providing an inexpensive and simple vehicle for investors to gain exposure to bitcoin in a secure and easily accessible product that is familiar and transparent.[81] As compared to a direct investment in bitcoin, the proposed ETP would enhance the security afforded to investors.[82] Further, the Trust would not face risks similar to investment vehicles that hold bitcoin directly because the Trust's exposure to bitcoin would be through cash-settled CME bitcoin futures.[83]

In essence, Nasdaq asserts that the risky nature of direct investment in spot bitcoin or a spot bitcoin ETP and the complex nature of direct investment in CME bitcoin futures compels approval of the proposed ETP. The Commission disagrees.[84] Pursuant to Section 19(b)(2) of the Exchange Act, the Commission must approve a proposed rule change filed by a national securities exchange if it finds that the proposed rule change is consistent with the applicable requirements of the Exchange Act, and it must disapprove the filing if it does not make such a finding.[85] Thus, even if a proposed rule change purports to protect investors from a particular type of investment risk—such as the susceptibility of an asset to loss or

[70] *See id.*

[71] *See id.*

[72] *See, e.g.,* WisdomTree Order, 86 FR at 69332; Skybridge Order, 87 FR at 3878–80; Wise Origin Order, 87 FR at 5536–37.

[73] *See* Teucrium Order, 87 FR at 21680.

[74] *See id.* at 21681.

[75] *See id.* Among other things, the Commission considered that the CME bitcoin futures market began offering trading in bitcoin futures contracts in 2017 and, as of March 2022, trading in the standard-sized CME bitcoin futures contract was $38.9 billion. The Commission also stated that, since the launch of 1940 Act-registered Bitcoin Futures ETFs in October 2021, the Commission has neither observed any disruption to the CME bitcoin futures market, nor any evidence that the Bitcoin Futures ETFs have exerted a dominant influence on CME bitcoin futures prices. *See id.*

[76] The Commission has recognized that a listing exchange could demonstrate that other means to prevent fraudulent and manipulative acts and practices are sufficient to justify dispensing with a comprehensive surveillance-sharing agreement with a regulated market of significant size, including by demonstrating that the bitcoin market as a whole or the underlying bitcoin market is uniquely and inherently resistant to fraud and manipulation. *See* USBT Order, 85 FR at 12587 n.23. Such resistance to fraud and manipulation must be novel and beyond those protections that exist in traditional commodities or securities markets. *See id.* at 12597. Moreover, in the context of previous spot bitcoin ETP proposals that have attempted to demonstrate that other means besides surveillance-sharing agreements are sufficient to prevent fraudulent and manipulative acts and practices, the Commission has consistently rejected arguments made by the listing exchanges. *See supra* note 26. In this proposal, Nasdaq likewise asserts that, with respect to the proposed ETP, there are other means to prevent fraudulent and manipulative acts and practices sufficient to justify dispensing with the requisite surveillance-sharing requirement. *See* Notice, 86 FR at 50578–79. Because Nasdaq has the requisite surveillance sharing agreement, the Commission does not need to reach the separate question of whether Nasdaq has demonstrated that there are other means, besides the surveillance-sharing agreement, that would be sufficient to prevent fraudulent and manipulative acts and practices.

[77] *See* Notice, 86 FR at 50582.

[78] *See id.*

[79] *See id.*

[80] *See id.*

[81] *See id.*

[82] *See id.*

[83] *See id.*

[84] The Commission has disagreed with similar arguments made in the context of a previous bitcoin futures-related ETP. *See* GraniteShares Order, 83 FR at 43931.

[85] *See* Exchange Act Section 19(b)(2)(C), 15 U.S.C. 778s(b)(2)(C).

theft—the proposed rule change may still fail to meet the requirements under the Exchange Act.[86]

Regardless of Nasdaq's assertions and for the reasons discussed herein—including that Nasdaq has demonstrated that it has a comprehensive surveillance-sharing agreement with a regulated market of significant size related to CME bitcoin futures contracts that will help prevent fraudulent and manipulative acts and practices,[87] and that core aspects of the proposed ETP will be consistent with other commodity-futures ETPs that the Commission has approved, including with respect to the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures [88]—the Commission finds that the proposal is also consistent with the requirement under Section 6(b)(5) that the Exchange's rules be designed to protect investors and the public interest.[89]

C. Other Standards for Commodity-Futures ETPs

Nasdaq's proposal sets forth aspects of the proposed ETP, including the availability of pricing information, transparency of portfolio holdings, and types of surveillance procedures, that are consistent with the other commodity-futures ETPs that the Commission has approved.[90]

According to Nasdaq,[91] quotation and last-sale information regarding the Shares will be disseminated through the facilities of the Consolidated Tape Association. Information regarding market price and trading of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Price information for CME bitcoin futures can be found on the CME's website. Intraday price quotations on Money Market Instruments of the type held by the Trust will be available from major broker-dealer firms and from third parties, which may provide prices free with a time delay, or ''live'' with a paid fee. For CME bitcoin futures, such intraday information will be available directly from the applicable listing venue. Intraday price information will also be available through subscription services, such as Bloomberg and Thomson Reuters, which can be accessed by authorized participants and other investors. Pricing information related to Money Market Instruments will be available through issuer websites and publicly available quotation services, such as Bloomberg, Markit, and Thomson Reuters. The CME CF BRR will be disseminated once daily at 4:00 p.m. London time and will be available on the CME's website. Information regarding the CME CF BRR, including rules and methodologies can also be found on the CME's website.

The Trust's website will display the prior business day's NAV. On each business day, before commencement of trading in the Shares during Regular Trading Hours, the Trust will disclose on its website the portfolio holdings of the Trust. The Trust's website will also include a form of the prospectus for the Trust. The website will include the Shares' ticker symbol and CUSIP information, along with additional quantitative information updated on a daily basis.[92] The website will also contain pricing information for the Shares. All information disclosed on the Trust's website will be publicly available at no charge.[93]

The Trust's NAV will be calculated by the Sponsor once a day and will typically be determined as of 4:00 p.m. (Eastern time) on each day the Shares trade on the Exchange. The Exchange or a third-party financial data provider will calculate an intra-day indicative value (''IIV'') by using the prior day's closing NAV per Share as a base and updating that value during the Exchange's Regular Market Session (9:30 a.m. to 4:00 p.m. (Eastern time)) to reflect changes in the value of the Trust's NAV during the trading day. The IIV will be widely disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session by one or more major market data vendors. The NAV for the Trust will be disseminated daily to all market participants at the same time.[94]

The proposal also is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately and to prevent trading in the Shares when a reasonable degree of transparency cannot be assured. If the Exchange becomes aware that the NAV with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV is available to all market participants. Further, if the IIV or the value of the underlying futures contract is not being disseminated as required, the Exchange may halt trading during the day in which an interruption to the dissemination of the IIV or the value of the underlying futures contract occurs. If the interruption to the dissemination of the IIV or the value of the underlying futures contract persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption. Trading in Shares of the Trust will be halted if conditions specified in Nasdaq Rule 4120(a)(9) or the circuit breaker parameters in Nasdaq Rules 4120(a)(11) and (12) have been reached. Trading also may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. The Exchange states that it has a general policy prohibiting the distribution of material, non-public information by its employees.[95] Moreover, trading of the Shares will be subject to Nasdaq Rule 5711(g), which sets forth certain restrictions on registered Market Makers in the Shares to facilitate surveillance.[96]

The Commission notes that the Exchange or the Financial Industry Regulatory Authority (''FINRA''), on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the underlying CME bitcoin futures with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain information regarding trading in the Shares and the underlying CME bitcoin futures from such markets and entities. In addition, the Exchange may obtain information regarding trading in

[86] *See* SolidX Order, 82 FR at 16259; WisdomTree Order, 86 FR at 69334; Wise Origin Order, 87 FR at 5538.

[87] *See supra* Section III.A.

[88] *See infra* Section III.C.

[89] The Commission acknowledges that, compared to trading in unregulated spot bitcoin markets, trading a CME bitcoin futures-based ETP on a national securities exchange may provide some additional protection to investors. *See* GraniteShares Order, 83 FR at 43931; USBT Order, 85 FR at 12615; Teucrium Order, 87 FR at 21682 n.109.

[90] *See, e.g.,* ProShares UltraPro 3X Natural Gas ETF and ProShares UltraPro 3X Short Natural Gas ETF, Securities Exchange Act Release No. 86532 (July 31, 2019), 84 FR 38312 (Aug. 6, 2019) (SR–NYSEArca–2019–02); Teucrium Order, 87 FR at 21683–84.

[91] *See* Notice, 86 FR at 50580, 50583; Amendment No. 2, *supra* note 9, at 4–5.

[92] The Trust's website will include: (1) The prior business day's NAV and the reported closing price; (2) the mid-point of the bid/ask price in relation to the NAV as of the time the NAV is calculated (''Bid/Ask Price'') and a calculation of the premium or discount of such price against such NAV; and (3) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for at least each of the four previous calendar quarters (or for the life of the Trust, if shorter).

[93] *See* Notice, 86 FR at 50580; Amendment No. 2, *supra* note 9, at 4, 7.

[94] *See* Notice, 86 FR at 50574, 50580.

[95] *See id.* at 50581.

[96] *See id.* at 50580–81.

the Shares and the underlying CME bitcoin futures from other exchanges who are members or affiliates of the ISG or with which the Exchange has in place a comprehensive surveillance-sharing agreement (''CSSA'').[97] The Exchange may also obtain information regarding trading in the spot bitcoin market from the exchanges with which the CME or the Exchange has entered into a CSSA.[98]

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.[99] In support of this proposal, the Exchange represented that: [100]

(1) The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(g).

(2) The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions.

(3) The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. Trading of Shares on the Exchange will be subject to the Exchange's surveillance procedures for derivative products.

(4) Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading in the Shares. Specifically, the Information Circular will discuss the following: (a) The procedures for purchases and redemptions of Shares in Creation Units (and that Shares are not individually redeemable); (b) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (c) how information regarding the IIV and the portfolio holdings is disseminated; (d) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions when an updated IIV will not be calculated or publicly disseminated; (e) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (f) trading information.

(5) For initial and continued listing, the Trust will be in compliance with Rule 10A–3 under the Exchange Act.[101]

(6) Under no circumstances will the Trust hold and/or invest in any assets other than CME bitcoin futures contracts, cash, and Money Market Instruments. The Trust will not invest in or hold spot bitcoin.

(7) The Trust's investments will be consistent with the Trust's investment objective and will not be used to enhance leverage. That is, the Trust's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs, 3Xs, −2Xs, and −3Xs) of the Trust's benchmark.

(8) A minimum of 100,000 Shares of the Trust will be outstanding at the commencement of trading on the Exchange.

(9) The Exchange represents that all statements and representations made in the filing regarding (a) the description of the reference assets or trust holdings; (b) limitations on reference assets, or trust holdings; (c) dissemination and availability of the reference asset or intraday indicative values; or (d) the applicablilty of Nasdaq listing rules specified in the filing shall constitute continued listing standards. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

IV. Conclusion

This approval order is based on all of the Exchange's representations and description of the Trust, including those set forth above and in Amendment No. 2. The Commission notes that the Shares must comply with the requirements of Nasdaq Rule 5711(g) to be listed and traded on the Exchange on an initial and continuing basis.

For the reasons set forth above, the Commission finds, pursuant to Section 19(b)(2) of the Exchange Act,[102] that the proposed rule change, as modified by Amendment Nos. 1 and 2, is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with Section 6(b)(5) and Section 11A(a)(1)(C)(iii) of the Exchange Act.[103]

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[104] that proposed rule change SR–NASDAQ–2021–066, as modified by Amendment Nos. 1 and 2, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[105]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–10065 Filed 5–10–22; 8:45 am]

BILLING CODE 8011–01–P

[97] For a list of the current members and affiliate members of ISG, *see www.isgportal.org.* According to the Exchange, not all components of the Disclosed Portfolio for the Trust may trade on markets that are members of the ISG or with which the Exchange has in place a CSSA. *See* Notice, 86 FR at 50581 n.68.

[98] *See* Notice, 86 FR at 50581; Amendment No. 2, *supra* note 9, at 5. For additional discussion of the CME bitcoin futures market and how surveillance-sharing between the Exchange and the CME via common membership in the ISG would assist in detecting and deterring manipulative conduct related to the Shares, *see* Section III.A above.

[99] *See* Notice, 86 FR at 50581.

[100] *See id.;* Amendment No. 2.

[101] 17 CFR 240.10A–3.

[102] 15 U.S.C. 78f(b)(2).

[103] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78k–1(a)(1)(C)(iii).

[104] 15 U.S.C. 78f(b)(2).

[105] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 11727]

Determination Pursuant to Section 451 of the Foreign Assistance Act for the Use of Funds To Support South Sudan Peace Agreement Monitoring Mechanisms

Pursuant to section 451 of the Foreign Assistance Act of 1961 (the ''Act'') (22 U.S.C. 2261), section 1–100(a)(1) of E.O. 12163 and Delegation of Authority 513, I hereby authorize, notwithstanding any other provision of law, the use of up to $3,000,000 made available to carry out provisions of the Act (other than the provisions of chapter 1 of part I of the Act) to provide assistance authorized by part I of the Act to support countries that participate in the Reconstituted Joint Monitoring and Evaluation Commission and the Ceasefire and Transitional Security Arrangements Monitoring and Verification Mechanism in South Sudan.

This Determination and the accompanying Memorandum of Justification shall be promptly reported to the Congress. This Determination shall be published in the **Federal Register**.

Dated: February 24, 2022.

Brian P. McKeon,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2022–10150 Filed 5–10–22; 8:45 am]

BILLING CODE 4710–25–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36604]

Georgia Central Railway, L.P.—Lease and Operation Exemption—City of Vidalia, Ga.

Georgia Central Railway, L.P. (GC), a Class III railroad, has filed a verified notice of exemption under 49 CFR 1150.41 to replace a lease between GC and the City of Vidalia (the City) for GC to lease and operate as a common carrier over approximately 2.6 miles of track owned by the City beginning at milepost 152.2 and extending to milepost 149.6 (the Line).

According to the verified notice, GC has been the sole operator providing local service on the Line since at least 1997. GC states that the lease agreement (New Lease) supersedes and replaces the current lease, and GC will continue to lease and operate as the sole common carrier on the Line.

GC certifies that the New Lease does not include an interchange commitment. It also certifies that its projected annual revenues from this transaction will not exceed those that would qualify it as a Class III carrier, but that its revenues currently exceed $5 million. Pursuant to 49 CFR 1150.42(e), if a carrier's projected annual revenues will exceed $5 million, it must, at least 60 days before the exemption is to become effective, post a notice of its intent to undertake the proposed transaction at the workplace of the employees on the affected lines, serve a copy of the notice on the national offices of the labor unions with employees on the affected lines, and certify to the Board that it has done so. However, GC's verified notice includes a request for waiver of the 60-day advance labor notice requirements. GC's waiver request will be addressed in a subsequent decision. The Board will establish the effective date of the exemption in its separate decision on the waiver request.

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than May 18, 2022.

All pleadings, referring to Docket No. FD 36604, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on GC's representative, Justin J. Marks, Clark Hill PLC, 1001 Pennsylvania Avenue NW, Suite 1300 South, Washington, DC 20004.

According to GC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: May 6, 2022.

By the Board, Valerie O. Quinn, Acting Director, Office of Proceedings.

Brendetta Jones,

Clearance Clerk.

[FR Doc. 2022–10110 Filed 5–10–22; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket Number USTR–2022–0004]

Annual Review of Country Eligibility for Benefits Under the African Growth and Opportunity Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is announcing the initiation of the annual review of the eligibility of the sub-Saharan African countries to receive the benefits of the African Growth and Opportunity Act (AGOA). The AGOA Implementation Subcommittee of the Trade Policy Staff Committee (AGOA TPSC Subcommittee) is developing recommendations for the President on AGOA country eligibility for calendar year 2023 and requests comments for this review. Due to the COVID–19 pandemic, the AGOA TPSC Subcommittee will foster public participation via written submissions rather than an in-person hearing. This notice includes the schedule for submission of comments and responses to questions from the AGOA TPSC Subcommittee related to this review.

DATES:

June 23, 2022 at 11:59 p.m. EDT: Deadline for submission of written comments on the eligibility of sub-Saharan African countries to receive the benefits of AGOA.

July 7, 2022 at 11:59 p.m. EDT: Deadline for the AGOA TPSC Subcommittee to pose any questions on written comments.

July 15, 2022 at 11:59 p.m. EDT: Deadline for submission of commenters' responses to questions from the AGOA TPSC Subcommittee.

July 22, 2022 at 11:59 p.m. EDT: Deadline for replies from other interested parties to the written comments and responses to the AGOA TPSC Subcommittee questions.

August 3, 2022 at 11:59 p.m. EDT: The AGOA TPSC Subcommittee to pose any additional questions on written comments.

August 12, 2022 at 11:59 p.m. EDT: Deadline for submission of responses to any additional questions from the AGOA TPSC Subcommittee.

ADDRESSES: USTR strongly prefers electronic submissions made through the Federal eRulemaking Portal: *https://www.regulations.gov* (*Regulations.gov*), using Docket Number USTR–2022–0004. Follow the instructions for submitting comments in 'Requirements for Submissions' below. For alternatives to on-line submissions, please contact Jeremy Streatfeild, Director of African Affairs, Office of African Affairs, in advance of the relevant deadline at *Jeremy.E.Streatfeild@ustr.eop.gov* or (202) 395–8642.

FOR FURTHER INFORMATION CONTACT: Jeremy Streatfeild, Director of African Affairs, Office of African Affairs, at *Jeremy.E.Streatfeild@ustr.eop.gov* or (202) 395–8642.

SUPPLEMENTARY INFORMATION:

I. Background

AGOA (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (19 U.S.C. 2466a *et seq.*), as amended, authorizes the President to designate sub-Saharan African countries as beneficiaries eligible for duty-free treatment for certain additional products not included for duty-free treatment under the Generalized System of Preferences (GSP) (Title V of the Trade Act of 1974 (19 U.S.C. 2461 *et seq.*) (1974 Act), as well as for the preferential treatment for certain textile and apparel articles. The President may designate a country as a beneficiary sub-Saharan African country eligible for AGOA benefits if he determines that the country meets the eligibility criteria set forth in section 104 of AGOA (19 U.S.C. 3703) and section 502 of the 1974 Act (19 U.S.C. 2462).

Section 104 of AGOA includes requirements that the country has established or is making continual progress toward establishing, among other things:

- A market-based economy
- the rule of law
- political pluralism
- the right to due process
- the elimination of barriers to U.S. trade and investment

- economic policies to reduce poverty
- a system to combat corruption and bribery
- protection of internationally recognized worker rights

In addition, the country may not engage in activities that undermine U.S. national security or foreign policy interests or engage in gross violations of internationally recognized human rights. Section 502 of the 1974 Act provides for country eligibility criteria under GSP. For a complete list of the AGOA eligibility criteria and more information on the GSP criteria, see section 104 of the AGOA and section 502 of the 1974 Act.

Section 506A of the 1974 Act requires the President to monitor and annually review the progress of each sub-Saharan African country in meeting the foregoing eligibility criteria in order to determine if a beneficiary sub-Saharan African country should continue to be eligible, and if a sub-Saharan African country that currently is not a beneficiary, should be designated as a beneficiary. If the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the eligibility requirements, the President must terminate the designation of the country as a beneficiary sub-Saharan African country. The President also may withdraw, suspend, or limit the application of duty-free treatment with respect to specific articles from a country if they determine that it would be more effective in promoting compliance with AGOA eligibility requirements than terminating the designation of the country as a beneficiary sub-Saharan African country.

For 2022 the President designated the following 36 countries as beneficiary sub-Saharan African countries:

1. Angola
2. Benin
3. Botswana
4. Burkina Faso
5. Cabo Verde
6. Central African Republic
7. Chad
8. Comoros
9. Democratic Republic of Congo (re-instated in 2021)
10. Republic of Congo
11. Cote d'Ivoire
12. Djibouti
13. Eswatini
14. Gabon
15. The Gambia
16. Ghana
17. Guinea-Bissau
18. Kenya
19. Lesotho
20. Liberia
21. Madagascar
22. Malawi
23. Mauritius
24. Mozambique
25. Namibia
26. Niger
27. Nigeria
28. Rwanda (AGOA apparel benefits suspended effective July 31, 2018)
29. Sao Tome & Principe
30. Senegal
31. Sierra Leone
32. South Africa
33. Tanzania
34. Togo
35. Uganda
36. Zambia

The President did not designate the following sub-Saharan African countries as beneficiary sub-Saharan African countries for 2022:

1. Burundi
2. Cameroon
3. Equatorial Guinea (graduated from GSP)
4. Eritrea
5. Ethiopia (terminated in 2022)
6. Guinea (terminated in 2022)
7. Mali (terminated in 2022)
8. Mauritania
9. Seychelles (graduated from GSP)
10. Somalia
11. South Sudan
12. Sudan
13. Zimbabwe

The AGOA TPSC Subcommittee is seeking public comments to develop recommendations to the President in connection with the annual review of sub-Saharan African countries' eligibility for AGOA benefits. The Secretary of Labor may consider comments related to the child labor criteria to prepare the U.S. Department of Labor's report on child labor as required under section 504 of the 1974 Act.

II. Public Participation

Due to the COVID–19 pandemic, the AGOA TPSC Subcommittee will foster public participation via written submissions rather than an in-person hearing for the 2023 AGOA Eligibility Review. USTR invites public comment according to the schedule set out in the Dates section above. The AGOA TPSC Subcommittee will review comments and replies to comments, if any, and may ask clarifying questions to commenters according to the schedule set out above. The AGOA TPSC Subcommittee will post the questions it asks on the public docket, other than questions that include properly designated business confidential information (BCI). Any questions that include properly designated BCI will not be posted on the docket for public viewing, but rather will be sent via email to the relevant commenters. Replies to these questions that also contain BCI must follow procedures laid out in section IV.

III. Requirements for Submissions

You must submit comments and answers to questions from the AGOA TPSC Subcommittee by the applicable deadlines set forth in this notice. You must make all submissions in English via *Regulations.gov*, using Docket Number USTR–2022–0004. USTR will not accept hand-delivered submissions. To make a submission using *Regulations.gov*, enter Docket Number USTR–2022–0004 in the 'search for' field on the home page and click 'search.' The site will provide a search results page listing all documents associated with this docket. Find a reference to this notice by selecting 'notice' under 'document type' in the 'refine documents results' section on the left side of the screen and click on the link entitled 'comment.' The *Regulations.gov* website offers the option of providing comments by filling in a 'comment' field or by attaching a document using the 'attach files' field. The AGOA TPSC Subcommittee prefers that you provide submissions in an attached document and note 'see attached' in the 'comment' field on the online submission form. At the beginning of the submission, or on the first page (if an attachment) include the following text (in bold and underlined): (1) ''2023 AGOA Eligibility Review''; (2) the relevant country or countries; and (3) whether the document is a comment, a reply to a comment, or an answer to an AGOA Subcommittee question. Submissions should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files. You will receive a tracking number upon completion of the submission procedure at *Regulations.gov*. The tracking number is confirmation that *Regulations.gov* received the submission. Keep the confirmation for your records. USTR is not able to provide technical assistance for *Regulations.gov*. USTR may not consider documents that you do not submit in accordance with these instructions. If you are unable to provide submissions as requested, please contact Jeremy Streatfeild, Director of African, Office of African Affairs, in advance of the relevant

deadline at *Jeremy.E.Streatfeild@ustr.eop.gov* or (202) 395–8642, to arrange for an alternative method of transmission.

General information concerning USTR is available at *www.ustr.gov.*

IV. Business Confidential Submissions

If you ask USTR to treat information you submitted as BCI, you must certify that the information is business confidential and you would not customarily release it to the public. You must clearly designate BCI by marking the submission 'BUSINESS CONFIDENTIAL' at the top and bottom of the cover page and each succeeding page, and indicating, via brackets, the specific information that is BCI. Additionally, you must note that the submission contains information that is business confidential by including 'Business Confidential' in the 'comment' field. For any submission containing BCI, you must separately submit a non-confidential version, *i.e.,* not as part of the same submission with the confidential version, indicating where BCI has been redacted. USTR will post the non-confidential version in the docket and it will be open to public inspection.

V. Public Viewing of Review Submissions

USTR will make public versions of all documents relating to these reviews available for public viewing pursuant to 15 CFR 2017.4, in Docket Number USTR–2022–0004 on *Regulations.gov*, upon completion of processing. This usually is within two weeks of the relevant due date or date of the submission.

VI. Petitions

At any time, any interested party may submit a petition to USTR with respect to whether a beneficiary sub-Saharan African country is meeting the AGOA eligibility requirements. An interested party may file a petition through *Regulations.gov*, under Docket Number USTR–2022–0004.

William Shpiece,

Chair of the Trade Policy Staff Committee, Office of the United States Trade Representative.

[FR Doc. 2022–10082 Filed 5–10–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by the California Department of Transportation (Caltrans) and the United States Forest Service (Plumas National Forest) to issue a special use permit to Caltrans.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, State Route 82, postmiles 12.3 to 15.9, in the County San Mateo, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before October 11, 2022. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans District 4: Yolanda Rivas, Senior Environmental Planner, Caltrans Office of Environmental Planning and Engineering, California Department of Transportation—District 4, 111 Grand Avenue, Oakland, CA 95901. Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone (510) 506–1461 or email *yolanda.rivas@dot.ca.gov.* For FHWA, contact Shawn Oliver at (916) 498–5048 or email *Shawn.Oliver@dot.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Remove and reconstruct entire roadway pavement structural section between East Santa Inez (PM 12.3) and Murchison Drive (PM 15.8). A total of 34 new drainage inlets would be installed, and 25 existing drainage inlets would be modified to conform to changes to curb ramps. All existing reinforced concrete pipes, clay pipes, and metal pipes smaller than 18 inches would be replaced with 18-inch polyvinyl chloride pipes. All existing sidewalks from East Santa Inez Avenue (PM 12.3) to Dufferin Avenue (PM 15.3) would be upgraded, ranging from 5 to 6 feet in width, to comply with ADA standards. Other pedestrian improvements include touch-free APS and CPS at signalized intersections, pedestrian hybrid beacons at uncontrolled intersections, realignment of existing crosswalks, advance stop pavement markings, adjustments to signal timing to provide for a leading pedestrian interval. Two design options regarding utilities are being evaluated (1) Utility poles would be removed and relocated at various locations throughout the project limits to conform to infrastructure upgrades, or (2) existing electrical transmission, telecommunications, and cable TV lines that currently run along poles above the roadway would be relocated underground from Barroilhet Avenue (PM 12.9) to Ray Drive/Rosedale Avenue (PM 15.2). The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Impact Statement (FEIS) approved on April 20, 2022, and in other documents in the Caltrans' project records. The FEIS and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans FEIS can be viewed and downloaded from *www.ecralternatives.com.* This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations (40 CFR 1500 *et seq.,* 23 CFR 771);
2. National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.;*
3. Federal-Aid Highway Act, (23 U.S.C. 109, as amended by FAST Act Section 1404(a), Public Law 114–94, and 23 U.S.C. 128);
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112–141);
5. Clean Air Act, as amended (42 U.S.C. 7401 *et seq.* (Transportation Conformity, 40 CFR part 93);
6. Clean Water Act of 1977 (33 U.S.C. 1251 *et seq.*);
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987);
8. Federal Land Policy and Management Act of 1976, Public Law 94–579;
9. Noise Control Act of 1972;
10. Safe Drinking Water Act, as amended (42 U.S.C. 300f *et seq.*);

11. Endangered Species Act of 1973 (16 U.S.C. 1531–1544 and Section 1536);
12. Executive Order 11990, Protection of Wetlands;
13. Executive Order 13186, Migratory Birds;
14. Fish and Wildlife Coordination Act of 1934, as amended;
15. Executive Order 13112, Invasive Species;
16. Executive Order 11988, Floodplain Management;
17. Title VI of the Civil Rights Act of 1964, as amended;
18. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations.
19. Department of transportation Act of 1966, Section 4(f) (49 U.S.C. 303 and 23 U.S.C. 138);
20. National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108 *et seq.*)

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Dated: April 20, 2022.

Signed Electronically,

Christina Leach,

Acting Director, Planning, Environment and Right of Way, Federal Highway Administration, California Division.

[FR Doc. 2022–10068 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

National Hazardous Materials Route Registry

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice; revisions to the listing of designated and restricted routes for hazardous materials.

SUMMARY: This notice provides revisions to the National Hazardous Materials Route Registry (NHMRR) reported to FMCSA from April 1, 2021 through March 31, 2022. The NHMRR is a listing, as reported by States and Tribal governments, of all designated and restricted roads and preferred highway routes for transportation of highway route controlled quantities of Class 7 radioactive materials (HRCQ/RAM) and non-radioactive hazardous materials (NRHM).

DATES: These revisions are effecive May 11, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Williams, Hazardous Materials Division, Office of Enforcement and Compliance, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 366–4163, *melissa.williams@dot.gov.* Office hours are from 9 a.m. to 5 p.m., ET., Monday through Friday, except for Federal holidays.

Legal Basis and Background

Paragraphs (a)(2) and (b) of section 5112 of title 49 United States Code (U.S.C.) permit States and Tribal governments to designate and limit highway routes over which hazardous materials (HM) may be transported, provided the State or Tribal government complies with standards prescribed by the Secretary of Transportation (the Secretary) and meets publication requirements in section 5112(c). To establish standards under paragraph (b), the Secretary must consult with the States, and, under section 5112(c), coordinate with the States to ''update and publish periodically'' a list of currently effective HM highway routing designations and restrictions. The requirements that States and Tribal governments must follow to establish, maintain, or enforce routing designations for the transport of placardable quantities of NRHM are set forth in 49 CFR part 397, subpart C. Subpart D of part 397 sets out the requirements for designating preferred routes for HRCQ/RAM shipments as an alternative, or in addition, to Interstate System highways. For HRCQ/RAM shipments, § 397.101 defines a *preferred route* as an Interstate Highway for which no alternative route is designated by the State; a route specifically designated by the State; or both. (See § 397.65 for the definitions of *NRHM* and *routing designations.*)

Under a delegation from the Secretary,[1] FMCSA has authority to implement 49 U.S.C. 5112.

Currently, 49 CFR 397.73 establishes public information and reporting requirements for NRHM. States or Tribal governments are required to furnish information regarding any new or changed routes to FMCSA within 60 days after establishment. Under 49 CFR 397.103, a State routing designation for HRCQ/RAM routes (preferred routes) as an alternative, or in addition, to an Interstate System highway, is effective when the authorized routing agency provides FMCSA with written notification, FMCSA acknowledges receipt in writing, and the route is published in FMCSA's NHMRR. The Office of Management and Budget has approved these collections of information under control number 2126–0014, Transportation of Hazardous Materials, Highway Routing.

In this notice, FMCSA is merely performing the ministerial function of updating and publishing the NHMRR based on input from its State and Tribal partners under 49 U.S.C. 5112(c)(1). Accordingly, this notice serves only to provide the most recent revisions to the NHMRR; it does not establish any new public information and reporting requirements.

Updates to the NHMRR

FMCSA published the full NHMRR in a **Federal Register** notice on April 29, 2015 (80 FR 23859). Since publication of the 2015 notice, FMCSA published five updates to the NHMRR in **Federal Register** notices on August 8, 2016 (81 FR 52518), August 9, 2018 (83 FR 39500), September 24, 2019 (84 FR 50098), June 3, 2020 (85 FR 34284), and June 17, 2021 (86 FR 32306).

This notice provides revisions to the NHMRR, reported to FMCSA from April 1, 2021 through March 31, 2022. The revisions to the NHMRR listings in this notice supersede and replace corresponding NHMRR listings published in the April 29, 2015 notice and corresponding revisions to the NHMRR listings published in the August 8, 2016, August 9, 2018, September 24, 2019, June 3, 2020 and June 17, 2021 notices. Continue to refer to the April 29, 2015 notice for additional background on the NHMRR and the August 8, 2016 notice for the procedures for State and Tribal government routing agencies to update their Route Registry listings and contact information.

The full current NHMRR for each State is posted on the FMCSA's website at: *https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry.*

Revisions to the NHMRR in This Notice

In accordance with the requirements of 49 CFR 397.73 and 397.103, the NHMRR is being revised as follows:

Table 2.—California—Designated NRHM Routes
- Route Order Designator ''A13P–2.0–O2'' is revised.
- Route Order Designator ''A17P–2.0–C'' is revised.

Table 3.—California—HRCQ/RAM Routes
- Route Order Desginator ''B6A–2.0B'' is revised.

Table 4.—Washington—Restricted HM Routes

[1] 49 CFR 1.87(d)(2).

Route Order Desginator ''C'' is added.

Route Order Key

Each listing in the NHMRR includes codes to identify each route designation and each route restriction reported by the State. Designation codes identify the routes along which a driver may or must transport specified HM. Among the designation codes is one for preferred routes, which apply to the transportation of a HRCQ/RAM. Restriction codes identify the routes along which a driver may not transport specified HM shipments. Table 1 presents information on each restriction and designation code.

TABLE 1—RESTRICTION/DESIGNATION KEY

Restrictions	Designations
0—ALL Hazardous Materials	A—ALL NRHM Hazardous Materials.
1—Class 1—Explosives	B—Class 1—Explosives.
2—Class 2—Gas	I—Poisonous Inhalation Hazard (PIH).
3—Class 3—Flammable	P—*Preferred Route* Class 7—Radioactive.
4—Class 4—Flammable Solid/Combustible.	
5—Class 5—Organic.	
6—Class 6—Poison.	
7—Class 7—Radioactive.	
8—Class 8—Corrosives.	
9—Class 9—Dangerous (Other).	
i—Poisonous Inhalation Hazard (PIH).	

Revisions to the National Hazardous Materials Route Registry (March 31, 2021)

TABLE 2—CALIFORNIA—DESIGNATED NRHM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A, B, I, P)	FMCSA QA comment
10/28/92	A13P–2.0–O2	State 29 from State 20 [Upper Lake] to State 53 [Clearlake].		Lake	B	Changed to Clearlake on 08/17/2021.
12/16/21	A17P–2.0–C	Remove a section of SR–1 add Willow Rd A17P–2.0–B Is from Monterey to Pismo Beach.			B	

TABLE 3—CALIFORNIA—DESIGNATED HRCQ/RAM ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A, B, I, P)	FMCSA QA comment
08/25/21	B6A–2.0B	SR 210 From SR 57 to I–15			P	

TABLE 4—WASHINGTON—RESTRICTED ROUTES

Designation date	Route order	Route description	City	County	Designation(s) (A, B, I, P)	FMCSA QA comment
08/17/21	C	SR 99 Tunnel for 2.49 miles			A	

End of Revisions to the National Hazardous Materials Route Registry.

Robin Hutcheson,

Acting Administrator.

[FR Doc. 2022–10038 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2016–0050]

Hours of Service of Drivers: Application for an Exemption From Cleveland-Cliffs Steel, LLC

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; grant of exemption.

SUMMARY: FMCSA announces its decision to grant Cleveland-Cliffs Steel, LLC (Cliffs), formerly known as ArcelorMittal Indiana Harbor, LLC, exemption from the hours of service (HOS) that allows its employee-drivers with commercial driver's licenses (CDLs) who transport scrap metal on two trucks between their production and shipping locations on public roads to work up to 16 hours per day and to return to work with less than the mandatory 10 consecutive hours off duty. The exemption is similar to the exemption that allows Cliffs' drivers transporting steel coils to work the same HOS schedule. Unlike the steel coil exemption, the scrap metal trucks

comply with the heavy hauler trailer definition, height of rear side marker lights restrictions, tire loading restrictions, and the coil securement requirements in the FMCSRs.

DATES: This exemption is effective May 11, 2022 and ending May 11, 2027.

FOR FURTHER INFORMATION CONTACT: Mr. José R. Cestero, Vehicle and Roadside Operations Division, Office of Carrier, Driver, and Vehicle Safety, MC–PSV, (202) 366–5541, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001.

Docket: For access to the docket to read background documents or comments submitted to notice requesting public comments on the exemption application, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Docket Operations. The online Federal document management system is available 24 hours a day, 365 days a year. The docket number is listed at the beginning of this notice.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period (up to 5 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Cliffs' Application for Exemption

Cliffs, formerly known as ArcelorMittal, requests an exemption to allow its employee-drivers with CDLs who transport scrap metal on two trucks between their production and shipping locations to work up to 16 hours per day and return to work with less than the mandatory 10 consecutive hours off duty. The request is similar to the exemption previously granted that allows Cliffs' drivers transporting steel coils to work the same HOS and travel the same distances and routes between their production and shipping locations. Unlike the steel coil exemption, the scrap trucks would comply with the definition of a ''heavy hauler trailer'' in 49 CFR 393.5; the required ''height of rear side marker lights restrictions'' in 49 CFR 393.11 Table1—Footnote 4; the ''tire loading restrictions'' in 49 CFR 393.75(f); and the ''coil securement requirements'' in 49 CFR 393.120.

Cliffs (USDOT 1313214) operates a steel plant in East Chicago, Indiana, its principal place of business. Several public roadways run through the plant area. Scrap metal produced in one portion of the plant must be transported over two short segments of public highway to another section of the plant. Both points where the vehicles cross are controlled intersections, having either traffic lights or a combination of traffic lights and signs. The first public road the CMVs cross is Riley Road and it was controlled by a traffic signal in both directions; however, the City of East Chicago removed the traffic lights and is in the process of replacing them with four-way stop signs. The distance traveled is 80 feet. The average number of crossings at this intersection is 32 per day. The second crossing is at Dickey Road and 129th Street, which is controlled by a stop sign and traffic light. The distance traveled here is .2 miles. The trucks cross 129th Street 32 times per day.

According to Cliffs, the current HOS regulations create problems as employee-drivers typically work an 8-hour shift plus overtime while employees in the production and shipping areas work 12-hour shifts. Employee-drivers must go home under the current arrangement, leaving a 4-hour gap between production and the driver's schedule, creating an overrun of scrap metal for disposal and/or recycling.

Cliffs advised that it would ensure that all employee-drivers would not work more than 16 hours per shift, would receive 8 hours off duty between shifts, and would not be allowed to drive more than 10 percent of their total workday.

Cliffs acknowledged in its application that these scrap metal truck drivers would remain subject to all of the other applicable Federal regulations. This includes CDLs, controlled substance and alcohol testing, inspection, maintenance, and repair of vehicles. A copy of Cliffs' application for the exemption is available for review in the docket for this notice.

Comments

FMCSA published a notice of the application in the **Federal Register** on August 26, 2021, requesting public comment (86 FR 47708). The Agency received comments from five individuals.

Jeffrey Hill wrote ''We have regulations in place to ensure drivers are well rested and alert during service hours. The company should not be granted additional hours. Sixteen hours is way too many hours. These drivers will be over worked and become fatigued.'' Mathew Hillegas commented ''This sounds like an accident just looking for place to happen. There is so much traffic congestion in this area that requires a driver to be on their A game not half wore out with little chance to get proper rest.''

A&A Express, LLC stated, ''They should not be approved for the waiver. I own and operate a trucking company and drivers need their rest and sleep. Running those longer hours and with less than a 10-hour break is too dangerous. Barry Owen wrote ''Companies are pushing drivers more than ever, the truck drivers are fatigued enough! Now companies want longer hours for the drivers! As a driver, I say no!''

Michael Millard stated ''I hope the FMCSA denies the application for an exception to the HOS submitted by Cleveland-Cliffs Steel, LLC. The application goes against the HOS and general human needs; whereas, eight hours off between shifts involves commute time to and from work, time for personal hygiene and wellness limiting drivers to possibly less than five hours of sleep between shifts.''

FMCSA Response

FMCSA ensured that the motor carrier possessed an active USDOT registration, minimum required levels of insurance, and was not subject to any ''imminent hazard'' or other out-of-service orders. The Agency conducted a comprehensive investigation of the safety performance history of the motor carrier during the

review process. As part of this process, FMCSA reviewed its Motor Carrier Management Information System safety records, including inspection and accident reports submitted to FMCSA by State agencies.

The request is similar to the exemption previously granted that allows Cliffs' drivers transporting steel coils to work the same HOS and travel the same distances and routes between their production and shipping locations. Unlike the steel coil exemption, the scrap trucks would comply with the definition of a ''heavy hauler trailer'' in 49 CFR 393.5; the required ''height of rear side marker lights restrictions'' in 49 CFR 393.11 Table 1—Footnote 4; the ''tire loading restrictions'' in 49 CFR 393.75(f); and the ''coil securement requirements'' in 49 CFR 393.120. As the Agency stated in the steel coil exemption, this is somewhat comparable to current HOS regulations that allow certain ''short-haul'' drivers a 16-hour driving ''window'' once a week (49 CFR 395.1(o)) and other non-CDL short-haul drivers two 16-hour duty periods per week (49 CFR 395.1(e)(2)), provided specified conditions are met. However, current regulations require a minimum of 10 hours off duty between duty periods.

FMCSA Decision

The FMCSA has evaluated Cliffs' application for exemption and the public comments and hereby grants the exemption. The Agency believes that Cliffs' overall safety performance, as well as other factors discussed in its application (principally the short distances and low speeds of its operations on public highways) will enable it to achieve a level of safety that is equivalent to, or greater than the level of safety achieved without the exemption (49 CFR 381.305(a)).

Terms and Conditions for the Exemption

1. Period of the Exemption

The exemption is effective for a 5-year period, beginning May 11, 2022 and ending May 11, 2027.

2. Extent of the Exemption

The exemption from the requirements of 49 CFR part 395 is restricted to Cliffs' scrap truck drivers. Drivers utilizing the exemption may work up to 16 consecutive hours in a duty period and return to work with a minimum of at least 8 hours off duty when necessary.

The CMVs must cross only on Riley Road, where they travel 80 feet and Dickey Road and 129th Street where they travel .2 miles to move scrap metal from one part of the plant to another section of the plant. All drivers must have CDLs, and drivers and vehicles must comply with all other applicable provisions of the Federal Motor Carrier Safety Regulations.

3. Preemption

In accordance with 49 U.S.C. 31315(d), during the period this exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with these exemptions with respect to a firm or person operating under this exemption.

4. Notification to FMCSA

Cliffs must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs operating under the terms of this exemption. The notification must be emailed to *MCPSD@DOT.GOV* and include the following information:

a. Exemption Identifier: ''Cleveland-Cliffs Steel, LLC'';

b. Name and USDOT number of the motor carrier;

c. Date of the accident;

d. City or town, and State, in which the accident occurred, or which is closest to the scene of the accident;

e. Driver's name and driver's license number;

f. Vehicle number and State license number;

g. Number of individuals suffering physical injury;

h. Number of fatalities;

i. The police-reported cause of the accident;

j. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations; and

k. The total driving time and the total on-duty time of the CMV driver at the time of the accident.

5. Termination

FMCSA does not believe the motor carrier, the drivers, and CMVs covered by the exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions.

Robin Hutcheson,

Deputy Administrator.

[FR Doc. 2022–10129 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2002–14084]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter received on April 1, 2022, the San Luis Central Railroad (SLC) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 223.11, *Requirements for existing locomotives.* The relevant FRA Docket Number is FRA–2002–14084.

Specifically, SLC requests relief from 49 CFR 223.11 for two locomotives, SLC 70 and SLC 71, for operations not exceeding 10 miles per hour over 13 miles of branch line track in Colorado. In support of its petition, SLC states that there have been no accidents, incidents, or injuries to employees involving window glazing on the locomotives since the waiver was granted.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by June 27, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to

better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2022–10043 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0015]

Petition for Extension of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 7, 2022, Drake Switching Companies (DSC) petitioned the Federal Railroad Administration (FRA) for an extension of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses. The relevant FRA Docket Number is FRA–2011–0015.

Specifically, DSC requests relief from 49 CFR part 223 for one Shuttlewagon, DSC 601, for operations not exceeding 10 miles per hour over 4 miles of track owned by Drake Cement LLC in Arizona. In support of its petition, DSC states that there have been no accidents, incidents, or injuries to employees involving window glazing on the car since the waiver was granted.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by June 27, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–10044 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0029]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on April 7, 2022, the Delaware-Lackawanna Railroad Co., Inc. (DL), petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 240 (Qualification and Certification of Locomotive Engineers) and part 242 (Qualification and Certification of Conductors). FRA assigned the petition Docket Number FRA–2022–0029.

Specifically, DL requests relief as part of its proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^3RS) Program. DL seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in 49 CFR 240.117(e)(1)–(4); 240.305(a)(l)–(4) and (a)(6); 240.307; 242.403(b), (c), (e)(l)–(4), (e)(6)–(11), (f)(l)–(2); and 242.407. The C^3RS Program encourages certified operating crew members to report close calls and protects the employees and the railroad from discipline or sanctions arising from the incidents reported per the C^3RS Implementing Memorandum of Understanding.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested parties desire an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by June 27, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–10045 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0030]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on March 31, 2022, Arcade and Attica Railroad Corporation (ARA) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 223, Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses. FRA assigned the petition Docket Number FRA–2022–0030.

Specifically, ARA requests a waiver from the glazing regulations in 49 CFR part 223 for one locomotive, #113. ARA states that the locomotive is equipped with one-quarter-inch safety glass, consisting of two glass plates with a laminating material. In support of its request, ARA states that it is a short line historic railroad and freight carrier serving two customers on 15 miles of track at slow speeds, installing custom glazing would be cost prohibitive, and it reports no vandalism or window breakage issues in the past.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by June 27, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–10046 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2022–0005]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection requests abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** notice with a 60-day comment period soliciting comments on the information collections was published on February 2, 2022.

DATES: Interested persons are invited to submit comments on or before June 10, 2022.

ADDRESSES: The public is invited to submit comments regarding this information collection request, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments can also be submitted electronically at *www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–680–2034, by email at *angela.dow@dot.gov,* or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: Title 5, Code of Regulations (CFR) section 1320.8(d), requires PHMSA to provide interested members of the public and affected agencies the opportunity to comment on information collection and recordkeeping requests before they are submitted to OMB for approval. In accordance with this regulation, on February 2, 2022, (87 FR 5937) PHMSA published a **Federal Register** notice with a 60-day comment period soliciting comments on its plan to request the renewal of the four impacted information collections abstracted below. PHMSA received no comments in response to these information collection renewal requests. This notice announces that PHMSA will submit the following four information collection requests to the OMB for renewal.

The following information is provided for each of these information collections: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for each of the following information collection activities.

1. *Title:* Response Plans for Onshore Oil Pipelines.

OMB Control Number: 2137–0589.

Current Expiration Date: 6/30/2022.

Type of Request: Renewal without change of a currently approved information collection.

Abstract: Title 49 CFR part 194 requires an operator of an onshore oil pipeline facility to prepare and submit an oil spill response plan to PHMSA for review and approval. This mandatory recordkeeping requirement details operators' plans to prepare for emergency situations involving oil spills. This mandatory information collection is used by PHMSA to determine if an operator is compliant with the requirements in part 194. Plans are submitted and/or updated annually. This information collection covers operators' submission of facility response plans for onshore hazardous liquid pipeline facilities.

Affected Public: Operators of onshore oil pipeline facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 540.

Total Annual Burden Hours: 73,980.

Frequency of Collection: On occasion.

2. *Title:* Pipeline Integrity Management in High Consequence

Areas Gas Transmission Pipeline Operators.

OMB Control Number: 2137–0610.

Current Expiration Date: 6/30/2022.

Type of Request: Renewal without change of a currently approved information collection.

Abstract: This mandatory information collection request pertains to gas transmission operators that are required to comply with PHMSA's Gas Transmission Integrity Management Program regulations. The information collection requires gas transmission operators in high consequence areas to maintain a written integrity management program and keep records that demonstrate compliance with 49 CFR part 192, subpart O. Operators must maintain their integrity management records for the life of the pipeline, and PHMSA and/or state regulators may review those records as a part of inspections. Gas transmission operators are also required to report to PHMSA certain actions related to their integrity management program. This information collection supports DOT's strategic goal of safety by reducing the number of incidents in natural gas transmission pipelines.

Affected Public: Gas transmission operators.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 733.

Estimated annual burden hours: 1,018,807.

Frequency of Collection: On occasion.

3. *Title:* Control Room Management Human Factors.

OMB Control Number: 2137–0624.

Current Expiration Date: 6/30/2022.

Type of Request: Renewal without change of a currently approved information collection.

Abstract: Operators of gas and hazardous liquid pipelines must develop, implement, and submit a human factors management plan designed to reduce risks associated with human factors in each control room. The information is used by PHMSA to determine compliance with federal pipeline safety regulations and is also used by agency and state officials to assist federal and state pipeline safety inspectors who audit this information when they conduct compliance inspections as well as to provide background for failure investigations.

Affected Public: Operators of natural gas and hazardous liquid pipelines.

Estimated number of responses: 2,702.

Estimated annual burden hours: 127,328.

Frequency of collection: On occasion.

4. *Title:* Excess Flow Valves—New Customer Notifications.

OMB Control Number: 2137–0631.

Current Expiration Date: 12/31/2022.

Type of Request: Renewal without change of a currently approved information collection.

Abstract: This information collection covers the reporting and recordkeeping requirements for gas pipeline operators associated with customer notifications pertaining to the installation of excess flow valves. Gas pipeline operators must notify customers of their right to request the installation of excess flow valves and keep records of those notifications. This information collection includes example of language that can be used to notify natural gas customers of their right to request the installation of an excess flow valve pursuant to § 192.383(d). Use of the language is voluntary but would comply with federal regulatory requirements.

Affected Public: Natural gas pipeline operators.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 4,448.

Estimated annual burden hours: 4,448.

Frequency of Collection: On occasion.

Comments to Office of Management and Budget are invited on:

(a) The need for the proposed information, including whether the information will have practical utility in helping the agency to achieve its pipeline safety goals;

(b) The accuracy of the agency's estimate of the burden of the proposed collection;

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

(d) Ways to minimize the burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, on May 5, 2022, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2022–10119 Filed 5–10–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one entity that has been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this entity is blocked, and U.S. persons are generally prohibited from engaging in transactions with it. Additionally, OFAC is publishing updates to the identifying information of one entity currently included on the SDN List. All property and interests in property subject to U.S. jurisdiction of this entity remains blocked, and U.S. persons are generally prohibited from engaging in transactions with it.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT: OFAC: Andrea M. Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*https://www.treasury.gov/ofac*).

Notice of OFAC Actions

A. On May 6, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following entity is blocked under the relevant sanctions authority listed below.

Entity

1. BLENDER.IO (a.k.a. @BLENDERIO_ENGLISH; a.k.a. @BLENDERIO_RUSSIAN; a.k.a. @MADEAMAZE_BOT; a.k.a. BLENDERIO); Website https://blender.io; alt. Website https://blender.to; alt. Website http://blenderjkul472odyrnpmnirqgpzd3kms54jrrfycledrvvfbyj3wnqd.onion/; Email Address blender.io@tuta.io; alt. Email Address adblenderio@tuta.io; Digital Currency Address - XBT 3K35dyL85fR9ht7UgzPfd1gLRRXQtNTqE3; alt. Digital Currency Address - XBT 3Q5dGfLKkWqWSwYtbMUyc8xGjN5LrRviK4; alt. Digital Currency Address - XBT 3EPqGUw2q89pwPZ1UF8FJspE2AyojSTjdu; alt. Digital Currency Address - XBT 3LhnVMcBq4gsR7aDaRr9XmUo17CuYBV4FN; alt. Digital Currency Address - XBT 3F6bbvS1krsc1qR8FsbTDfYQyvkMm3QvmR; alt. Digital Currency Address - XBT 3JHMz3mTna1gVCZSPp8NgRFiY7phkv5mA8; alt. Digital Currency Address - XBT 32DaxSzUhLBHY2WGSWQYiBSHnRsfQZrrRp; alt. Digital Currency Address - XBT 3MTRvM5QrYZHKo8gh5qKcrPK3RLjxcDCZE; alt. Digital Currency Address - XBT 34pFGsSYbWEritXncW9unZtQQE9dKSvKku; alt. Digital Currency Address - XBT 38ncxqt932N9CcfNfYuHGZgCyR85hDkWBW; alt. Digital Currency Address - XBT 3F6bbvS1krsc1qR8FsbTDfYQyvkMm3QvmR; alt. Digital Currency Address - XBT 3MD3riFB6U8PykypF6qkvSj8R2SGdUDPn3; alt. Digital Currency Address - XBT 3JUwAS7seL3fh5hxWh9fu3HCiEzjuQLTfg; alt. Digital Currency Address - XBT 3EUjqe9UpmyXCFd6jeu69hoTzndMRfxw9M; alt. Digital Currency Address - XBT 3QEjBiPzw6WZUL4MYMmMU6DY1Y25aVbpQu; alt. Digital Currency Address - XBT 3N3YSDvp4cbhEgNGabQxTN39kEzJmwG8Ah; alt. Digital Currency Address - XBT 3J19qffPT6mxQUcV6k5yVURGZtdhpdGr4y; alt. Digital Currency Address - XBT 33KKjn4exdBJQkTtdWxqpdVsWxrw3LareG; alt. Digital Currency Address - XBT 3GSXNXzyCDoQ1Rhsc7F1jjjFe7DGcHHdcM; alt. Digital Currency Address - XBT 3QJyT8nThEQakbfqgX86YjCK1Sp9hfNCUW; alt. Digital

Currency Address - XBT 35hh9dg3wSvUJz9vFk1FsezLE5Fx3Hudk2; alt. Digital Currency Address - XBT 3NDzzVxiLBUs1WPvVGRfCYDTAD2Ua2PvW4; alt. Digital Currency Address - XBT 3DCCgmyKozcZkFBzYb1A2x8abZCpAUTPPk; alt. Digital Currency Address - XBT 3MvQ4gThF4mmuo49p4dBNchcmFHBRZnYfx; alt. Digital Currency Address - XBT 3FBgeJdhiBe22UoSpp51Vd8dPHVa2A4wZX; alt. Digital Currency Address - XBT 3HQDRyzwm82MFmLWtmyikDM9JQEtVT6vAp; alt. Digital Currency Address - XBT 31t4nEpcwyQJT1VuXdAoQZTT5givRDPsNP; alt. Digital Currency Address - XBT 39AALn7eTjdPzLb99hHhD6F7J8QWB3R2Rd; alt. Digital Currency Address - XBT 3LDbNuDkKmLae5r3a5icPA5CQg2Y8F7ogW; alt. Digital Currency Address - XBT 3JLyyLbwciWAC6re87D7mRknXakR4YbnUd; alt. Digital Currency Address - XBT 3ANWhUnHujdwbw2jEuGSRH6bvFsD9BqEy9; alt. Digital Currency Address - XBT 32fbAZMTaQxNd2fAue1PgsiPgWfcsHBQQt; alt. Digital Currency Address - XBT 3HupEUfKmMhvhXqf8TMoPAyqDcRC1kpe65; alt. Digital Currency Address - XBT 34kEYgpijvCmjvahRXXQEnBH76UGJVx2wg; alt. Digital Currency Address - XBT 3GYbbYkvqvjF5oYhaKCgQYCvcVE1JENk6J; alt. Digital Currency Address - XBT 3BazbaTP8ELJUEfPBV9z5HXEdgBziV9p7W; alt. Digital Currency Address - XBT 3GMfGEDYMTq9G8dEHet1zLtUFJwYwSNa3Y; alt. Digital Currency Address - XBT 38LjCapRrJEW7w2zwbyS15P9D9UGPjWS44; alt. Digital Currency Address - XBT 36XqYWGvUQwBrYLRVuegN4pJJJSPWL1WEu; alt. Digital Currency Address - XBT 37g6WgqedzZx6nx51tYgssNG8Hnknyj5nL; alt. Digital Currency Address - XBT 3QAdoc1rDCt8dii1GVPJXvvK6CEJLzCRZw; alt. Digital Currency Address - XBT 32PsiT8itBrEF84ebdaF82yBUEcz5Wc6uY; alt. Digital Currency Address - XBT 3B4G1M8eF3cThbeMwhEWkKzczw9QoNTGak; alt. Digital Currency Address - XBT 34ETiHfQWEYFCCaXmEeQWVmhFH5vz2JMvd; alt. Digital Currency Address - XBT 3PyzSbFj3hbQQjTzDzyLSgvFVDjB7yw4Cj; alt. Digital Currency Address - XBT 15PggTG7YhJKiE6B16vkKzA1YDTZipXEX4; Organization Established Date 2017 [CYBER2].

Designated pursuant to section l(a)(iii)(B) of Executive Order (E.O.) 13694 of April 1, 2015, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities", 80 FR 18077, 3 CFR, 2015 Comp., p. 297, as amended by Executive Order 13757 of December 28, 2016, "Taking Additional Steps to Address the National Emergency With Respect to Significant Malicious Cyber-Enabled Activities", 82 FR 1, 3 C.F.R., 2016 Comp., p. 659 (E.O. 13694, as amended) for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, an activity described in section 1(a)(ii) of E.O. 13694, as amended.

B. On May 6, 2022, OFAC updated the entry on the SDN List for the following entity, whose property and interests in property subject to U.S. jurisdiction continues to be blocked under E.O. 13722 of March 15, 2016, "Blocking Property of the Government of North Korea and the Workers' Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea.".

Entity

1. LAZARUS GROUP (a.k.a. "APPLEWORM"; a.k.a. "APT-C-26"; a.k.a. "GROUP 77"; a.k.a. "GUARDIANS OF PEACE"; a.k.a. "HIDDEN COBRA"; a.k.a. "OFFICE 91"; a.k.a. "RED DOT"; a.k.a. "TEMP.HERMIT"; a.k.a. "THE NEW ROMANTIC CYBER ARMY TEAM"; a.k.a. "WHOIS HACKING TEAM"; a.k.a. "ZINC"), Potonggang District, Pyongyang, Korea, North; Digital Currency Address - ETH 0x098B716B8Aaf21512996dC57EB0615e2383E2f96; Digital Currency Address - ETH 0xa0e1c89Ef1a489c9C7dE96311eD5Ce5D32c20E4B; Digital Currency Address - ETH 0x3Cffd56B47B7b41c56258D9C7731ABaDc360E073; Digital Currency Address- ETH 0x53b6936513e738f44FB50d2b9476730C0Ab3Bfc1; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK3].

-to-

1. LAZARUS GROUP (a.k.a. "APPLEWORM"; a.k.a. "APT-C-26"; a.k.a. "GROUP 77"; a.k.a. "GUARDIANS OF PEACE"; a.k.a. "HIDDEN COBRA"; a.k.a. "OFFICE 91"; a.k.a. "RED DOT"; a.k.a. "TEMP.HERMIT"; a.k.a. "THE NEW ROMANTIC CYBER ARMY TEAM"; a.k.a. "WHOIS HACKING TEAM"; a.k.a. "ZINC"), Potonggang District, Pyongyang, Korea, North; Digital Currency Address - ETH 0x098B716B8Aaf21512996dC57EB0615e2383E2f96; alt. Digital Currency Address - ETH 0xa0e1c89Ef1a489c9C7dE96311eD5Ce5D32c20E4B; alt. Digital Currency Address - ETH 0x3Cffd56B47B7b41c56258D9C7731ABaDc360E073; alt. Digital Currency Address - ETH 0x53b6936513e738f44FB50d2b9476730C0Ab3Bfc1; alt. Digital Currency Address - ETH 0x35fB6f6DB4fb05e6A4cE86f2C93691425626d4b1; alt. Digital Currency Address - ETH 0xF7B31119c2682c88d88D455dBb9d5932c65Cf1bE; alt. Digital Currency Address - ETH 0x3e37627dEAA754090fBFbb8bd226c1CE66D255e9; alt. Digital Currency Address - ETH 0x08723392Ed15743cc38513C4925f5e6be5c17243; Secondary sanctions risk: North Korea Sanctions Regulations, sections 510.201 and 510.210; Transactions Prohibited For Persons Owned or Controlled By U.S. Financial Institutions: North Korea Sanctions Regulations section 510.214 [DPRK3].

Dated: May 6, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–10087 Filed 5–10–22; 8:45 am]

BILLING CODE 4810–AL–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Requesting Comments on Voluntary Customer Surveys To Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

DATES: Written comments should be received on or before July 11, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *omb.unit@irs.gov.* Include OMB Control Number 1545–1432 in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Voluntary Customer Surveys to Implement E.O. 12862 Coordinated by the Corporate Planning and Performance Division on Behalf of All IRS Operations Functions.

OMB Number: 1545–1432.

Form: Generic Customer Feedback Surveys.

Abstract: This is a generic clearance for an undefined number of customer satisfaction and opinion surveys to be conducted over the next three years. Surveys conducted under the generic clearance are used by the Internal Revenue Service to determine levels of customer satisfaction as well as issues that contribute to customer burden. This information will be used to make quality improvements to products and services.

Current Actions: A variety of questionnaires are expected to be used in IRS data gathering efforts. The exact number of different forms, the length of each form, and the number of respondents per form are unknown at the present time. The IRS will also be consolidating surveys issued using different clearance numbers to increase internal efficiency and reduce duplication of work.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

Estimated Number of Responses: 450,000.

Estimated Time per Response: .10 hours.

Estimated Total Burden Hours: 45,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2022.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2022–10101 Filed 5–10–22; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 91 May 11, 2022

Part II

Securities and Exchange Commission

17 CFR Parts 201, 232, 240, et al.

Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 232, 240, 242, and 249

[Release No. 34–94615; File No. S7–14–22]

RIN 3235–AK93

Rules Relating to Security-Based Swap Execution and Registration and Regulation of Security-Based Swap Execution Facilities

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; withdrawal of proposed rules.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') is proposing a set of rules (''Regulation SE'') and forms under the Securities Exchange Act of 1934 (''SEA'') that would create a regime for the registration and regulation of security-based swap execution facilities (''SBSEFs'') and address other issues relating to security-based swap (''SBS'') execution generally. One of the rules being proposed as part of Regulation SE would implement part of the Dodd-Frank Act, which is intended to mitigate conflicts of interest at SBSEFs and national securities exchanges that trade SBS (''SBS exchanges''). Other rules being proposed as part of Regulation SE would address the cross-border application of the SEA's trading venue registration requirements and the trade execution requirement for SBS. In addition, the Commission is proposing to amend an existing rule to exempt, from the SEA definition of ''exchange,'' certain registered clearing agencies as well as registered SBSEFs that provide a market place only for SBS. The Commission also is proposing a new rule that, while affirming that an SBSEF would be a broker under the SEA, would exempt a registered SBSEF from certain broker requirements. Finally, the Commission is proposing certain new rules and amendments to its Rules of Practice to allow persons who are aggrieved by certain actions by an SBSEF to apply for review by the Commission. The Commission also is withdrawing all previously proposed rules regarding these subjects.

DATES: Comments should be received on or before June 10, 2022. As of May 11, 2022, the SEC is withdrawing or partially withdrawing the following previously proposed rules (see **SUPPLEMENTARY INFORMATION** for details): SEA Release No. 63825 (76 FR 10948, published on February 28, 2011); SEA Release No. 63107 (75 FR 65581, published on October 26, 2010); and SEA Release No. 69490 (78 FR 30968, published on May 23, 2013).

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. S7–14–22 on the subject line.

Paper Comments

- Send paper comments to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–14–22. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's internet website (*http://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 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

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: Michael Gaw, Assistant Director, at (202) 551–5602; David Liu, Special Counsel, at (312) 353–6265; Leah Mesfin, Special Counsel, at (202) 551–5655; Michou Nguyen, Special Counsel, at (202) 551–7768; Geoffrey Pemble, Special Counsel, at (202) 551–5628; or Mark Sater, Counsel, at (202) 551–4729; all of whom are in the Division of Trading and Markets, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing new 17 CFR 242.800 through 242.835 to create a regime for the registration and regulation of SBSEFs and address other issues relating to SBS execution generally. Regulation SE would consist of 17 CFR 242.800 through 242.835 (proposed Rules 800 through 835). Key rules within Regulation SE would include Rule 803, which would establish a process for SBSEF registration; Rules 804 to 810, which would establish procedures for rule and product filings by SBSEFs; Rule 815, which would establish permissible execution methods for SBS that are subject to the SEA's trade execution requirement; Rule 816, which would set out a procedure for SBSEFs to make an SBS available to trade and establish certain exemptions from the trade execution requirement; Rules 818 to 831, which would implement the 14 Core Principles for SBSEFs set forth in section 3D(d) of the SEA; Rules 832 to 833, which would address cross-border matters; and Rule 834, which would impose requirements addressing conflicts of interest involving SBSEFs and SBS exchanges, as required by section 765 of the Dodd-Frank Act.

In addition to the rules described above, the Commission is also proposing 17 CFR 249.2001 (Form SBSEF), which is the form that an entity would use to register with the Commission as an SBSEF; 17 CFR 249.2002 (a submission cover sheet), which would be required to accompany filings with the Commission made by SBSEFs for rule and rule amendments and for product listings; amendments to 17 CFR 232.405 (Rule 405 of Regulation S–T) to require various SBSEF filings to be provided in Inline eXtensible Business Reporting Language (''Inline XBRL''), a structured data language; amendments to 17 CFR 240.3a1–1 (Rule 3a1–1 under the SEA) to exempt from the SEA definition of ''exchange'' certain registered clearing agencies as well as registered SBSEFs that provide a market place only for SBS; 17 CFR 240.15a–12 (Rule 15a–12 under the SEA) that, while affirming that an SBSEF also would be a broker under the SEA, would exempt a registered SBSEF from certain broker requirements; to sunset an existing exemption from the requirement to register as a clearing agency for an entity performing the functions of an SBSEF but that is not yet registered as such; and certain new rules and amendments to 17 CFR part 201

(the Commission's Rules of Practice) to allow persons who are aggrieved by certain actions by an SBSEF to apply for review by the Commission.

The Commission also is withdrawing all previously proposed rules, rule amendments, and interpretations regarding these subjects in view of the length of time that has passed since they were issued and significant changes to the swap and SBS markets that have taken place during that time.

Table of Contents

I. Background
II. Relation to the SEF Market
III. Approach to the Commission's Proposed Requirements Relating to Security-Based Swap Execution
IV. Introductory Provisions of Regulation SE
A. Rule 800—Scope
B. Rule 801—Applicable Provisions
C. Rule 802—Definitions
V. Registration of SBSEFs
A. Rule 803—Requirements and Procedures for Registration
B. Form SBSEF
C. Abbreviated Registration Procedures for CFTC-Registered SEFs
VI. Rule and Product Filings by SBSEFs
A. Rule 804—Listing Products for Trading by Certification
B. Rule 805—Voluntary Submission of New Products for Commission Review and Approval
C. Rule 806—Voluntary Submission of Rules for Commission Review and Approval
D. Rule 807—Self-Certification of Rules
E. Submission Cover Sheet and Instructions
F. Rule 808—Availability of Public Information
G. Rule 809—Staying of Certification and Tolling of Review Period Pending Jurisdictional Determination
H. Rule 810—Product Filings by SBSEFs That Are Not Yet Registered and by Dormant SBSEFs
VII. Miscellaneous Requirements
A. Rule 811—Information Relating to SBSEF Compliance
1. Harmonization With § 37.5
2. Harmonization With § 1.60
B. Rule 812—Enforceability
C. Rule 813—Prohibited Use of Data Collected for Regulatory Purposes
D. Rule 814—Entity Operating Both a National Securities Exchange and SBSEF
E. Rule 815—Methods of Execution for Required and Permitted Transactions
F. Rule 816—Trade Execution Requirement and Exemptions Therefrom
1. Process for an SBSEF To Make an SBS Product Available To Trade
2. Exemptions From Trade Execution Requirement
G. Rule 817—Trade Execution Compliance Schedule
VIII. Implementation of Core Principles
A. Rule 818—Core Principle 1—Compliance With Core Principles
B. Rule 819—Core Principle 2—Compliance With Rules
1. Rules Modelled on Subpart C of Part 37
2. Provisions of Rule 819 Adapted From Other SEF Requirements
a. Rule 819(h)—Activities of SBSEF's Employees, Governing Board Members, Committee Members, and Consultants
b. Rule 819(i)—Service on SBSEF Governing Boards or Committees by Persons With Disciplinary Histories
c. Rule 819(j)—Notification of Final Disciplinary Action Involving Financial Harm to a Customer
d. Rule 819(k)—Designation of Agent for Non-U.S. Member
C. Rule 820—Core Principle 3—SBS Not Readily Susceptible to Manipulation
D. Rule 821—Core Principle 4—Monitoring of Trading and Trade Processing
E. Rule 822—Core Principle 5—Ability To Obtain Information
F. Rule 823—Core Principle 6—Financial Integrity of Transactions
G. Rule 824—Core Principle 7—Emergency Authority
H. Rule 825—Core Principle 8—Timely Publication of Trading Information
I. Rule 826—Core Principle 9—Recordkeeping and Reporting
J. Rule 827—Core Principle 10—Antitrust Considerations
K. Rule 828—Core Principle 11—Conflicts of Interest
L. Rule 829—Core Principle 12—Financial Resources
M. Rule 830—Core Principle 13—System Safeguards
N. Rule 831—Core Principle 14—Designation of Chief Compliance Officer
IX. Cross-Border Rules
A. Rule 832—Cross-Border Mandatory Trade Execution
B. Rule 833—Cross-Border Exemptions
1. Exemptions for Foreign SBS Trading Venues
2. Exemptions Relating to the Trade Execution Requirement
X. Rule 834—Implementation of Section 765 of the Dodd-Frank Act and Governance of SBSEFs and SBS Exchanges
XI. Rule 835—Notice to Commission by SBSEF of Final Disciplinary Action, Denial or Conditioning of Membership, or Denial or Limitation of Access
XII. Amendments to Existing Rule 3a1–1 Under the SEA—Exemptions From the Definition of ''Exchange''
XIII. Rule 15a–12—SBSEFs as Registered Brokers; Relief From Certain Broker Requirements
XIV. Proposed Sunsetting of Temporary Exemption From SEA Definition of ''Clearing Agency'' for Unregistered SBSEFs
XV. Electronic Filings Under Regulation SE
XVI. Amendments to Commission's Rules of Practice for Appeals of SBSEF Actions
A. Amendment to Rule 101
B. Amendment to Rule 202
C. Amendment to Rule 210
D. Amendment to Rule 401
E. Rule 442—Right to Appeal
F. Rule 443—*Sua Sponte* Review by Commission
G. Amendment to Rule 450
H. Amendment to Rule 460
I. Request for Comment
XVII. Conclusion
XVIII. Compliance Schedule
XIX. Economic Analysis
A. Introduction
B. Economic Baseline
1. Available Data From the SBS Market
2. SBS Market Activity and Participants
a. SBS Entities
b. Other SBS Market Participants
c. SBS Market Participant Domiciles
3. Distribution of Rransaction Size
4. Other Markets and Regulatory Frameworks
5. Number of Entities That Likely Will Register as SBSEFs
6. SBS Trading on Platforms
7. Global Regulatory Efforts
8. Trading Models
C. Benefits, Costs, and Reasonable Alternatives
1. Overarching Benefits of the Proposal
2. Benefits Associated With Specific Proposed Rules
3. Costs
a. Registration Requirements for SBSEFs and Form SBSEF
b. Ongoing Compliance With Other Requirements That Are Similar to the Remainder of Part 37
c. Rule and Product Filing Processes for SBSEFs
d. Proposed Rules 809, 811, 819, 826, 833, 834, and 835
e. Assessment Costs
f. Structured Data Costs
4. Reasonable Alternatives
D. Effects on Efficiency, Competition, and Capital Formation
1. Competition
2. Capital Formation
3. Efficiency
E. Request for Comment
XX. Paperwork Reduction Act
A. Summary of Collection of Information
B. Proposed Use of Information
1. Registration Requirements and Form SBSEF
2. Requirements for SBSEFs To Establish Rules
3. Reporting Requirements for SBSEFs
4. Recordkeeping Required Under Regulation SE
5. Timely Publication of Trading Information Requirement for SBSEFs
6. Rule Filing and Product Filing Processes for SBSEFs
7. Requirements Relating to the CCO
8. Surveillance Systems Requirements for SBSEFs
C. Respondents
D. Total Annual Reporting and Recordkeeping Burden
1. Overview
2. Aggregate Burdens for Rules Modelled After CFTC Part 37 Rules
a. Registration requirements for SBSEFs and Form SBSEF
b. Ongoing Compliance With Other Requirements That Are Similar to the Remainder of Part 37
3. Aggregate Burdens for Rules Modelled on CFTC Part 40 Rules
a. Rule and Product Filing Processes for SBSEFs
b. Burdens Related to Rules Modelled After Other Part 40 Rules
i. Rule 802

ii. Rule 809
4. Aggregate Burdens for Rules Modelled After CFTC Rules Other Than Parts 37 and 40
a. Rule 811(d)
b. Rule 819(h)
c. Rule 819(i)
d. Rule 819(j)
e. Rule 819(k)
f. Rule 826(f)
g. Rule 834
5. Miscellaneous Burdens
a. Rule 833
b. Rule 835
6. Total Paperwork Burden Under Proposed Regulation SE
E. Collection of Information Is Mandatory
F. Responses to Collection of Information Will Not Be Confidential
G. Retention Period of Recordkeeping Requirements
H. Request for Comment
XXI. Regulatory Flexibility Certification
A. SBSEFs
B. Persons Requesting an Exemption Order Pursuant to Rule 833
C. SBS Exchanges
D. Certification
XXII. Consideration of Impact on Economy
Statutory Authority

I. Background

Section 3D of the SEA,[1] enacted as part of Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''),[2] provides for the registration and regulation of SBSEFs. Section 3D(a)(1) provides that no person may operate a facility for the trading or processing of SBS, unless the facility is registered as an SBSEF or as a national securities exchange. Section 3D(d) enumerates 14 Core Principles with which SBSEFs must comply.[3] Section 3D(f) requires the Commission to prescribe rules governing the regulation of SBSEFs.

Section 765 of the Dodd-Frank Act directs the Commission to adopt rules to mitigate conflicts of interest with respect to clearing agencies that clear SBS (''SBS clearing agencies''), SBSEFs, and national securities exchanges that post or make available for trading SBS (''SBS exchanges''). In October 2010, the Commission published for comment proposed Regulation MC to implement section 765.[4]

In February 2011, the Commission published for comment: (1) Proposed Regulation SBSEF that would govern the registration and regulation of SBSEFs, including rules to implement the 14 Core Principles and rules requiring SBSEFs to submit filings with the Commission to list SBS and to establish or amend rules; (2) proposed Form SBSEF for an entity to register with the Commission as an SBSEF; (3) a proposed interpretation of the definition of ''security-based swap execution facility''; and (4) proposed exemptions for registered SBSEFs relating to their status also as ''exchanges'' and ''brokers.''[5] On May 23, 2013, the Commission issued a proposing release to address various cross-border aspects of its proposed Title VII rules[6]—which included a proposed rule on the application of Title VII's ''trade execution requirement''[7] to cross-border SBS transactions and a proposed interpretation of when the SBSEF registration requirements would apply to a foreign venue that trades SBS (a ''foreign SBS trading venue'')[8]—and reopened the comment period for various proposed rulemaking releases and policy statements under Title VII, including the 2011 SBSEF Proposal.[9]

In view of the passage of time since these earlier proposals were issued and the significant market and regulatory developments affecting swaps and SBS over those years, the Commission is issuing this new proposal relating to the registration and regulation of SBSEFs and to SBS execution generally. Accordingly, the Regulation MC Proposal, the 2011 SBSEF Proposal, and the elements of the Cross-Border Proposing Release relating to the trade execution requirement and the registration status of foreign SBS trading venues are withdrawn. The proposed rules discussed below supersede all previous Commission proposals on these subjects.[10]

II. Relation to the SEF Market

The economic baseline for establishing a registration and regulatory regime for SBSEFs and SBS execution generally has changed considerably since the Commission issued the 2011 SBSEF Proposal. In June 2013, the Commodity Futures Trading Commission (''CFTC'') adopted rules (in 17 CFR chapter I) under Title VII of the Dodd-Frank Act for swap execution facilities (''SEFs'').[11] The swap market has grown and matured within the framework established by the CFTC's rules. In 2018, the CFTC proposed to make fundamental changes to the SEF regulatory structure.[12] However, according to the CFTC, ''[s]everal commenters expressed concern over the magnitude of changes'' in the proposal.[13] In 2021, the CFTC ultimately declined to finalize the 2018 SEF Proposal and elected instead ''to improve the SEF framework through targeted rulemakings that address distinct issues.''[14] Accordingly, the CFTC withdrew the unadopted portions of its 2018 proposal.[15] Currently, the CFTC has no proposals outstanding to further amend its SEF rules.

Because of the close relationship between the swap and SBS markets, an analysis of swap trading on CFTC-registered SEFs offers insights into the potential development of SBS trading on SEC-registered SBSEFs.[16] Currently,

[1] 15 U.S.C. 78c–4. In this release, the Commission is defining the Securities Exchange Act as the ''SEA'' to distinguish it from the Commodity Exchange Act (''CEA'').

[2] Public Law 111–203, H.R. 4173, section 763(c).

[3] *See infra* section VIII (listing the Core Principles).

[4] *Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC,* SEA Release No. 63107 (October 14, 2010), 75 FR 65882 (October 26, 2010) (''Regulation MC Proposal'').

[5] *Registration and Regulation of Security-Based Swap Execution Facilities,* SEA Release No. 63825 (February 2, 2011), 76 FR 10948 (February 28, 2011) (''2011 SBSEF Proposal'').

[6] *Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* SEA Release No. 69490 (May 1, 2013), 78 FR 30968 (May 23, 2013) (''Cross-Border Proposing Release'').

[7] The ''trade execution requirement'' as used with respect to SBS refers to a provision mandated by Title VII and set forth in section 3C(h) of the SEA that requires a transaction involving an SBS that is subject to the clearing requirement of section 3C to be executed on a national securities exchange, a registered SBSEF, or an SBSEF that is exempt from registration under section 3D(e) of the SEA. *See infra* note 106 and accompanying text. A similar provision regarding swaps is set forth in section 2(h)(8) of the CEA.

[8] *See id.,* 78 FR at 31053–58 (discussing potential exemptions for foreign SBS trading venues) and 31081–85 (discussing a proposed rule to address the application of the trade execution requirement to cross-border SBS transactions).

[9] *Reopening of Comment Periods for Certain Proposed Rulemaking Releases and Policy Statements applicable to Security-Based Swaps,* SEA Release No. 69491 (May 1, 2013), 78 FR 30800 (May 23, 2013) (''Reopening of Comment Periods Release'').

[10] The Commission notes, however, that Rule 834 of proposed Regulation SE would implement section 765 only with respect to SBSEFs and SBS exchanges.

[11] *See* CFTC, *Core Principles and Other Requirements for Swap Execution Facilities,* 78 FR 33476 (June 4, 2013) (''2013 CFTC Final SEF Rules Release''); CFTC, *Process for a Designated Contract Market or Swap Execution Facility To Make a Swap Available to Trade, Swap Transaction Compliance and Implementation Schedule, and Trade Execution Requirement Under the Commodity Exchange Act,* 78 FR 33606 (June 4, 2013) (''2013 CFTC Final MAT Rules'' and, together with the 2013 CFTC Final SEF Rules Release, the ''2013 CFTC SEF Rules'').

[12] *See* CFTC, *Swap Execution Facilities and Trade Execution Requirement,* 83 FR 61946 (November 30, 2018) (''2018 SEF Proposal'').

[13] CFTC, *Swap Execution Facilities and Trade Execution Requirement—Proposed rule; partial withdrawal,* 86 FR 9304, 9304 (February 12, 2021).

[14] *Id.*

[15] *See id.,* 86 FR at 9304–05.

[16] The Commission bases its preliminary analysis on trading of credit derivatives. Other swap asset classes that trade on SEFs, such as interest rate swaps (''IRS'') and foreign exchange swaps, have no analogs in the SBS market. While there are parallels

there are 20 non-dormant entities registered with the CFTC as SEFs.[17] In 2021, volume in index credit default swaps (''CDS'') traded on CFTC-registered SEFs was distributed as follows: One SEF had the largest share of index CDS volume (in notional amount) at $8 trillion (69%); one SEF had the second largest share at $2.1 trillion (18%); and the remaining 13% of volume was shared among five other SEFs.[18] As discussed in section XIX below, only a small fraction of SBS trading occurs on platforms currently. Further, some trading occurs on platforms that do not include CFTC-registered SEFs.

Based on research from publicly available sources as well as discussions with CFTC-registered SEFs, the Commission understands that the SBS market—both on organized platforms that are potential SBSEF registrants and on a purely over-the-counter (''OTC'') basis—is a small fraction of the overall swap market.[19] Furthermore, the single-name CDS market, which falls under SEC jurisdiction, is smaller than the index CDS market, which falls under CFTC jurisdiction.[20] Because the swap markets are larger than the SBS markets, the opportunities for revenue capture from swap execution are much larger than from SBS execution. In view of the SBS market's size relative to the swap market, the Commission is sensitive to the economic impact that its final rules for SBSEFs could have.

The entities that are most likely to register with the Commission as SBSEFs are those already registered with the CFTC as SEFs.[21] These entities have made substantial investments in systems, policies, and procedures to comply with and adapt to the regulatory system developed by the CFTC. To the extent that the Commission harmonizes its SBSEF rules with the CFTC's SEF rules, dually registered entities could utilize their existing systems, policies, and procedures to comply with the Commission's SBSEF rules, and SEF market participants would face no or only incremental changes to trade SBS as well as swaps on those facilities, and to comply with the Commission's rules regarding SBS trading. To the extent that the Commission establishes different or additive requirements, dually registered entities and their market participants might need to incur costs and burdens to modify their systems, policies, and procedures to comply with the SEC-specific rules. As indicated below, the Commission seeks comment on such costs and burdens in light of the CFTC's SEF rules.[22] Accordingly, as discussed below, the Commission is proposing to take the general approach of harmonizing closely with analogous CFTC SEF rules, except where differences in the SEC's statutory authority relative to the CFTC's statutory authority or differences in the SBS market relative to the swap market necessitate differences between the Commission's rules and the CFTC's, or where the Commission preliminarily believes that the benefits of deviating from the CFTC's rules would otherwise justify the burdens and costs associated with imposing different or additional requirements than the corresponding CFTC rule. Throughout this release, the Commission will seek comment on the accuracy of these assumptions. In particular, the Commission seeks comment on the following:

1. How many CFTC-registered SEFs do you believe will seek to register with the Commission as SBSEFs? Please explain.

2. Are there any entities that will seek to register with the Commission as SBSEFs but *not* register with the CFTC as SEFs? If so, please explain and estimate how many.

3. For SEFs that will likely seek registration with the Commission as SBSEFs, please estimate the size of their swaps business versus the anticipated size of their SBS business, using any metric(s) that you believe would be illustrative (*e.g.,* number of products listed, trade count, aggregate notional size traded, number of counterparties trading swaps versus SBS, *etc.*).

4. Please provide any information or market data that you believe would be illustrative regarding current SBS trading activity on entities that are not likely to register with the Commission as SBSEFs, and thus would have to cease SBS trading upon the compliance date of the Commission's SBSEF rules. Do you believe that this activity would migrate to registered SBSEFs or would it migrate instead to the bilateral OTC market?

5. What types of products do you anticipate could be listed by registered SBSEFs (*e.g.,* CDS on individual corporate bonds, CDS on individual sovereign bonds, CDS on individual securitized bonds, swaps on securities options, swaps on narrow-based securities indexes, total return swaps on individual cash equities or crypto/digital asset securities, *etc.*)?

In the remainder of this release, the Commission describes its proposed registration and regulation regime for SBSEFs and SBS execution generally, and seeks comment on all aspects of its proposal. You are invited in particular to provide data and analysis regarding the economic and Paperwork Reduction Act (''PRA'') implications of this proposal. For example, the Commission seeks comment on the following:

6. If, in a particular area, the Commission were to harmonize closely with a CFTC rule, to what extent would this reduce, or perhaps eliminate entirely, any incremental costs or burdens on dually registered SEF/SBSEFs and their members?

7. Should the Commission impose any different or additive requirements? For example, are there any statutory or market differences that would create benefits from different or additive requirements? If the Commission imposes different or additive requirements, what would be the impact on dually registered SEF/SBSEFs and their members?

8. Are there provisions of the CFTC's rules the Commission should *not* incorporate, even if the Commission were to opt for harmonization with the CFTC's rules in other areas? In other words, are there areas where *not* harmonizing with a CFTC rule would reduce burdens on SBSEFs and/or their members? If so, please explain, with particular regard to the economic impacts and/or PRA burdens.

9. Do you believe that the Commission should adopt different or additive requirements for SBSEFs, even if there is no analog to such provisions in the CFTC's SEF rules? If so, please explain, with particular regards to the economic impacts and/or PRA burdens. For example, do you believe that the SEC-specific provision *would impose* additional costs or burdens on SBSEFs

between the equity swap and equity SBS markets, equity swap trading on SEFs appears to be minimal.

[17] *See* CFTC, Trading Organizations—Swap Execution Facilities (SEF), *https://sirt.cftc.gov/SIRT/SIRT.aspx?Topic=SwapExecutionFacilities* (accessed on January 25, 2022).

[18] *See infra* note 376 and accompanying text.

[19] *See infra* note 371 and accompanying text.

[20] *See id.*

[21] *See infra* section XIX(B)(5).

[22] Consider the following example: § 37.1306(a) of the CFTC's rules (17 CFR 37.1306(a)), which is among the rules that implements CEA Core Principle 13 (Financial resources), requires a SEF to submit a financial report to the CFTC every quarter (*i.e.,* every three months). To implement the corresponding Core Principle under the SEA, the Commission could require an SBSEF to file only three financial reports per year, rather than four. All things being equal, filing three reports per year is less burdensome than filing four. But all things are not equal, because of the CFTC's rules. In this case, requiring new ''off cycle'' reporting by a dually registered SEF/SBSEF would likely be more burdensome than allowing the dually registered entity to make the same four filings, on the same cycle, with both the SEC and CFTC. As discussed later in this release, the Commission is proposing a rule closely modelled on § 37.1306(a) that would require the same type of financial report as the CFTC rule, and for that report to be filed quarterly. *See* proposed Rule 829(g).

and/or their members that are *nevertheless appropriate* in view of new and additional benefits? Or do you believe that an SEC-specific provision would be appropriate *because it would relieve costs or burdens* that are imposed on the swap business by a CFTC rule that is unnecessary or inappropriate in the SBS market?

10. If the Commission ultimately adopts SBSEF rules that are closely harmonized with the CFTC's SEF rules, do you believe this could result in ambiguities or potential conflicts between the SEC's SBSEF rules and the other SEC rules (pertaining, for example, to exchanges or alternative trading systems)? If so, please indicate where this might occur and suggest ways that the Commission could reduce these ambiguities or potential conflicts.

III. Approach to the Commission's Proposed Requirements Relating to Security-Based Swap Execution

Most of the rules proposed in this release are designed to implement provisions of section 3D of the SEA,[23] which is nearly identical to section 5h of the CEA.[24] As described in detail throughout this release, when the Commission is proposing a rule to implement a provision of section 3D of the SEA, that rule generally will harmonize as closely as practicable with the analogous CFTC rule, unless a reason exists to do otherwise.[25] Indeed, many of the rules proposed herein are adapted from the CFTC rules, with only minor changes to reflect differences in the Commission's statutory authority (*e.g.,* using the term ''security-based swap'' instead of ''swap,'' cross-referencing provisions of the SEA rather than the CEA, *etc.*). The Commission seeks to minimize occasions where differences in the wording between an SEC and a CFTC rule leads affected persons to believe that there is a difference in policy outcome, where no difference in outcome is intended.

In cases where the Commission preliminarily believes that a reason exists for a proposed SEC rule to differ from an analogous CFTC rule, that reason is described and alternate rule language is proposed and explained. Here too, the Commission might be in general agreement with the policy behind the CFTC's rule, but it might not be practicable to closely track the CFTC rule language, for reasons that are specific to each instance and which will be discussed herein.

In proposing these rules, the Commission acknowledges that, in the abstract, there are a variety of ways of implementing a Core Principle or other policy goal where the benefits could justify the costs. Indeed, the Commission's 2011 SBSEF Proposal includes many such alternate ways that differ from the CFTC's current rules. But the CFTC's rules for SEF—and swap execution more generally—have significantly reshaped the swap market, and indirectly the SBS market. The fundamental principles of the CFTC's regulatory regime for SEFs and swap execution generally have established the existing environment, and any rules proposed by the SEC to implement the regulatory regime for SBSEFs and SBS execution more generally must be considered against the CFTC's regulatory regime. SEFs and swap market participants have invested significant resources in systems, policies, and procedures to comply with the CFTC's SEF rules. The Commission believes that the CFTC's rules are reasonably designed to implement section 5h of the CEA, which is nearly identical to section 3D of the SEA, and have been effective in practice in facilitating fair, transparent, and competitive trading on SEFs. By proposing similar rules for SEC-registered SBSEFs, the Commission seeks to obtain comparable regulatory benefits as the CFTC while minimizing costs imposed on SEF/SBSEFs and their members to the greatest extent practicable.

The Commission recognizes that an entity might elect to register as an SBSEF with the SEC but not as a SEF with the CFTC. In such case, an SEC-only registrant would not have any familiarity with the CFTC's rules and would not have made any investments in systems, policies, and procedures to comply with them. Nevertheless, because the Commission preliminarily believes that most if not all entities that will seek SBSEF registration with the SEC are or will also be registered as SEFs with the CFTC, such dual registrants would benefit from harmonized rules. Furthermore, if the Commission adopts these rules substantially as proposed, it likely would be unnecessary to establish and apply one set of rules for dual registrants and a different set for SEC-only SBSEFs.

Proposed Regulation SE follows the basic structure of part 37 of the CFTC's rules (17 CFR part 37). In the CFTC's rules, subpart A of part 37 (General Provisions) consists of §§ 37.1 to 37.12. Subparts B to P of part 37 implement the 15 Core Principles for SEFs set forth in the CEA and consist of §§ 37.100 *et seq.* to 37.1500 *et seq.* Proposed Rules 800 to 817 of Regulation SE are modelled on the ''General Provisions'' in subpart A, while proposed Rules 818 to 831 would implement the 14 Core Principles for SBSEFs set forth in the SEA. Proposed Rules 832 to 833 address cross-border matters that have no direct counterpart in the CFTC's rules applicable to SEFs. Proposed Rule 834 is designed to implement section 765 of the Dodd-Frank Act, which requires the Commission to adopt rules addressing conflicts of interest involving SBSEFs and SBS exchanges, as well as to harmonize with certain of the CFTC's governance rules. Proposed Rule 835 is designed to facilitate reviews of final disciplinary actions, denials or conditioning of membership, and denials or limitations of access by SBSEFs. In addition, the Commission is proposing a new subpart V to part 249 of the Commission's rules,[26] entitled ''Forms for use by security-based swap execution facilities,'' that would include proposed § 249.2001, setting forth Form SBSEF and its instructions, which would be used to register with the Commission as an SBSEF; and proposed § 249.2002, setting forth the submission cover sheet (with instructions) that would be required to accompany filings with the Commission made by SBSEFs for rule and rule amendments, product listings, and determinations to make an SBS available to trade.

Many parts of proposed Rules 800 to 817 are very similar in substance to §§ 37.1 to 37.12. Other parts of proposed Rules 800 to 817 are derived from CFTC rules that are referenced in subpart A of part 37 but located outside of part 37. For example, § 37.4 is a short rule entitled ''Procedures for listing products and implementing rules.'' Section 37.4 does not itself lay out the specific filing procedures for new products and new rules, but directs a SEF, after it has registered with the CFTC, to make such filings pursuant to part 40 (Provisions common to registered entities[27]). Key rules in part 40 include §§ 40.2 (Listing products for trading by certification), 40.3 (Voluntary submission of new products for Commission review and approval), 40.5 (Voluntary submission of rules for Commission review and

[23] 15 U.S.C 78c–4.

[24] 7 U.S.C. 7b–3.

[25] Other rules, however, are designed to address certain issues relating to SBSEFs that are specific to the SEA. These include proposed amendments to existing Rule 3a1–1 under the SEA, proposed new Rule 15a–12, and various proposed amendments to the Commission's Rules of Practice.

[26] Part 249 is entitled ''Forms, Securities Exchange Act of 1934.''

[27] ''Registered entity'' is defined under the CEA to include a SEF. *See* 7 U.S.C 1a(40).

approval), and 40.6 (Self-certification of rules).

To promote oversight of the SBS market and to assess that SBSEFs continue to operate in a manner consistent with the SEA, the Commission preliminarily believes that it would be appropriate to establish procedures whereby SBSEFs would submit filings to the Commission to list SBS products and to establish new rules, and that it would be appropriate to harmonize with the procedures that the CFTC applies to SEFs. These procedures are well articulated and well understood by SEFs, and appear to provide an effective process for establishing new rules and listing products. Therefore, the Commission is proposing Rules 804, 805, 806, and 807 that are closely modelled on relevant provisions of §§ 40.2, 40.3, 40.5, and 40.6, respectively. To implement such rules for SBSEFs and the SBS market, the Commission identifies only those parts of the CFTC rules that are most germane to the SBS market and adapts the wording accordingly.[28] In the detailed discussions of each of these proposed rules, the Commission seeks comment on whether its proposed rule is appropriately tailored for the SBS market, particularly for dually registered SEF/SBSEFs that would be complying with substantially similar filing procedures under CFTC rules, or whether the proposed rule incorporates a part of the CFTC rule that *is not* relevant to the SBS market or should have incorporated additional or different language that *is* more relevant.

Regulation SE includes proposed rules modelled on CFTC rules found in Parts 16, 36, 37, 40, 45, and elsewhere. In some cases, these disparate CFTC rules from outside part 37 that the Commission is proposing to adapt into Regulation SE use different terms than in part 37 for what appears to be the same concept. To promote uniformity within Regulation SE, the Commission is proposing certain definitions for use throughout the regulation—in a dedicated definitions rule, proposed Rule 802—that will sometimes require the replacement of a term used in the CFTC version of a rule with a different, newly defined term in the proposed SEC version.[29] Any such changes in defined terms are noted below. Proposed Rule 802 also includes terms derived from the SEA and certain SEC rules thereunder.

Part 37 of the CFTC's rules includes an appendix B, which sets out guidance and acceptable practices for demonstrating compliance with several of the rules that implement the Core Principles for SEFs. These provisions are, by their terms, non-binding.[30] The Commission preliminarily believes that all of the provisions of Regulation SE should be enforceable. Therefore, the Commission is proposing to adapt some of the guidance and acceptable practices found in appendix B as proposed rule text in Regulation SE. As a result, some of the rules proposed in Regulation SE are a blend of the CFTC rule text with language adapted from the guidance and/or acceptable practices. Instances where this occurs in a particular rule will be noted below. The Commission requests comment on its overall approach to incorporating relevant portions of the part 37 guidance and acceptable practices into Regulation SE, as well as comment on how they are adapted in specific rules.

In various places in the CFTC's SEF rules, the CFTC has delegated to its staff authority to perform various functions relating to SEFs on the CFTC's behalf. The Commission has not adapted any of these provisions into proposed Regulation SE and is not proposing any delegation-of-authority rules. The Commission may address delegations of its authority in the adopting release for Regulation SE.

Finally, in developing this proposal, the Commission has consulted and coordinated with the CFTC and the prudential regulators,[31] in accordance with the consultation mandate of the Dodd-Frank Act.[32] The Commission also has consulted and coordinated with foreign regulatory authorities through Commission staff participation in numerous bilateral and multilateral discussions with foreign regulatory authorities addressing the regulation of OTC derivatives markets.[33] Through these multilateral and bilateral discussions and the Commission staff's participation in various international task forces and working groups, the Commission has gathered information about foreign regulatory reform efforts and their effect on and relationship with the U.S. regulatory regime. The Commission has taken and will continue to take these discussions into consideration in developing rules, forms, and interpretations for implementing Title VII of the Dodd-Frank Act.

IV. Introductory Provisions of Regulation SE

A. Rule 800—Scope

Proposed Rule 800 is based on § 37.1 of the CFTC's rules, which provides that part 37 applies to every SEF that is registered or applying to become registered as a SEF under section 5h of the CEA. Section 37.1 further provides that the rule does not affect the eligibility of SEFs to operate under the provisions of part 38 or 49 of the CFTC's rules.

Proposed Rule 800 would provide that the provisions of Regulation SE would apply to every SBSEF that is registered or is applying to become registered as an SBSEF under section 3D of the SEA.

B. Rule 801—Applicable Provisions

Proposed Rule 801 is based on § 37.2 of the CFTC's rules, which provides that a SEF shall comply with the requirements of part 37 and all other applicable CFTC regulations, including § 1.60 and part 9, and including any related definitions and cross-referenced

[28] Various provisions of part 40 apply to entities other than SEFs or relate to trading of products other than swaps. *See, e.g.,* § 40.4 (Amendments to terms or conditions of enumerated agricultural products); § 40.11 (Review of event contracts based upon certain excluded commodities).

[29] For example, certain CFTC rules that the Commission is proposing to adapt into Regulation SE utilize the term ''board of directors,'' while other CFTC rules use the term ''governing board.'' The Commission is proposing to use the term ''governing board'' throughout Regulation SE and to define that term in proposed Rule 802 as the board of directors of an SBSEF, or for an SBSEF whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors. This definition is closely modelled on the definition of ''board of directors'' found in § 37.1501(a) of the CFTC's rules.

[30] *See* appendix B to part 37, introductory paragraph (1) (''The guidance for the core principle is illustrative only of the types of matters a swap execution facility may address, as applicable, and is not intended to be used as a mandatory checklist'').

[31] The term ''prudential regulator'' is defined in section 1a(39) of the CEA, 7 U.S.C. 1a(39), and that definition is incorporated by reference in section 3(a)(74) of the SEA, 15 U.S.C. 78c(a)(74).

[32] Section 712(a)(2) of the Dodd-Frank Act provides in relevant part that the Commission shall ''consult and coordinate to the extent possible with the Commodity Futures Trading Commission and the prudential regulators for the purposes of assuring regulatory consistency and comparability, to the extent possible.'' In addition, section 752(a) of the Dodd-Frank Act provides in relevant part that ''[i]n order to promote effective and consistent global regulation of swaps and security-based swaps, the Commodity Futures Trading Commission, the Securities and Exchange Commission, and the prudential regulators . . . as appropriate, shall consult and coordinate with foreign regulatory authorities on the establishment of consistent international standards with respect to the regulation (including fees) of swaps.''

[33] The Commission participates in a number of international bodies working on OTC derivatives reforms. For example, the Commission is a member of the International Organization of Securities Commissions (''IOSCO'') and the Commission staff participates on IOSCO's Committee on Derivatives. In addition, the Commission is a member of the Regulatory Oversight Committee, which serves as the international standard-setter for data elements and identifiers used in the reporting of OTC derivatives transactions.

sections. Proposed Rule 801 would require an SBSEF to comply with the requirements of Regulation SE and all other applicable Commission rules, including any related definitions and cross-referenced sections.

C. Rule 802—Definitions

Proposed Rule 802 would set forth definitions of terms that are used in multiple rules in proposed Regulation SE. The majority of such terms are adapted from a CFTC rule. Other terms are taken from section 3 of the SEA [34] or from a Commission rule under the SEA. Where appropriate, the definition is discussed below in the context of the proposed rule where it is used.

In particular, paragraph (w) of proposed Rule 802 which would define the term ''security-based swap execution facility'' by cross-referencing the definition of that term provided in section 3(a)(77) of the SEA,[35] but with one carve-out. An entity that is registered with the Commission as a clearing agency pursuant to section 17A of the SEA [36] and limits its SBSEF functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations would be exempt from the definition of ''security-based swap execution facility.'' This provision would codify a series of exemptions granted by the Commission to SBS clearing agencies that operate ''forced trading'' sessions.[37] As part of the clearing and risk management process, an SBS clearing agency must establish an end-of-day valuation for any SBS in which any of its members has a cleared position and will calculate margin based on that variation. Certain SBS clearing agencies utilize a valuation mechanism whereby they require clearing members to submit indicative quotes for those SBS products, and can require them to trade as a way to promote accurate quote submissions. The precise means by which the clearing agency matches quotes from different clearing members could cause the clearing agency to fall within the SEA definition of ''exchange.'' The Commission previously has found that it was necessary or appropriate in the public interest and consistent with the protection of investors to exempt clearing agencies that engage in this activity from the definition of ''exchange.'' [38] The Commission is now proposing to codify this exemption with respect to the both exchange and SBSEF registration.

The Commission preliminarily believes that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to exempt a registered clearing agency from the definition of ''security-based swap execution facility'' that utilizes a forced trading functionality for SBS. Such an entity would continue to be registered as a clearing agency and subject to the requirements of section 17A of the SEA. Furthermore, a registered clearing agency is a self-regulatory organization (''SRO''); therefore, all of its rules—including those governing the forced trading session—would have to be submitted to the Commission pursuant to section 19 of the SEA. The Commission preliminarily believes, therefore, that codification of the exemption from the definitions of ''exchange'' and ''security-based swap execution facility'' would preserve the *status quo* and eliminate a largely duplicative and unnecessary set of regulatory requirements. This exemption would cover only the forced-trading functionality of an SBS clearing agency; any other exchange or SBSEF activity in which a clearing agency might engage could subject the clearing agency to the SEA provisions and the Commission's rules thereunder applying to exchanges or SBSEFs.

The Commission seeks comment on the following:

11. Do you believe that any definitions in proposed Rule 802 should be revised or clarified? If so, please indicate which one(s) and provide any suggested revisions or clarifications.

12. Are there any terms used in proposed Regulation SE that are not defined in proposed Rule 802 but which you believe should be defined? If so, which term(s) and how would you define them?

13. Do you agree with the proposed definition of ''security-based swap execution facility''? In particular, do you believe that registered clearing agencies that operate forced trading sessions for SBS should be exempted from the definition of ''security-based swap execution facility'' entirely? Or do you believe instead that such entities should fall within the definition of ''security-based swap execution facility'' but be exempted from some or all registration and regulatory requirements that otherwise would apply to SBSEFs? Why?

V. Registration of SBSEFs

Section 3D(a)(1) of the SEA [39] provides that no person may operate a facility for the trading or processing of SBS [40] unless the facility is registered as an SBSEF or as a national securities exchange. After issuing the 2011 SBSEF Proposal, the Commission granted temporary exemptions pursuant to section 36(a)(1) of the SEA [41] to entities that meet the definition of ''security-based swap execution facility'' from having to register with the Commission as an SBSEF or national securities exchange (''Temporary SBSEF Exemptions'').[42] The Temporary SBSEF Exemptions will expire on the

[34] 15 U.S.C. 78c.

[35] 15 U.S.C. 78c(a)(77).

[36] 15 U.S.C. 78q–1.

[37] *See, e.g., Order Granting Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request on Behalf of ICE U.S. Trust LLC Related to Central Clearing of Credit Default Swaps, and Request for Comments,* SEA Release No. 59527 (March 6, 2009), 74 FR 10791, 10796 (March 12, 2009) (providing, *inter alia,* an exemption from sections 5 and 6 of the SEA because ''ICE Trust will periodically require ICE Trust Participants to execute certain CDS trades at the applicable end-of-day settlement price. Requiring ICE Trust Participants to trade CDS periodically in this manner is designed to help ensure that such submitted prices reflect each ICE Trust Participant's best assessment of the value of each of its open positions in Cleared CDS on a daily basis, thereby reducing risk by allowing ICE Trust to impose appropriate margin requirements''); *Order Extending and Modifying Temporary Exemptions Under the Securities Exchange Act of 1934 in Connection With Request of Chicago Mercantile Exchange Inc. Related to Central Clearing of Credit Default Swaps, and Request for Comments,* SEA Release No. 61164 (December 14, 2009), 74 FR 67258, 67262 (December 18, 2009) (providing, *inter alia,* an exemption from sections 5 and 6 of the SEA because, ''[a]s part of the CDS clearing process, CME will periodically require CDS clearing members to trade at prices generated by their indicative settlement prices where those indicative settlement prices generate crossed bids and offers, pursuant to CME's price quality auction methodology'').

[38] *See id.*

[39] 15 U.S.C. 78c–4(a)(1).

[40] The term ''security-based swap'' is defined in section 3(a)(68) of the SEA, 15 U.S.C. 78c(a)(68), to include, among other things, a swap that is based on a single security or loan, including any interest therein or on the value thereof. A single security could include, for example, a cash equity, a crypto/digital asset security, or a security option.

[41] 15 U.S.C. 78mm(a)(1).

[42] *See* SEA Release No. 64678 (June 15, 2011), 76 FR 36287 (June 22, 2011) (temporarily exempting entities that meet the definition of ''security-based swap execution facility'' from the requirement to register with the Commission as an SBSEF) (''June 2011 Exemptive Order''); SEA Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (temporarily exempting entities that meet the definition of ''security-based swap execution facility'' from exchange registration and other requirements of sections 5 and 6 of the SEA) (''July 2011 Exemptive Order''). An entity that meets the definition of ''security-based swap execution facility'' is required to register as an SBSEF under section 3D of the SEA or as an exchange under sections 5 and 6 of the SEA. But because the Commission has not yet adopted final rules relating to SBSEFs, such entities cannot yet register with the Commission as SBSEFs. The Temporary SBSEF Exemptions allow such entities to continue trading SBS without needing to register either as SBSEFs or national securities exchanges before the compliance date of the SBSEF registration rules.

compliance date for the Commission's final SBSEF rules.[43]

A. Rule 803—Requirements and Procedures for Registration

Rule 803 of Regulation SE is closely modelled on § 37.3 of the CFTC's rules and would set forth a process for registration with the Commission as an SBSEF.

Section 37.3(a)(1) provides that any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade swaps with more than one other market participant on the system or platform shall register the facility as a swap execution facility under this part or as a designated contract market (''DCM'') under part 38 of this chapter. Paragraph (a)(1) of proposed Rule 803 would track the language of § 37.3(a)(1) closely, except that a person meeting these criteria would be directed to register the facility under relevant provisions of the SEA rather than the CEA (*i.e.,* to register as an SBSEF under proposed Rule 803 or as a national securities exchange pursuant to section 6 of the SEA).

A person that registers with the Commission as a national securities exchange pursuant to section 6 of the SEA does not fall within the statutory definition of ''security-based swap execution facility'' [44] and thus would not need to register as an SBSEF under proposed Rule 803. Furthermore, as discussed below,[45] a person that registers as an SBSEF under proposed Rule 803 and provides a market place for no securities other than SBS would be exempt from the definition of ''exchange'' [46] and would not need to register as such pursuant to section 6 of the SEA. The SEA definitions of ''exchange'' and ''security-based swap execution facility'' overlap substantially. The Commission preliminarily believes that it is appropriate to subject a trading venue for SBS to only one regulatory regime. Thus, under proposed Regulation SE, if a trading venue for SBS elects to register as a national securities exchange, it would not fall within the statutory definition of ''security-based swap execution facility'' and would not have to register as an SBSEF.[47] If a trading venue for SBS elects to register as an SBSEF under proposed Rule 803 and provides a market place for no securities other than SBS, it would not—pursuant to a proposed amendment to Rule 3a1–1—fall within the statutory definition of ''exchange'' and would not have to register as an exchange.

Section 37.3(a)(2) of the CFTC's rules sets out the minimum trading functionality that must be offered by a SEF. A SEF must, at a minimum, offer an ''order book.'' Section 37.3(a)(3) defines ''order book'' to mean an electronic trading facility, as that term is defined in section 1a(16) of the CEA; a trading facility, as that term is defined in section 1a(51) of the CEA; or a trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.

Paragraph (a)(2) of proposed Rule 803, like § 37.3(a)(2), would require an SBSEF, at a minimum, to offer an order book. The Commission is proposing, like § 37.3(a)(3), to define ''order book'' in Rule 802 to mean an electronic trading facility, a trading facility, or a trading system or platform in which all market participants in the trading system or platform have the ability to enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers. Section 37.3(a)(3) defines ''trading facility'' and ''electronic trading facility'' by cross-referencing definitions of those terms in the CEA. Rather than cross-referencing the CEA, the Commission is proposing instead to adapt the CEA definitions of those terms directly into Rule 802.[48] The Commission preliminarily believes that it should harmonize as closely as possible with the CFTC on foundational terms such as ''trading facility,'' ''electronic trading facility,'' and ''order book'' because the CFTC's reliance on these terms over several years has created understanding of what type of functionality a SEF must offer. The Commission seeks to avoid a scenario where differences with the CFTC regarding these key definitions results in an entity's functionality being allowed under one agency's regime but disallowed under the other's.

Under § 37.3(a)(4), a SEF is not required to provide an order book for certain package transactions, although the SEF must provide an order book for a Required Transaction [49] when such Required Transaction is not executed as part of a package transaction. Paragraph (a)(3) of proposed Rule 803 is closely modelled on § 37.3(a)(4) and would provide a narrow exception to allow an SBSEF not to offer an order book for the SBS component(s) of a package transaction that contains a mix of products that both are and are not subject to the trade execution requirement.

Paragraph (b) of proposed Rule 803 is closely modelled on § 37.3(b) and would set out procedures for full registration of an SBSEF. Paragraph (b)(1), like § 37.3(b)(1), would provide that an applicant requesting registration must:

(i) File electronically a complete Form SBSEF or any successor forms, and all information and documentation described in such forms with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T; and

(ii) Provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review an application.

Paragraph (b)(2) of proposed Rule 803, like § 37.3(b)(2), would provide that an

[43] *See* June 2011 Exemptive Order, 76 FR at 36293, 36306; July 2011 Exemptive Order, 76 FR at 39934, 39939. The July 2011 Exemptive Order also provided an exemption from the broker registration requirements of section 15(a)(1) of the SEA, 15 U.S.C. 78o(a)(1), and other requirements of the SEA and the Commission's rules thereunder that apply to a broker, solely in connection with broker activities involving SBS (the ''Broker Exemptions''). The Broker Exemptions generally expired on October 6, 2021; however, because an entity that meets the definition of ''security-based swap execution facility'' also would also meet the definition of ''broker'' in section 3(a)(4) of the SEA, 15 U.S.C. 78c(a)(4), the Commission extended the Broker Exemptions solely for persons acting as an SBSEF until the expiration of the Temporary SBSEF Exemptions (*i.e.,* the compliance date for the Commission's final SBSEF rules). *See* SEA Release No. 87005 (September 19, 2019), 84 FR 68550, 68602 (December 16, 2019).

[44] *See* section 3(a)(77) of the SEA, 15 U.S.C. 78c(a)(77) (defining ''security-based swap execution facility'' as ''a trading system or platform in which multiple participants have the ability to execute or trade security-based swaps by accepting bids and offers made by multiple participants in the facility or system, through any means of interstate commerce, including any trading facility that . . . *is not a national securities exchange*'' (emphasis added).

[45] *See infra* section XII (discussing proposed paragraph (a)(4) of SEA Rule 3a1–1).

[46] 15 U.S.C. 78c(a)(1) (defining ''exchange'' as ''any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange'').

[47] However, a national securities exchange could elect to operate an SBSEF and separately register that SBSEF with the Commission. *See* section 3D(c) of the SEA, 15 U.S.C. 78c–4(c); proposed Rule 814.

[48] *See* proposed Rule 802.

[49] As discussed below in section VII(E), the Commission is proposing to incorporate into Regulation SE the concepts of ''Required Transaction'' and ''Permitted Transaction'' in a manner closely modelled on the CFTC's use of those terms. A Required Transaction would be a transaction involving an SBS that is subject to the trade execution requirement.

applicant requesting registration as an SBSEF must identify with particularity any information in the application that will be subject to a request for confidential treatment pursuant to Rule 24b–2 under the SEA.[50] Paragraph (b)(2) also would provide that, as set forth in proposed Rule 808, certain information provided in an application shall be made publicly available.

Paragraph (b)(3) of proposed Rule 803 would address amendments to the SBSEF registration application. Like § 37.3(b)(3), proposed Rule 803(b)(3) would provide that an applicant amending a pending application or requesting an amendment to an order of registration shall file an amended application electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T. Subsequent to being registered, an SBSEF would be required to submit rule and product filings under Rule 806 or 807, as well as provide other updates as may be required pursuant to other rules for SBSEFs.

Paragraph (b)(4) of proposed Rule 803 would address the effect of an incomplete application. Like § 37.3(b)(4), proposed Rule 803(b)(4) would provide that, if an application is incomplete, the Commission shall notify the applicant that its application will not be deemed to have been submitted for purposes of the Commission's review.

Paragraph (b)(5) of proposed Rule 803 would establish the Commission review period for an application to register as an SBSEF. Proposed Rule 803(b)(5) is closely modelled on § 37.3(b)(5) and would require the Commission to approve or deny an application for registration as an SBSEF within 180 days of the filing of the application. Proposed Rule 803(b)(5) would further provide that, if the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period would be stayed from the time of such notification until the application is resubmitted in completed form. In such case, the Commission would have not less than 60 days to approve or deny the application from the time the application is resubmitted in completed form.

Paragraph (b)(6)(i) of proposed Rule 803, like § 37.3(b)(6)(i), would provide that the Commission shall issue an order granting registration upon a Commission determination, in its own discretion, that the applicant has demonstrated compliance with the SEA and the Commission's rules applicable to SBSEFs. Paragraph (b)(6)(i) would allow the Commission to issue an order granting registration, subject to conditions. Paragraph (b)(6)(ii) of proposed Rule 803, modelled on § 37.3(b)(6)(ii), would provide that the Commission may issue an order denying registration upon a Commission determination, in its own discretion, that the applicant has not demonstrated compliance with the SEA and the Commission's rules applicable to SBSEFs. If the Commission denies an application under proposed Rule 803(b)(6)(ii), it would be required to specify the grounds for the denial.

Paragraph (c) of § 37.3, which allows the CFTC to grant SEFs temporary registration under certain conditions, was adopted with a sunset provision that generally terminated the applicability of the paragraph two years after it became effective in August 2013.[51] Because this provision is now obsolete, the Commission is not proposing an equivalent provision in Regulation SE.

Paragraph (c) of proposed Rule 803, like § 37.3(d), would address reinstatement of a dormant registration. Proposed Rule 803(c) would provide that a dormant SBSEF[52] may reinstate its registration under the procedures of proposed Rule 803(b). Proposed Rule 803(c) would further provide that the applicant may rely upon previously submitted materials if such materials accurately describe the dormant SBSEF's conditions at the time that it applies for reinstatement of its registration.

Paragraph (d) of proposed Rule 803, like § 37.3(e), would set out procedures for an SBSEF to request a transfer of registration. Paragraph (d)(1), which is closely modelled on § 37.3(e)(1), would provide that an SBSEF seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Commission in the form and manner specified by the Commission. Paragraph (d)(2), modelled on § 37.3(e)(2), would provide that a request for transfer of registration shall be filed no later than three months prior to the anticipated corporate change; or in the event that the SBSEF could not have known of the anticipated change three months prior to the anticipated change, as soon as it knows of such change.

Paragraph (d)(3) of proposed Rule 803, like § 37.3(e)(3), would require an SBSEF's request for transfer of registration to include the following:

- The underlying agreement that governs the corporate change;
- A description of the corporate change, including the reason for the change and its impact on the SBSEF, including its governance and operations, and its impact on the rights and obligations of members;[53]
- A discussion of the transferee's ability to comply with the SEA, including the core principles applicable to SBSEFs and the Commission's rules thereunder;
- The governing documents of the transferee, including, but not limited to, articles of incorporation and bylaws;
- The transferee's rules marked to show changes from the current rules of the SBSEF;
- A representation by the transferee that it:
  - Will be the surviving entity and successor-in-interest to the transferor SBSEF and will retain and assume, without limitation, all of the assets and liabilities of the transferor;
  - Will assume responsibility for complying with all applicable

[50] Section 37.3(b)(2), like many other provisions in the CFTC's SEF rules, states that a request for confidential treatment for parts of a required filing shall be made pursuant to § 145.9 of the CFTC's rules, which contains the CFTC's substantive requirements for requests for confidential treatment. Rather than adapting § 145.9 into proposed Regulation SE, the Commission instead is proposing that confidential treatment requests arising from SBSEF matters would be made and adjudicated pursuant to SEA Rule 24b–2, 17 CFR 240.24b–2. The Commission preliminarily believes that it is not necessary or appropriate to establish and utilize one set of procedures to handle confidential treatment requests made by SBSEFs while utilizing a different set of procedures for all other persons who request confidential treatment from the Commission under the SEA.

[51] *See* § 37.3(c)(5). Notwithstanding the general sunset provision, SEFs that applied for temporary registration before the termination date were permitted to continue operating if they had not yet been either granted or denied full registration by that date. *See id.*

[52] *See* proposed Rule 802 (defining ''dormant security-based swap execution facility'' to mean ''a security-based swap execution facility on which no trading has occurred for the previous 12 consecutive calendar months; provided, however, that no security-based swap execution facility shall be considered to be a dormant security-based swap execution facility if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months''). This proposed definition is modelled on the definition of ''dormant swap execution facility'' found in § 40.1(f).

[53] Here, and at several other places in § 37.3(e)(3), the CFTC uses the term ''market participants'' rather than ''members.'' However, there are other places in the CFTC's rules that are being adapted by the Commission into proposed Regulation SE that use the term ''member'' synonymously with ''market participant.'' When the context suggests that a rule is addressing participants of a particular SBSEF market, rather than market participants in the abstract, the Commission is proposing to use the term ''member'' throughout Regulation SE.

provisions of the SEA and the Commission's rules thereunder;

○ Will assume, maintain, and enforce all rules implementing and complying with the core principles applicable to SBSEFs, including the adoption of the transferor's rulebook, as amended in the request, and that any such amendments will be submitted to the Commission pursuant to proposed Rules 806 or 807;

○ Will comply with all regulatory responsibilities [54] except if otherwise indicated in the request, and will maintain and enforce all regulatory programs; and

○ Will notify members of all changes to the transferor's rulebook prior to the transfer and will further notify members of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting this transfer.

• A representation by the transferee that upon the transfer:

○ It will assume responsibility for and maintain compliance with core principles for all SBS previously made available for trading through the transferor, whether by certification or approval; and

○ None of the proposed rule changes will affect the rights and obligations of any member.

Paragraph (d)(4) of proposed Rule 803, modelled on § 37.3(e)(4), would provide that, upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request.

Paragraph (e) of proposed Rule 803, like § 37.3(f), would provide that an applicant for registration as an SBSEF may withdraw its application by filing a withdrawal request electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T.[55] Proposed Rule 803(e) would further provide that withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application was pending with the Commission.

Paragraph (f) of proposed Rule 803, like § 37.3(g), would provide that an SBSEF may request that its registration be vacated by filing a vacation request electronically with the Commission using the EDGAR system and must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S–T at least 90 days prior to the date that the vacation is requested to take effect. Section 37.3(g) provides that a registration may be vacated under section 7 of the CEA. Since the Commission does not operate under the CEA, the Commission is proposing to adapt relevant language from section 7 of the CEA directly into proposed Rule 803(f). Thus, proposed Rule 803(f) would continue as follows, with language taken from section 7 italicized and language taken from § 37.3(g) in regular text: ''*Upon receipt of such request, the Commission shall promptly order the vacation to be effective upon the date named in the request and send a copy of the request and its order to all other security-based swap execution facilities, SBS exchanges, and registered clearing agencies that clear security-based swaps.* Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the security-based swap execution facility was registered by the Commission. *From and after the date upon which the vacation became effective the said security-based swap execution facility can thereafter be registered again by applying to the Commission in the manner provided in paragraph (b) of this section for an original application.*''

The Commission seeks comment on the following:

14. Do you believe in general that the Commission should closely harmonize the rules for SBSEF registration with the CFTC's rules for SEF registration? Why or why not?

15. In particular, do you agree with the language that the Commission is proposing to adapt from § 37.3 (Requirements and procedures for registration) into Rule 803? If not, what language would you delete or revise, and why?

16. Do you believe that the Commission should harmonize the application procedures and timeframes in proposed Rule 803 with § 37.3 of the CFTC's rules? Why or why not? Are there aspects of § 37.3 that you believe are not necessary or appropriate to incorporate into Rule 803? If so, please describe. Are there different or additional requirements that the Commission should include in Rule 803 that are not included in § 37.3? If so, please describe.

17. Do you believe that any provisions of § 37.3(c) relating to temporary registration are still relevant and should be adapted into Rule 803? If so, which provisions and why?

18. Do you believe in general that proposed Rule 803 should include provisions relating to vacation of an SBSEF registration? If so, do you agree with the specific language adapted by the Commission from section 7 of the CEA and § 37.3(g) into proposed Rule 803(f)? If not, how would you revise that language?

B. Form SBSEF

As new § 249.2001, the Commission is proposing Form SBSEF, the application form for an entity to register with the Commission as an SBSEF. The proposed form would also be used for submitting any updates, corrections, or supplemental information to a pending application for registration. Proposed Form SBSEF is closely modelled on the CFTC's Form SEF for entities that seek to register with the CFTC as SEFs, with only minor changes to remove the concept of post-registration amendments, as the proposed rule would not require any amendments to Form SBSEF post-registration. The exhibits being proposed along with Form SBSEF are very similar to the exhibits in Form SEF. Like with Form SEF, each applicant submitting a Form SBSEF would be required to provide the Commission with documents and descriptions pertaining to its business organization, financial resources, and compliance program, including various documents describing the applicant's legal and financial status. An applicant would be required to disclose any affiliates and provide a brief description of the nature of the affiliation, and submit copies of any agreements between the SBSEF and third parties that would assist the applicant in complying with its duties under the SEA. In addition, an applicant would be required to demonstrate operational capability through documentation, including technical manuals and third-party service provider agreements.

Under proposed Rule 803(b)(1), an applicant for SBSEF registration would be required to complete Form SBSEF and provide, upon the Commission's request, any additional necessary information and documentation in order review the application. The determination as to when an application submission is complete would be at the sole discretion of the Commission. The Commission would review Form SBSEF

[54] The equivalent provision in § 37.3(e)(3)(vi)(D) requires a representation from the transferee that it ''[w]ill comply with all *self*-regulatory responsibilities except if otherwise indicated in the request, and will maintain and enforce all *self*-regulatory programs'' (emphasis added). SBSEFs are not SROs under the SEA and therefore do not have self-regulatory responsibilities or self-regulatory programs.

[55] 17 CFR 232.405. The proposed electronic filing requirement discussed above does not appear in the CFTC version of this provision. The Commission is adding this specification to implement the Inline XBRL and EDGAR electronic filing requirements for certain documents required by proposed Regulation SE. *See infra* section XV.

and, at the conclusion of its review, by order either: (i) Grant registration; (ii) deny the application for registration; or (iii) grant registration subject to certain conditions. After an applicant is granted registration, any updates or amendments to the information contained in its Form SBSEF by an active SBSEF would be required to be submitted as rules or rule amendments under proposed Rule 806 or 807 or as may be required by other rules in Regulation SE.

The CFTC's process for registering SEFs appears well understood by the industry and well designed for being adapted to the SBS market. Therefore, the Commission is using the CFTC's process as a basis for its own process for registering SBSEFs. Assuming that most if not all SBSEFs will be dually registered as SEFs, the Commission preliminarily believes that it is not necessary to require the same registrant to provide relevant information in one manner to the Commission if the CFTC requires it in a different manner.

The Commission seeks comment on the following:

19. Are there parts of Form SEF that you believe are not necessary or appropriate to incorporate into Form SBSEF? If so, please describe.

20. Are there different or additional requirements that the Commission should include in Form SBSEF that are not included in Form SEF? If so, please describe. What would be the benefits and costs of requiring that information in Form SBSEF that is not required by the CFTC in Form SEF?

C. Abbreviated Registration Procedures for CFTC-Registered SEFs

Many of the entities that will seek registration with the Commission as SBSEFs are already registered with the CFTC as SEFs. Entities that seek dual registration presumably see efficiencies in utilizing the same systems, policies, and procedures to trade both swaps and SBS. As noted throughout this release, the Commission seeks to harmonize the SBSEF regulatory regime as closely as practicable with the CFTC's SEF regulatory regime, achieving similar regulatory benefits as the CFTC regime while imposing only marginal costs on dually-registered SEF/SBSEFs and their members. If the Commission ultimately adopts SBSEF rules that are closely harmonized with those of the CFTC, SEFs that seek dual registration with the SEC would likely need to make only minor adjustments to their rules and trading procedures to support trading of SBS in addition to the trading of swaps. The Commission preliminarily believes that whether an entity is registered as a SEF and in good standing with the CFTC is relevant when considering its application to register as an SBSEF, and that an abbreviated registration for CFTC-registered SEFs is appropriate. Furthermore, the Commission is preliminarily considering that, after adopting final rules establishing a registration process for SBSEFs, it could exercise its exemptive authority under section 36(a)(1) of the SEA [56] to relax or eliminate entirely certain of the registration requirements for entities that are already registered as SEFs with the CFTC.

The Commission seeks comment on the following:

21. Do you believe in general that the Commission should utilize its authority under section 36(a)(1) of the SEA to establish an abbreviated procedure for entities wishing to register as SBSEFs that are already registered with the CFTC as SEFs? Why or why not?

22. If so, what registration requirements should the Commission relax or eliminate entirely for entities seeking dual registration?

VI. Rule and Product Filings by SBSEFs

Unlike section 19(b) of the SEA,[57] which sets out a process whereby national securities exchanges and other SROs submit filings to the Commission to add, delete, or amend rules (including rules to list products), section 3D of the SEA [58] does not set out an equivalent process for SBSEFs. It can be expected, however, that an SBSEF will seek to change its rules over time in order, for example, to implement new trading methodologies and to expand its product offerings, with the intent to make its market more attractive to participants. The Commission preliminarily believes, therefore, that some review process is necessary to assess whether such changes to an SBSEF's rules and product offerings are consistent with section 3D of the SEA and the Commission's rules thereunder. The Commission preliminarily believes that the CFTC's filing procedures are an appropriate model on which to base its own filing procedures. Furthermore, because of the likelihood that most if not all SBSEFs will be dually registered with the CFTC as SEFs and that many rule changes for a dual registrant will affect both its SBS and swap trading businesses, close harmonization with the CFTC's filing procedures would allow a dual registrant to make a similar filing to each agency, allowing each agency to carry out its oversight functions while minimizing the burdens on dual registrants.

Parts 37 and 40 of the CFTC's rules set out processes whereby SEFs may establish or amend rules and list products. In short, these processes allow a SEF to voluntarily submit a rule, rule amendment, or new product for CFTC review and approval, or to ''self-certify'' that a rule, rule amendment, or new product meets applicable standards under the CEA and the CFTC's rules thereunder without obtaining CFTC approval, although the CFTC retains the ability, in certain circumstances, to stay the self-certification for further review before it may become effective. Using its general authority to impose any requirement on SBSEFs and to prescribe rules governing the regulation of SBSEFs,[59] the Commission is proposing to establish similar filing processes for registered SBSEFs in proposed Rules 804 to 810 of Regulation SE.

A. Rule 804—Listing Products for Trading by Certification

Proposed Rule 804 is modelled on § 40.2 of the CFTC's rules and would set forth procedures by which an SBSEF may list a product via certification.

§ 40.2(a) specifies the filing requirements for DCMs and SEFs to certify a product for listing. Paragraph (a) of proposed Rule 804 would adapt these requirements for SBSEFs, with one exception, as explained in the next paragraph. Paragraph (a)(1) of proposed Rule 804 would require an SBSEF to file its submission electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T.

Paragraph (a)(2) of proposed Rule 804 would provide that the Commission must receive the submission by the open of business on the business day that is ten business days preceding the product's listing. By contrast, the parallel provision in § 40.2(a) provides that a DCM or SEF must file the self-certification only one business day before listing the product.[60] The Commission preliminarily believes that a ten-business-day review period for self-certified SBS products before they can be listed strikes a reasonable balance between allowing SBSEFs to bring new products to market quickly while affording the Commission staff a

[56] 15 U.S.C. 78mm(a)(1).

[57] 15 U.S.C. 78s(b).

[58] 15 U.S.C. 78c–4.

[59] *See* 15 U.S.C. 78c–4(d)(1)(A)(ii) (requiring an SBSEF, to be registered and to maintain registration, to comply with any requirement that the Commission may impose by rule or regulation); 15 U.S.C. 78c–4(f) (directing the Commission to prescribe rules governing the regulation of SBSEFs).

[60] *See* § 40.2(a)(2) (one of the conditions for a valid self-certification of a product is that the CFTC has received the submission by the open of business on the business day preceding the product's listing).

reasonable period in which to assess them prior to listing. The Commission is concerned that one business day would not provide the SEC staff sufficient time to review a new product, especially a novel or complex product that might be difficult to analyze. As discussed below, the Commission is proposing that it could stay a product for reasons similar to those in the CFTC's stay provision. If a product does warrant a stay, the Commission also would need sufficient time to go through the administrative steps of formally issuing the stay. The proposed ten-business-day review period for self-certified products accords with the CFTC's ten-business-day review period for self-certified rules,[61] which the Commission is proposing to replicate in Rule 807(a)(3).[62]

Paragraph (a)(3) of proposed Rule 804 would require a self-certification to include:

(1) A copy of the submission cover sheet;[63]

(2) A copy of the product's rules, including all rules related to its terms and conditions;

(3) The intended listing date;

(4) A certification by the SBSEF that the product to be listed complies with the SEA and the Commission's rules thereunder;

(5) A concise explanation and analysis of the product and its compliance with applicable provisions of the SEA, including core principles, and the Commission's rules thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(6) A certification that the SBSEF posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the SBSEF's website;[64] and

(7) A request for confidential treatment, if appropriate, as permitted pursuant to SEA Rule 24b–2.[65]

Paragraph (b) of proposed Rule 804, modelled on § 40.2(b), would provide that, if requested by Commission staff, an SBSEF shall provide any additional evidence, information, or data that demonstrates that the SBS meets, initially or on a continuing basis, the requirements of the SEA or the Commission's rules or policies thereunder.

Section 40.2(c) provides that the CFTC may stay the listing of a contract pursuant to paragraph (a) of this section during the pendency of CFTC proceedings for filing a false certification or during the pendency of a petition to alter or amend the contract terms and conditions pursuant to section 8a(7) of the CEA. The SEA does not include the CEA's provisions regarding altering or amending the terms and conditions of an SBS listed by an SBSEF like the authority granted to the CFTC with respect to products listed by SEFs, such that the Commission would be able to stay the listing of an SBS that it believes may be inconsistent with the SEA, pending proceedings to exercise that authority. Nor are proceedings for false certification of an SBS contemplated by the SEA. For this reason, in lieu of harmonizing with § 40.2(c), the Commission is proposing, in Rule 804(c), a provision that would allow the Commission to stay the certification of a new product in the same manner that proposed Rule 807(c)—which, as described below, is itself based on § 40.6(c) of the CFTC rules—would allow the Commission to stay the self-certifications of a new rule or rule amendment.[66]

Thus, paragraph (c)(1) of proposed Rule 804 would provide that the Commission may stay the certification of a new product by issuing a notification informing the SBSEF that the Commission is staying the certification on the grounds that the product presents novel or complex issues that require additional time to analyze, is accompanied by an inadequate explanation, or is potentially inconsistent with the SEA or the Commission's rules thereunder. Under paragraph (c)(1), the Commission would have an additional 90 days from the date of the notification to conduct the review. Paragraph (c)(2) would require the Commission to provide a 30-day comment period during that 90 days, and to publish a notice of the 30-day comment period on the Commission's website. Comments from the public could be submitted as specified in that notice. Paragraph (c)(3) would provide that the product that had been stayed would become effective, pursuant to the certification, at the expiration of the 90-day review period, unless the Commission withdraws the stay prior to that time, or the Commission notifies the SBSEF during the 90-day time period that it objects to the proposed certification on the grounds that the proposed product is inconsistent with the SEA or the Commission's rules.

Paragraph (d) of § 40.2 provides that a DCM or SEF may submit a class certification of swaps based on an ''excluded commodity,''[67] subject to certain conditions. The proposed rules do not provide for class certification of any SBS although, as noted below, the Commission seeks commenters' views on whether the concept of class certification would be appropriate for SBSEFs.

The Commission preliminarily believes that proposed Regulation SE should allow SBSEFs to introduce new SBS products to their market places as speedily as practicable while affording the Commission an effective mechanism to assess their consistency with section 3D of the SEA. The Commission preliminarily believes that the CFTC's self-certification procedures are well articulated and well understood by SEFs, and that harmonizing with these procedures for new product filings by SBSEF would yield comparable regulatory benefits while minimizing burdens on SBSEFs. At the same time, the Commission preliminarily believes that, for the reasons noted above, a ten-business-day pre-listing review period is more appropriate than a one-business-day review period for self-certified SBS products.

The Commission seeks comment on the following:

23. Do you believe in general that Regulation SE should include a rule that allows SBSEFs to list products for trading by certification? Why or why not?

[61] *See* § 40.6(a)(3) (one of the conditions for a valid self-certification of a rule or rule amendment is that the CFTC has received the submission not later than the open of business on the business day that is ten business days prior to the registered entity's implementation of the rule or rule amendment).

[62] *See infra* section VI(D).

[63] The Commission is proposing, in new § 249.2002, a submission cover sheet (with instructions) that is closely modelled on the CFTC's submission cover sheet.

[64] Under proposed Rule 804(a)(3)(vi), information that the SBSEF seeks to keep confidential could be redacted from the documents published on the SBSEF's website but would have to be republished consistent with any determination made by the Commission pursuant to SEA Rule 24b–2.

[65] Section 40.2(a)(3) instructs filers to make any request for confidential treatment pursuant to § 40.8 of the CFTC's rules, which in turn cross-references § 145.9. The Commission is proposing instead to direct filers to make any request for confidential treatment pursuant to existing SEA Rule 24b–2. *See supra* note 50.

[66] The Commission also is not proposing to adapt—either in Rule 807 or here in Rule 804—§ 40.6(c)(4), which relates to rules already implemented and permits the CFTC to stay the effectiveness of such rules during the pendency of proceedings for filing a false certification or of a petition to alter or amend the rule pursuant to section 8a(7) of the CEA.

[67] *See* section 1a(19) of the CEA, 7 U.S.C. 1a(19) (defining ''excluded commodity'').

24. In particular, should the Commission establish a procedure for listing SBS products for trading by certification by harmonizing closely with § 40.2 of the CFTC's rules? Why or why not?

25. Do you agree with the ten-business-day pre-listing review period for self-certified products in proposed Rule 804(a)(2) instead of the CFTC's one-business-day review period? Why or why not? What economic harm might an SBSEF and/or its members suffer if the Commission ultimately adopted a review period other than one business day? If you believe that the Commission should adopt a review period of greater than one day (but other than ten), please explain.

26. Do you believe that the Commission should adapt the concept of class certification from § 40.2(d) into proposed Rule 804? Why or why not? If so, how do you believe a ''class'' should be defined for purposes of listing SBS products on an SBSEF? Should there be any conditions for class certification? If so, what conditions and why?

27. Are there any provisions of proposed Rule 804 that the Commission has adapted from § 40.2 that you believe would be inappropriate, or would not create any benefit, in a Commission rule to establish procedures for SBSEFs to list SBS products for trading by certification? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

28. Do you believe that proposed Rule 804(c), relating to stays of product certifications, mirroring the Commission's proposed provisions relating to stays of self-certifications of new rules, is appropriate and workable? Why or why not? If not, what alternatives, if any, should be considered to enable the Commission to stay product certifications that it believes pose issues with respect to consistency with the SEA?

B. Rule 805—Voluntary Submission of New Products for Commission Review and Approval

Proposed Rule 805 is closely modelled on § 40.3 of the CFTC's rules and would set forth procedures by which an SBSEF may voluntarily submit new SBS products for Commission review and approval.

Section 40.3(a) provides that a SEF or DCM may request the CFTC to approve a new or dormant product prior to listing it for trading, and sets out the filing requirements. Paragraph (a) of proposed Rule 805 would adapt these requirements for SBSEFs. First, an SBSEF would be required to file its submission electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T. The filing also would have to include a copy of the submission cover sheet, a copy of the rules that set forth the terms and conditions of the SBS to be listed, and an explanation and analysis of the product and its compliance with applicable provisions of the SEA, including the Core Principles and the Commission's rules thereunder.[68] The submission also would have to describe any agreements or contracts entered into with other parties that enable the SBSEF to carry out its responsibilities.

Furthermore, paragraph (a) of proposed Rule 805, modelled on § 40.3(a), would require the SBSEF to include, if requested by Commission staff, additional evidence, information, or data demonstrating that the SBS meets, initially or on a continuing basis, the requirements of the SEA, or other requirement for registration under the SEA, or the Commission's rules or policies thereunder. The SBSEF would be required to submit the requested information by the open of business on the date that is two business days from the date of request by Commission staff, or at the conclusion of such extended period agreed to by Commission staff after timely receipt of a written request from the SBSEF. Paragraph (a) of proposed Rule 805, like § 40.3(a), would permit the submitting SBSEF to include a request for confidential treatment regarding portions of its application.[69] Finally, paragraph (a) of proposed Rule 805, like § 40.3(a), would require the SBSEF to certify that it posted a notice of its request for Commission approval of the new product and a copy of the submission, concurrent with the filing of a submission with the Commission, on the SBSEF's website.[70]

Paragraph (a) of proposed Rule 805 would omit two provisions in § 40.3(a). First, § 40.3(a)(6) requires the submitting entity to include the certifications required in § 41.22 for product approval of a commodity that is a security future or a security futures product, as defined in sections 1a(44) or 1a(45) of the CEA, respectively. The Commission is not adapting this provision into proposed Regulation SE because it pertains to security futures and security futures products, not to swaps or SBS. Second, § 40.3(a)(8) requires the submitting entity to include a filing fee. The Commission is not proposing to charge SBSEFs filing fees for submitting new product proposals.

Paragraph (b) of proposed Rule 805, like § 40.3(b), would provide that the Commission shall approve a new product unless the terms and conditions of the product violate the SEA or the Commission's rules thereunder.

Paragraph (c) of proposed Rule 805, modelled on § 40.3(c), would provide that a product submitted for Commission approval under Rule 805 shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under proposed Rule 805(d), unless notified otherwise within the applicable period, if the submission complies with the requirements of Rule 805(a) and the SBSEF does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering, or other non-substantive revisions, during that period. Paragraph (c) also would provide that any voluntary, substantive amendment by the SBSEF would be treated as a new submission under Rule 805.

Paragraph (d) of proposed Rule 805, modelled on § 40.3(d), would provide that the Commission may extend the 45-day review period in paragraph (c) for an additional 45 days, if the product raises novel or complex issues that require additional time to analyze, in which case the Commission shall notify the SBSEF within the initial 45-day review period and briefly describe the nature of the specific issue(s) for which additional time for review is required. Paragraph (d) also would provide that the Commission may extend the 45-day review period for any length of time to which the SBSEF agrees in writing.

Paragraph (e) of proposed Rule 805 would provide that the Commission, at any time during its review, may notify the SBSEF that it will not, or is unable to, approve the product. This notification would have to briefly specify the nature of the issues raised and the specific provision of the SEA or

[68] This explanation and analysis would have to either be accompanied by the documentation relied upon to establish the basis for compliance with the applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources.

[69] Section 40.3(a), like § 40.2(a)(3), instructs filers to make any request for confidential treatment pursuant to § 40.8 of the CFTC's rules, which in turn cross-references § 145.9. As noted previously, the Commission proposes instead to direct filers to make any request for confidential treatment pursuant to SEA Rule 24b–2. *See supra* note 50.

[70] Information that the SBSEF seeks to keep confidential could be redacted from the documents published on the SBSEF's website but would have to be republished consistent with any determination made by the Commission pursuant to SEA Rule 24b–2.

the Commission's rules thereunder, including the form or content requirements of proposed Rule 805(a), that the product violates, appears to violate, or potentially violates but which cannot be ascertained from the submission. Paragraph (f) of proposed Rule 805, like § 40.3(f), would provide that such notification of the Commission's determination not to approve a product does not prejudice the SBSEF from subsequently submitting a revised version of the product for Commission approval, or from submitting the product as initially proposed pursuant to a supplemented submission. Furthermore, such notification would be presumptive evidence that the entity may not truthfully certify under proposed Rule 804 that the same, or substantially the same, product does not violate the SEA or the Commission's rules thereunder.

The Commission preliminarily believes that it is reasonable and appropriate to supplement the product certification procedures in proposed Rule 804 by also including in Regulation SE, as proposed Rule 805, procedures for voluntary submission of new products for Commission review and approval. The Commission preliminarily believes that providing this approval process, as the CFTC does, can be valuable to an SBSEF seeking the Commission's concurrence that a new product is in compliance with the SEA prior to listing it. The Commission preliminarily believes that the CFTC's procedures in this regard are well articulated and well understood by SEFs, and that closely harmonizing with these procedures would yield comparable regulatory benefits while minimizing burdens on SBSEFs.[71]

The Commission requests comment on the following:

29. Do you believe in general that Regulation SE should include a rule setting forth procedures for an SBSEF to voluntarily submit new SBS products for Commission review and approval? Why or why not?

30. In particular, should the Commission adopt procedures for voluntary submission of new SBS products for Commission review and approval by harmonizing closely with § 40.3 of the CFTC's rules? Why or why not?

31. Are there any provisions of § 40.3 that are adapted into proposed Rule 805 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

C. Rule 806—Voluntary Submission of Rules for Commission Review and Approval

Proposed Rule 806 is closely modelled on § 40.5 of the CFTC's rules and would set forth procedures by which an SBSEF may voluntarily submit rules, rule amendments, or dormant rules for Commission review and approval.

Section 40.5(a) provides that a registered entity, including a SEF, may request that the CFTC approve a new rule, rule amendment, or dormant rule and sets out the filing requirements. Paragraph (a) of proposed Rule 805 would adapt these requirements for SBSEFs. First, an SBSEF would be required to file its submission electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T. The filing also would have to include a copy of the submission cover sheet and set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated). Further, the SBSEF would be required to describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the SBSEF or by its governing board or by any committee thereof, and cite the rules of the SBSEF that authorize the adoption of the proposed rule. The SBSEF also would be required to provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the SEA, including the core principles relating to SBSEFs and the Commission's rules thereunder, and, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the SBSEF's framework of regulation.

Moreover, the SBSEF would be required to provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the SBSEF, the pertinent text of any such rule would have to be set forth and the anticipated effect described. The SBSEF also would be required to provide a brief explanation of any substantive opposing views expressed to the SBSEF by governing board or committee members, members of the SBSEF, or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed.

The SBSEF could request confidential treatment for portions of its submission, as permitted by SEA Rule 24b–2. Finally, the SBSEF would have to certify that it posted a notice of the pending rule with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the SBSEF's website.[72]

Paragraph (b) of proposed Rule 806, modelled on § 40.5(b), would provide that the Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with the SEA or the Commission's rules thereunder. Paragraph (c) of proposed Rule 806, like § 40.5(c), would provide that a rule or rule amendment submitted for Commission approval under Rule 806 shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the SBSEF is notified otherwise within the applicable period, if the submission complies with the requirements of proposed Rule 806(a) and the SBSEF does not amend the proposed rule or supplemented the submission, except as requested by the Commission, during the pendency of the review period, other than for correction of typographical errors, renumbering, or other non-substantive revisions. Paragraph (c) also would provide that any amendment or supplementation not requested by the Commission would be treated as the submission of a new filing under Rule 806.

Paragraph (d) of proposed Rule 806, modelled on § 40.5(d), would provide that the Commission may further extend the review period in paragraph (c) for an additional 45 days, if the proposed rule

[71] The Commission does not discount the possibility that an entity might elect to register as an SBSEF with the SEC but not as a SEF with the CFTC. In such case, the SEC-only registrant would not have any familiarity with the CFTC's rules and filing procedures. Nevertheless, because the Commission preliminarily believes that most if not all entities that will seek SBSEF registration with the SEC are or will also be registered as SEFs with the CFTC, such dual registrants would benefit from harmonized procedures. Furthermore, if the Commission ultimately adopts these procedures substantially as proposed, it likely would be unnecessary to establish and apply one set of procedures for dual registrants and a different set for SEC-only SBSEFs.

[72] Information that the SBSEF seeks to keep confidential could be redacted from the documents published on the SBSEF's website, but would have to be republished consistent with any determination made pursuant to SEA Rule 24b–2.

or rule amendment raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete, or the requestor does not respond completely to Commission questions in a timely manner, in which case the Commission shall notify the submitting SBSEF within the initial 45-day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required. Paragraph (d) also would allow an extension to which the SBSEF agrees in writing.

Paragraph (e) of proposed Rule 806, like § 40.5(e), would provide that, at any time during its review, the Commission may notify the SBSEF that it will not, or is unable to, approve the new rule or rule amendment. This notification would have to briefly specify the nature of the issues raised and the specific provision of the SEA or the Commission's rules thereunder, including the form or content requirements of proposed Rule 806, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the SEA or the Commission's rules thereunder. Paragraph (f) of proposed Rule 806, like § 40.5(f), would provide that such notification to an SBSEF would not prevent the SBSEF from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission. Paragraph (f) would further provide that the revised submission would be reviewed without prejudice. Finally, paragraph (f) would provide that such notification to an SBSEF of the Commission's determination not to approve a proposed rule or rule amendment shall be presumptive evidence that the SBSEF may not truthfully certify the same, or substantially the same, proposed rule or rule amendment under proposed Rule 807(a).

Paragraph (g) of proposed Rule 806, like § 40.5(g), would provide that, notwithstanding Rule 806(c), changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the SEA and the Commission's rules thereunder, may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification; provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

The Commission preliminarily believes that Regulation SE should afford the Commission a means for assessing whether SBSEF rules and rule amendments are consistent with section 3D of the SEA, and that it is appropriate to achieve this aim by aligning closely with the CFTC's process for voluntary rule-approval submission in § 40.5. The CFTC's procedures are well articulated and well understood by SEFs, and closely harmonizing with these procedures should yield comparable regulatory benefits while minimizing burdens on SBSEFs. As with the process for seeking Commission approval of new products, the Commission preliminarily believes that providing a process for voluntarily seeking Commission approval of rules, rule amendments, and dormant rules—as the CFTC does—can be valuable to an SBSEF seeking the Commission's concurrence that the rule change is consistent with the SEA prior to implementing it. Moreover, for dually registered SEF/SBSEFs, it is likely that certain rules will apply to member behavior generally—and not to one product market (*e.g.,* swaps or SBS) exclusively—and so will have to be filed with both the SEC and CFTC. Closely harmonizing the SEC's filing procedures with § 40.5 would allow dually registered entities to submit the same (or substantially the same) filing to both agencies for review and approval. The Commission preliminarily believes that it is not necessary to require SBSEFs to make a substantially different type of filing to the SEC than to the CFTC for the same underlying rule.

The Commission seeks comment on the following:

32. Do you believe in general that Regulation SE should include a rule establishing procedures for an SBSEF to voluntarily submit rules and rule amendments for Commission review and approval? Why or why not?

33. In particular, should the Commission adopt procedures for voluntary submission of rules and rule amendments for Commission review and approval by harmonizing closely with § 40.5 of the CFTC's rules? Why or why not?

34. Are there any provisions of § 40.5 that are adapted into proposed Rule 806 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

D. Rule 807—Self-Certification of Rules

Proposed Rule 807 is closely modelled on § 40.6 of the CFTC's rules and would set forth procedures by which an SBSEF may self-certify changes to its rules. Paragraph (a) of proposed Rule 807, modelled on § 40.6(a), would set forth the conditions that an SBSEF must comply with before implementing a rule or rule amendment via self-certification. Like § 40.6(a), proposed Rule 807(a) would permit an SBSEF to implement a rule or rule amendment without obtaining the Commission's prior approval under Rule 806, but only if it ''self-certifies'' the rule or rule amendment in compliance with the conditions set forth in Rule 807. Rule 807(a) also would permit an SBSEF to self-certify a rule or rule amendment that the Commission had previously approved under Rule 806, or that the SBSEF had previously self-certified under this Rule 807, but that in the interim had become a dormant rule (*i.e.,* unimplemented for 12 consecutive calendar months).[73]

Paragraph (a)(1) of proposed Rule 807 would require the SBSEF to file its submission electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S–T. Paragraph (a)(2) would require the SBSEF to provide a certification that the SBSEF posted a notice of the self-certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the SBSEF's website.[74] Paragraph (a)(3) would provide that the Commission must have received the submission not later than the open of business on the business day that is ten business days before the SBSEF's implementation of the rule or rule amendment. Paragraph (a)(4) would

[73] Also like § 40.6(a), proposed Rule 807(a) would include an exception that would allow an SBSEF to implement a certain kind of rule without having to comply with the full set of conditions set forth in paragraphs (a)(1) through (8) of proposed Rule 807, the details of which are discussed below. Specifically, the exception would provide that, when submitting a rule delisting or withdrawing the certification of a product with no open interest, an SBSEF would be required only to meet the conditions of paragraphs (a)(1), (a)(2), and (a)(6) of proposed Rule 807. The introductory language being proposed by the Commission in paragraph (a) of proposed Rule 807 generally tracks the language of § 40.6(a), with slight changes for clarity. However, proposed Rule 807(a) would not include an equivalent of the reference in § 40.6(a) to submissions under § 40.10, which concerns only systemically important derivatives clearing organizations and thus are not relevant to SBSEFs.

[74] Information that the SBSEF seeks to keep confidential could be redacted from the documents published on the SBSEF's website but must be republished consistent with any determination made pursuant to SEA Rule 24b–2.

provide that the SBSEF may not implement the rule or rule amendment if the Commission has stayed it pursuant to proposed Rule 807(c), discussed below.

Section 40.6(a)(5) sets forth an additional condition that the rule or rule amendment is not a rule or rule amendment of a DCM that materially changes a term or condition of a contract for future delivery of an agricultural commodity enumerated in section 1a(4) of the CEA or an option on such a contract or commodity in a delivery month having open interest. Because this provision applies to DCMs that trade contracts for future delivery of agricultural commodities, it is not germane to the SBS markets; therefore, the Commission is not adapting this condition into proposed Rule 807.

Section 40.6(a)(6) sets out procedures for emergency rule certifications, which the Commission is proposing to adapt into paragraph (a)(5) of Rule 807. Paragraph (a)(5)(i) would require a new rule or rule amendment that establishes standards for responding to an emergency [75] to be submitted pursuant to Rule 807(a). Paragraph (a)(5)(ii) would provide that a rule or rule amendment implemented under procedures of the governing board to respond to an emergency shall, if practicable, be filed with the Commission prior to implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation. In addition, paragraph (a)(5)(ii) would provide that any such submission be subject to the certification and stay provisions of proposed Rules 807(b) and (c), described below.

Paragraph (a)(6) of proposed Rule 807, modelled on § 40.6(a)(7), would set out the required elements for a rule submission under Rule 807. These requirements would include a copy of the submission cover sheet (in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'' should be noted in the description section of the submission cover sheet); the text of the rule (in the case of a rule amendment, deletions and additions must be indicated); the date of intended implementation; a certification by the SBSEF that the rule complies with the SEA and the Commission's rules thereunder; a concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the SEA, including Core Principles relating to SBSEFs and the Commission's rules thereunder; and a brief explanation of any substantive opposing views expressed to the SBSEF by governing board or committee members, members of the SBSEF, or market participants, that were not incorporated into the rule, or a statement that no such opposing views were expressed. Paragraph (a)(6)(vii) also would permit the SBSEF to request confidential treatment for portions of its submission.[76]

Paragraph (a)(7) of proposed Rule 807, like § 40.6(a)(8), would require an SBSEF to provide, if requested by Commission staff, additional evidence, information, or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the SBSEF's compliance with any of the requirements of the SEA or the Commission's rules or policies thereunder.

Paragraph (b) of proposed Rule 807, modelled on § 40.6(b), would give the Commission ten business days to review the new rule or rule amendment before it is deemed certified and can be made effective, unless the Commission notifies the SBSEF during that ten-business-day review period that it intends to issue a stay of the certification under proposed Rule 807(c).

Paragraph (c)(1) of proposed Rule 807, modelled on § 40.6(c)(1), would provide that the Commission may stay the certification of a new rule or rule amendment by issuing a notification informing the SBSEF that the Commission is staying the certification on the grounds that it presents novel or complex issues that require additional time to analyze, is accompanied by an inadequate explanation, or is potentially inconsistent with the SEA or the Commission's rules thereunder. In addition, paragraph (c)(1) would afford the Commission an additional 90 days from the date of the notification to conduct the review.

Paragraph (c)(2) of proposed Rule 807, modelled on § 40.6(c)(2), would require the Commission to provide a 30-day comment period within the 90-day period in which the stay is in effect. The Commission would be required to publish a notice of the 30-day comment period on the Commission's internet website, and comments from the public could be submitted as specified in that notice.

Paragraph (c)(3) of proposed Rule 807, modelled on § 40.6(c)(3), would provide that the new rule or rule amendment subject to the stay shall become effective, pursuant to the certification, at the expiration of the 90-day review period, unless the Commission withdraws the stay prior to that time, or the Commission notifies the SBSEF during the 90-day period that it objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the SEA or the Commission's rules thereunder.

Section 40.6(c)(4), relating to rules or rule amendments already implemented by a SEF (as opposed to rules or rule amendments that are the subject of a new submission) provides: ''The Commission may stay the effectiveness of an implemented rule during the pendency of Commission proceedings for filing a false certification or during the pendency of a petition to alter or amend the rule pursuant to section 8a(7) of the Act. The decision to stay the effectiveness of a rule in such circumstances shall not be delegable to any employee of the Commission.'' As previously noted,[77] the SEA does not provide the Commission explicit authority to alter or amend the terms and conditions of an SBS like the authority granted to the CFTC with respect to swaps, and does not contemplate proceedings for a false certification. Hence the Commission is not proposing a provision corresponding to § 40.6(c)(4).[78]

Section 40.6(d) of the CFTC's rules allows a registered entity to place certain rules or rule amendments into effect even without a self-certification, if certain enumerated conditions are met. Certain types of these rules or rule amendments must be disclosed on a

[75] *See* § 40.1(h) (defining ''emergency'' as ''any occurrence or circumstance that, in the opinion of the governing board of a registered entity, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of a registered entity under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any agreements, contracts, swaps or transactions or the timely collection and payment of funds in connection with clearing and settlement by a derivatives clearing organization''). The definition goes on to list a series of circumstances that are deemed emergencies under the definition. The Commission is proposing a definition of ''emergency'' in proposed Rule 802 that is adapted from § 40.1(h).

[76] Section 40.6(a)(7)(vii) directs the submitting entity to follow the procedures in § 40.8 when making a request for confidential treatment, which in turn cross-references § 145.9. As noted previously, the Commission proposes instead to direct filers to make any request for confidential treatment pursuant to SEA Rule 24b–2. *See supra* note 50.

[77] *See supra* note 66 and accompanying text.

[78] *See id.*

''Weekly Notification of Rule Amendments,'' pursuant to § 40.6(d)(1) and (2), while others can be put into effect without any notification to the CFTC at all, pursuant to § 40.6(d)(3). Paragraph (d) of proposed Rule 807, modelled on § 40.6(d), would provide that certain kinds of rules or rule amendments may be put into effect by an SBSEF without certification to the Commission if similar enumerated conditions are met. Some would be subject to a Weekly Notification of Rule Amendments, which is closely modelled on the CFTC notification; others would not be subject to any notification requirement.

Under paragraph (d)(2) of proposed Rule 807, the following types of rules could be put into effect by an SBSEF without self-certification, so long as they are disclosed on the Weekly Notice of Rule Amendments:

- *Non-substantive revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about the SBSEF, and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;
- *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that total $1.00 or more per contract, and are established by an independent third party or are unrelated to delivery, trading, clearing, or dispute resolution.
- *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third party and that are incorporated by reference as product terms;
- *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;
- *Trading months.* The initial listing of trading months, which may qualify for implementation without notice, within the currently established cycle of trading months; or
- *Minimum tick.* Reductions in the minimum price fluctuation (or 'tick').

Under paragraph (d)(3)(ii) of proposed Rule 807, the following types of rules could be put into effect by an SBSEF without self-certification and without having to be disclosed on the Weekly Notice of Rule Amendments:

- *Transfer of membership or ownership.* Procedures and forms for the purchase, sale, or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership, or dues or assessments;
- *Administrative procedures.* The organization and administrative procedures of governing bodies such as a governing board, officers, and committees, but not voting requirements, governing board, or committee composition requirements or procedures, decision-making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;
- *Administration.* The routine daily administration, direction, and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays; and changes to facilities housing the market, trading floor, or trading area;
- *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules;
- *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs that are less than $1.00 or relate to matters such as dues, badges, telecommunication services, booth space, real-time quotations, historical information, publications, software licenses, or other matters that are administrative in nature.
- *Trading months.* The initial listing of trading months which are within the currently established cycle of trading months.

Paragraphs (d)(2) and (3) of proposed Rule 807, which enumerate the types of rule and rule amendments that an SBSEF could put into effect without a self-certification, are adapted from the types of rules enumerated in § 40.6(d)(2) and (3). However, the Commission is not adapting into proposed Rules 807(d)(2) and (d)(3) the other types of rules enumerated in § 40.6(d)(2) and (3).[79]

The Commission preliminarily believes that Regulation SE should afford the Commission a mechanism to assess new SBSEF rules and rule amendments for consistency with section 3D of the SEA, and to permit SBSEFs to submit new rules and rule amendments using a self-certification process closely aligned with the § 40.6. The CFTC's procedures are well articulated and well understood by SEFs, and closely harmonizing with these procedures should yield comparable regulatory benefits while minimizing burdens on SBSEFs. It is likely that certain rules of dually registered SEF/SBSEFs will apply to member behavior generally—and not to one product market (*e.g.,* swaps or SBS) exclusively—and so will have to be filed with both the SEC and CFTC. Closely harmonizing the SEC's filing procedures with the CFTC's would allow dually registered entities to submit the same (or substantially the same) filing to both agencies for review. The Commission preliminarily believes that it is not necessary to require SBSEFs to make a substantially different type of filing to the SEC than to the CFTC for the same underlying rule.

The Commission requests comment on the following:

35. Do you believe in general that Regulation SE should include a rule establishing procedures for an SBSEF to establish rules via self-certification? Why or why not?

36. In particular, should the Commission adopt procedures for self-certification of rules by harmonizing closely with § 40.6 of the CFTC's rules? Why or why not?

37. Are there any provisions of § 40.6 that are adapted into proposed Rule 807 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

38. Do you disagree with the specific language that the Commission is proposing? If so, what revisions to the language would you suggest?

39. Do you agree with the proposed list of the types of rules and rule amendments that the Commission would allow an SBSEF to make effective without a self-certification? Are there any types that you believe should be added to that list? If so, which types and why? Are there any types that you believe should be removed from that list? If so, which types and why?

E. Submission Cover Sheet and Instructions

As new § 249.2002, the Commission is proposing a submission cover sheet and instructions that an SBSEF would be required to use in conjunction with

[79] These rules pertain to products that are only distantly related, if at all, to the types of products that are likely to trade on SBSEFs. *See* § 40.6(d)(2)(ii) (delivery standards set by third parties); § 40.6(d)(2)(iii) (index products); § 40.6(d)(2)(iv) (option contract terms); § 40.6(d)(2)(viii) (delivery facilities and delivery service providers); § 40.6(d)(3)(ii)(F) (securities indexes); § 40.6(d)(3)(ii)(G) (option contract term).

filings submitted pursuant to proposed Rules 804 through 807, 809, and 816. These are modelled on the cover sheet and instructions used by SEFs in conjunction with their analogous filings with the CFTC.[80]

The same cover sheet and instructions would be used for a new rule, rule amendment, or new product filing, with the SBSEF checking the appropriate box to indicate which of these types the filing represents. The SBSEF also would be required to check boxes to indicate whether the submission was seeking approval by the Commission or whether it was being filed as a certification by the SBSEF; and to identify the specific provision in the Commission's rules pursuant to which the filing was being submitted. The submission cover sheet also would include a box that the SBSEF would check if it intends to submit a request for a joint interpretation from the Commission and the CFTC regarding whether the product is a swap, an SBS, or mixed swap pursuant to SEA Rule 3a68–2.[81] Finally, the cover sheet would include a check box by which an SBSEF could indicate that it was requesting confidential treatment of materials in the submission.

The cover sheet would divide the rules and rule amendment filings into two categories: One for general rules of the SBSEF and the other for rules relating to the terms and conditions of a product. Additional boxes would need to be checked if a filing under the terms-and-conditions category concerned specifically a determination by the SBSEF that a particular SBS was now to be considered MAT (''made-available-to-trade'');[82] or if the filing concerned the delisting of an SBS with no open interest.[83] The cover sheet would need to be used in conjunction with the weekly notifications that SBSEFs would be required to file pursuant to Rule 807(d) for certain changes that do not need to be approved or certified, as discussed above.

Paragraph (a) of the submission cover sheet instructions would provide that a properly completed submission cover sheet must accompany all rule and product submissions submitted electronically to the Commission by an SBSEF, using the EDGAR system and must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S–T. Per paragraph (a), a properly completed submission cover sheet would include all of the following:

1. The name and platform ID of the SBSEF.[84]
2. The date of the filing.
3. An indication as to whether the filing is a new rule, rule amendment, or new product.
4. For rule filings, the rule number(s) being adopted or, in the case of rule amendments, the number of the rule(s) being modified.
5. For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the SBSEF, its members, and the overall market. The instructions will state that the narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

Paragraph (b) of the proposed submission cover sheet instructions would state that a submission must comply with all applicable filing requirements for proposed rules, rule amendments, or products, and that the filing of the submission cover sheet would not obviate the SBSEF's responsibility to comply with applicable filing requirements.

Paragraph (c) of the proposed submission cover sheet would state that checking the box marked ''confidential treatment requested'' would not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment under SEA Rule 24b–2 and would not substitute for notice or full compliance with such requirements.

The Commission contemplates establishing a system for electronic completion of the cover sheet and attachment of the submissions required by proposed Rules 804, 805, 806, 807, and 809, and will advise affected persons regarding its use by public announcement in advance of the effective date of these rules.

The Commission seeks comment on the following:

40. Do you agree in general that the submission cover sheet and instructions for SBSEF filings should be harmonized with the CFTC's? Why or why not?

41. Do you agree with the specific language proposed in the cover sheet and instructions? If not, how should the language be revised? Is there any information not included in the proposed cover sheet and instructions that you believe should be included?

42. Do you agree with the requirement for an SBSEF to report its platform ID on the cover sheet? Should the disclosure of standard identifiers such as the LEI, the Financial Instrument Global Identifier (''FIGI''), and the Unique Product Identifier (''UPI'') be included in an SBSEF's other reporting obligations under the proposed rules?

43. Are any of the instructions in the submission cover sheet unclear? If so, what matters do you believe require clarification?

F. Rule 808—Availability of Public Information

Section 40.8 of the CFTC's rules is entitled ''Availability of public information.'' § 40.8(a) provides that any part of an application to register as a SEF (among other CFTC-registered entities) that is not covered by a request for confidential treatment will be made publicly available. Section 40.8(a) also sets out the sections of an application to register as a SEF that shall be made publicly available. Section 40.8(c)[85] provides that rule and new product filings by a SEF, whether made under the self-certification procedures or pursuant to CFTC review and approval, will be treated as public information unless accompanied by a request for confidential treatment. Section 40.8(c) includes procedures for such requests for confidential treatment. Section 40.8(d) provides that CFTC staff will not consider confidential treatment requests for information that is required to be made public under the CEA, and that the terms and conditions of a product

[80] The CFTC cover sheet and instructions, found in appendix D to part 40 of the CFTC's rules, are designed for rule and product filings from a wider range of registered entities than just SEFs, and thus include entries that are omitted from the Commission's proposed adaptation.

[81] Proposed Rule 809 would provide that a product filing will be stayed or tolled, as applicable, if such a request for a joint interpretation is made by the SBSEF, the SEC, or the CFTC. *See infra* section VI(G).

[82] *See infra* section VII(F).

[83] *See supra* note 73.

[84] ''Platform ID'' is a term utilized in Regulation SBSR, 17 CFR 242.900 *et seq.,* and means the unique identification code (''UIC'') assigned to a platform on which an SBS is executed. *See* 17 CFR 242.900(w). The term ''platform'' includes an SBSEF. *See* Rule 900(v), 17 CFR 242.900(v). A registered SBSEF is required by Rule 903(a) of Regulation SBSR, 17 CFR 242.903(a), to use as its platform ID an identifier issued by an internationally recognized standards-setting system (''IRSS'') if the IRSS meets enumerated criteria and has therefore been recognized by the Commission pursuant to Rule 903(a). This identification requirement stems from a registered SBSEF's status as a ''participant'' of a registered SDR under Rule 900(u), 17 CFR 242.900(u), because the term ''participant'' includes a ''platform,'' as defined in Rule 900(v), 17 CFR 242.900(v), that incurs reporting duties under Rule 901(a), 17 CFR 242.901(a). Currently, the Global Legal Entity Identifier System (''GLEIS'') is the only IRSS that has been recognized by the Commission under Rule 903(a). *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* SEA Release No. 74244 (February 11, 2015), 80 FR 14564, 14631–32 (March 19, 2015) (''Regulation SBSR Adopting Release I''). Therefore, LEIs issued through the GLEIS are currently the only allowable platform IDs that may be used by registered SBSEFs.

[85] Section 40.8(b) has no text and is marked ''reserved.''

submitted to the CFTC shall be made publicly available at the time of submission.

Proposed Rule 808 is closely modelled on § 40.8. Section 40.8(a) does not provide a list of the exhibits required to be made public, but rather refers to a general description of items required to be made public. For purposes of clarity and ease of reference, however, the Commission is proposing to list the specific corresponding exhibits in proposed Rule 808 that would be made publicly available. Therefore, paragraph (a) of proposed Rule 808 would provide that the Commission shall make publicly available on its website the following parts of an application to register as an SBSEF, unless confidential treatment is obtained pursuant to SEA Rule 24b–2: the transmittal letter and first page of the application cover sheet; Exhibit C; Exhibit G; Exhibit L; and Exhibit M.

Paragraph (b) of proposed Rule 808, adapted from § 40.8(c), would provide that the Commission shall make publicly available on its website, unless confidential treatment is obtained pursuant to SEA Rule 24b–2,[86] an SBSEF's filing of new products pursuant to the self-certification procedures of proposed Rule 804, new products for Commission review and approval pursuant to proposed Rule 805, new rules and rule amendments for Commission review and approval pursuant to proposed Rule 806, and new rules and rule amendments pursuant to the self-certification procedures of proposed Rule 807. Paragraph (c), adapted from § 40.8(d), would provide that the terms and conditions of a product submitted to the Commission pursuant to any of proposed Rules 804 through 807 shall be made publicly available at the time of submission unless confidential treatment is obtained pursuant to SEA Rule 24b–2.

The Commission preliminarily believes that it would be appropriate to include in proposed Regulation SE a rule similar to § 40.8 that would clarify how SBSEFs may request confidential treatment for their filings, and what information contained in those filings would be publicly available by the Commission. The Commission preliminarily believes that the items enumerated in proposed Rule 808 are not of the type that typically would constitute confidential information.

The Commission requests comment on the following:

44. Do you believe in general that Regulation SE should include a rule modelled on § 40.8? Why or why not?

45. In particular, do you agree with the specific language proposed by the Commission to adapt § 40.8 into proposed Rule 808? If not, how would you revise that language?

46. Are there any provisions of § 40.8 that are adapted into proposed Rule 808 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

47. Do you prefer the Commission's proposed approach of listing specific exhibits or the CFTC's approach of providing in the rule only a general description of items required to be made public? If the former, are there any additional exhibits that you believe should be enumerated in Rule 808 that should be made publicly available? If so, which exhibits and why?

G. Rule 809—Staying of Certification and Tolling of Review Period Pending Jurisdictional Determination

Section 40.12 of the CFTC's rules is entitled ''Staying of certification and tolling of review period pending jurisdictional determination'' and reflects the process described in section 718 of the Dodd-Frank Act, which is entitled ''Determining Status of Novel Derivative Products.'' Section 718 of the Dodd-Frank Act sets forth a mechanism for addressing a situation where a person wishes to list or trade a novel derivative product that may have elements of both securities and contracts of sale of a commodity for future delivery (or options on such contracts or options on commodities)—*i.e.,* it is unclear whether the product is a security under the jurisdiction of the SEC or a future under the jurisdiction of the CFTC. Section 718(a) provides that the SEC or the CFTC may request that the other agency issue a determination as to the classification of that product, and section 718(b) provides that the CFTC and SEC may petition for the judicial review of any such determination. Section 40.12 provides that if a SEF (among other registered entities) certifies, submits for approval, or otherwise files a proposal to list or trade such a novel derivative product, the product certification shall be stayed or the approval review period shall be tolled until a final determination order is issued under section 718.

Proposed Rule 809 is loosely modelled on § 40.12, but modified to focus on the products and jurisdictional problems that are more likely to be relevant to SBSEFs. An SBSEF might seek to list a product where it is unclear whether the product is a swap or an SBS. While section 718 of the Dodd-Frank Act addresses situations where it is unclear if a product is a security or a future, the SEC and the CFTC have adopted separate rules—SEA Rule 3a68–2 and § 1.8, respectively—governing requests for interpretation regarding a product that might be an SBS, a swap, or a mixed swap. Accordingly, the Commission believes that it would be appropriate for proposed Rule 809 to reflect the process set forth in SEA Rule 3a68–2. Nonetheless, the objective of proposed Rule 809 would be consistent with the objective of § 40.12—to provide for a stay or tolling of a product filing where it is unclear whether the product is under the jurisdiction of the SEC or the CFTC.

Paragraph (a) of proposed Rule 809, modelled on § 40.12(b), would provide that a product certification made by an SBSEF pursuant to proposed Rule 804 shall be stayed, or the review period for a product that has been submitted for Commission approval by an SBSEF pursuant to proposed Rule 805 shall be tolled, upon request for a joint interpretation of whether the product is a swap, SBS, or mixed swap made pursuant to Rule 3a68–2 under the SEA[87] by the SBSEF, the SEC, or the CFTC. Paragraph (b) is modelled on § 40.12(b)(1) and would require the SEC to provide the SBSEF with a written notice of the stay or tolling pending issuance of a joint interpretation by the SEC and CFTC. Paragraph (c) is modelled on § 40.12(b)(2) and would provide that the stay shall be withdrawn, or the approval review period shall resume, if a joint interpretation finding that the SEC has jurisdiction over the product is issued.

The Commission preliminarily believes that it is appropriate for Regulation SE to include a mechanism for the staying or tolling of a filing by an SBSEF where it is unclear whether the product is a swap or an SBS—should an SBSEF ever seek to list such a product. Although proposed Rule 809 would deviate from § 40.12 in that it would apply where it is unclear whether a product is swap or an SBS, rather than where it is unclear whether

[86] An application for confidential treatment shall contain, among other things, a statement of the grounds of objection referring to, and containing an analysis of, the applicable exemption(s) from disclosure under the Freedom of Information Act, and a justification of the period of time for which confidential treatment is sought. *See* 17 CFR 240.24b–2(b)(2)(ii).

[87] 17 CFR 240.3a68–2.

the product is a security or a future, the Commission preliminarily believes that modifying the scope of proposed Rule 809, in relation to § 40.12, would appropriately address the jurisdictional questions that are more likely to arise from a product listed by an SBSEF.

The Commission seeks comment on the following:

48. Do you believe in general that Regulation SE should include a rule setting out a procedure for staying a product certification or tolling a product review period if a request for a joint interpretation regarding the classification of the product is made pursuant to SEA Rule 3a68–2? Why or why not?

49. In particular, do you agree with the specific language proposed by the Commission to adapt § 40.12 into proposed Rule 809? If not, how would you revise that language?

50. Do you agree that Rule 809 should apply to a product that might be an SBS or a swap, rather than to a product that might be a security or a future? Why or why not?

51. Are there any provisions of § 40.12 that are adapted into proposed Rule 809 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

H. Rule 810—Product Filings by SBSEFs That Are Not Yet Registered and by Dormant SBSEFs

Part 37 directs SEFs to submit product filings via self-certification or for CFTC review and approval, using § 40.2 or § 40.3, respectively. However, these sections cannot be utilized by an entity that has submitted an application for SEF registration but has not yet been registered, or by a dormant SEF that has submitted an application to reinstate its registration. Under § 37.4, either entity may submit a swap's terms and conditions before being registered or having its registration reinstated, and the CFTC will consider the swap listing request as part of the application for registration or reinstatement, respectively.

Proposed Rule 810 is closely modelled on § 37.4. Paragraph (a) of proposed Rule 810 is closely modelled on § 37.4(a) and would provide that an applicant for registration as an SBSEF may submit an SBS's terms and conditions prior to listing the product as part of its application for registration. Paragraph (b) is closely modelled on § 37.4(b) and would provide that any SBS terms and conditions or rules submitted as part of an application for registration shall be considered for approval by the Commission at the time the Commission issues the SBSEF's order of registration. Paragraph (c) is closely modelled on § 37.4(c) and would provide that, after the Commission issues the order of registration, the SBSEF shall submit an SBS's terms and conditions, including amendments to such terms and conditions, new rules, or rule amendments pursuant to the procedures in proposed Rules 804 to 807. Paragraph (d) is closely modelled on § 37.4(d), would provide that any SBS terms and conditions or rules submitted as part of an application to reinstate the registration of a dormant SBSEF shall be considered for approval by the Commission at the time the Commission approves the reinstatement of registration of the dormant SBSEF.

The Commission preliminarily believes that it is appropriate for Regulation SE to include provisions that address new products submitted as part of an SBSEF registration by an entity that has not yet been registered, or by a dormant SBSEF seeking reinstatement of its registration, and that these provisions should align with the CFTC's provisions as closely as possible.

The Commission seeks comment on the following:

52. Do you believe in general that Regulation SE should include a rule setting out how dormant SBSEFs and applicants for SBSEF registration can submit new products? Why or why not?

53. In particular, do you agree with the specific language proposed by the Commission to adapt § 37.4 into proposed Rule 810? If not, how would you revise that language?

54. Are there any provisions of § 37.4 that are adapted into proposed Rule 810 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

VII. Miscellaneous Requirements

Sections 37.5 to 37.12 of the CFTC's rules impose miscellaneous requirements on SEFs. The Commission seeks to impose similar requirements on SBSEFs in proposed Rules 811 to 817 of Regulation SE.

A. Rule 811—Information Relating to SBSEF Compliance

1. Harmonization With § 37.5

Paragraphs (a) to (c) of proposed Rule 811 are modelled on § 37.5, which is entitled ''Information regarding swap execution facility compliance.'' Section 37.5 provides that the CFTC may request various types of information from a SEF, and that the SEF must supply the information to the CFTC in a form and manner specified by the CFTC. Paragraph (a) of § 37.5 requires a SEF, at the CFTC's request, to provide information related to its business as a SEF. Paragraph (b) states that a SEF may be required to provide a written demonstration, containing supporting data, information, and documents that it is in compliance with one or more core principles or with its other obligations under the CEA. Paragraph (c) sets out procedures for a SEF to notify the CFTC of any transfer of 50% or more of the equity interest in the SEF.

Proposed Rules 811(a) to (c) are closely modelled on § 37.5. Paragraph (a) of proposed Rule 811 is closely modelled on § 37.5(a) and would provide that, upon the Commission's request, an SBSEF shall file with the Commission information related to its business as an SBSEF in the form and manner, and within the timeframe, specified by the Commission. Paragraph (b) is closely modelled on § 37.5(b) and would provide that, upon the Commission's request, an SBSEF shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with one or more Core Principles or with its other obligations under the SEA or the Commission's rules thereunder, as the Commission specifies in its request. Also, under proposed Rule 811(b), the SBSEF would be required to file such written demonstration in the form and manner, and within the timeframe, specified by the Commission.

Paragraph (c)(1) of proposed Rule 811 is closely modelled on § 37.5(c)(1) and would provide that an SBSEF shall file with the Commission a notification of any transaction involving the direct or indirect transfer of 50% or more of the equity interest in the SBSEF. Also, under proposed Rule 811(c)(1), the Commission could, upon receiving such notification, request supporting documentation of the transaction. Paragraph (c)(2) is closely modelled on § 37.5(c)(2) and would provide that the equity interest transfer notice shall be filed with the Commission in a form and manner specified by the Commission at the earliest possible time, but in no

event later than the open of business ten business days following the date upon which the SBSEF enters into a firm obligation to transfer the equity interest. Paragraph (c)(3) is closely modelled on § 37.5(c)(3), would provide that, notwithstanding the foregoing, if any aspect of an equity interest transfer requires an SBSEF to file a rule, the SBSEF shall comply with the applicable rule filing requirements of proposed Rule 806 or 807.

Paragraph (c)(4) of proposed Rule 811 is closely modelled on § 37.5(c)(4) and would provide that, upon a transfer of an equity interest of 50% or more in an SBSEF, the SBSEF shall file with the Commission, in a form and manner specified by the Commission, a certification that the SBSEF meets all of the requirements of section 3D of the SEA and the Commission rules thereunder, no later than two business days following the date on which the equity interest of 50% or more was acquired.

The Commission preliminarily believes that it is appropriate for Regulation SE to include provisions requiring an SBSEF to provide the Commission with the information described above. Information about its business as an SBSEF and transfers of 50% of its equity would promote understanding of its operations and ownership, which should facilitate oversight of the SBSEF; therefore, the Commission preliminarily believes that it should, similar to the CFTC, clarify that it may request such information from an SBSEF. In addition, should questions about compliance arise, the Commission should be able to obtain from an SBSEF supporting data, information, and documents that the SBSEF is in compliance with relevant obligations under the SEA. By modelling its proposed requirements on existing CFTC rules, the Commission seeks to obtain comparable regulatory benefits while imposing only marginal additional burdens on dually registered entities that are already subject to similar obligations.

The Commission requests comment on the following:

55. Do you believe in general that Regulation SE should include a rule that would require an SBSEF to provide the Commission with information about its business or its compliance with the SEA, as well as information regarding transfers of 50% or more of its equity interest? Why or why not?

56. In particular, do you agree with the specific language proposed by the Commission to adapt § 37.5 into proposed Rule 811? If not, how would you revise that language?

57. Are there any provisions of § 37.5 that are adapted into proposed Rule 811 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

2. Harmonization With § 1.60

Paragraph (d) of proposed Rule 811 is not modelled on § 37.5 but rather on § 1.60 of the CFTC's rules, which is entitled ''Pending legal proceedings.'' Because it is conceptually similar to § 37.5 in that it requires another type of information relevant to the regulatory oversight of a SEF, the Commission is proposing to adapt this provision into Rule 811.

Section 1.60 requires a SEF (among other entities) to provide the CFTC with copies of any legal proceeding to which it is a party, or to which its property or assets is subject. Paragraph (d) of proposed Rule 811 would adapt paragraphs (a), (c), and (e) of § 1.60 to apply to SBSEFs.[88]

Paragraph (d)(1) of proposed Rule 811 is closely modelled on § 1.60(a) and would provide that an SBSEF shall submit to the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the SBSEF is a party or its property or assets is subject. Paragraph (d)(2) is closely modelled on § 1.60(c) and would provide that an SBSEF shall submit to the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any officer, director, or other official of the SBSEF from conduct in such person's capacity as an official of the SBSEF and alleging violations of the SEA or any rule, regulation, or order thereunder; the constitution, bylaws, or rules of the SBSEF; or the applicable provisions of State law relating to the duties of officers, directors, or other officials of business organizations.

Paragraph (d)(3) of proposed Rule 811 is loosely modelled on § 1.60(e) and would provide that documents required by Rule 811(d) to be submitted to the Commission shall be submitted electronically in a form and manner specified by the Commission within ten days after the initiation of the legal proceedings to which they relate, after the date of issuance, or after receipt by the SBSEF of the notice of appeal, as the case may be.[89]

Paragraph (d)(4) of proposed Rule 811 is closely modelled on the final two sentences of § 1.60(e) and would provide that, for purposes of Rule 811(d), a ''material legal proceeding'' includes but is not limited to actions involving alleged violations of the SEA or the Commission rules thereunder, and that a legal proceeding is not ''material'' for the purposes of Rule 811 if the proceeding is not in a Federal or State court or if the Commission is a party.

The Commission preliminarily believes that, to properly oversee an SBSEF, the Commission needs to be aware of any pending legal proceedings involving the SBSEF or any officer, director, or other official of the SBSEF from conduct in such person's capacity as an official of the SBSEF. The Commission preliminarily believes, furthermore, that § 1.60 provides an established and well understood mechanism for obtaining this information, and therefore is using § 1.60 as the model for proposed Rule 811(d).

The Commission seeks comment on the following:

58. Do you believe in general that Regulation SE should include a rule that would require an SBSEF to provide the Commission with information about its pending legal proceedings? Why or why not?

59. In particular, do you agree with the specific language proposed by the Commission to adapt § 1.60 into proposed Rule 811? If not, how would you revise that language?

60. Are there any provisions of § 1.60 that are adapted into proposed Rule 811 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

[88] Paragraphs (b) and (d) of § 1.60 apply to futures commission merchants and do not appear germane to SEFs or SBSEFs. Therefore, the Commission is not adapting these paragraphs into proposed Rule 811(d).

[89] Section 1.60(e) requires relevant documents to be ''mailed via first-class or submitted by other more expeditious means.''

B. Rule 812—Enforceability

Section 37.6(a) of the CFTC's rules provides that a transaction entered into on or pursuant to the rules of a SEF shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable as a result of a violation by the SEF of the Core Principles or the part 37 rules thereunder. Section 37.6(a) also provides generally that such a transaction would not be void or voidable as a result of a CFTC or other proceeding to alter or supplement a rule, term, or trading rule or procedure. Section 37.6(b) requires a SEF to provide each counterparty to a transaction that is entered into on or pursuant to the rules of the SEF with a written record of all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction. Furthermore, under § 37.6(b), the confirmation of all terms of the transaction must take place at the same time as execution, provided that specific customer identifiers for accounts included in bunched orders need not be included in confirmations if certain conditions are met.

Proposed Rule 812 generally is modelled on § 37.6, but omits certain of its detailed provisions. Paragraph (a) of proposed Rule 812, which is based on § 37.6(a)(1), would provide that a transaction on or pursuant to the rules of an SBSEF cannot be invalidated as a result of a violation by the SBSEF of section 3D of the SEA or the Commission's rules thereunder.[90] An SBS executed on an SBSEF should not be invalidated by the SBSEF's violation of any of the securities laws, given that swaps executed on SEFs are afforded the same legal certainty under § 37.6(a).

Paragraph (b) of proposed Rule 812 is modelled on the first sentence of § 37.6(b) and would provide that an SBSEF shall, as soon as technologically practicable after the time of execution of a transaction entered into on or pursuant to the rules of the facility, provide a written record to each counterparty of all of the terms of the transaction that were agreed to on the facility, which shall legally supersede any previous agreement regarding such terms. The Commission preliminarily believes that it would be appropriate to require an SBSEF to inform counterparties as soon as technologically practicable after they have effected a trade on or pursuant the rules of the SBSEF, and to provide them with a written record of the terms to which they have agreed. The Commission also preliminarily believes that it would be appropriate to require that this written record legally supersede any previous agreement regarding the terms that were agreed to on the SBSEF. The Commission recognizes, however, that there may be other terms of an uncleared SBS transaction that are specified in one or more agreements previously negotiated between the counterparty pair (relating, *e.g.,* to credit support). Because agreements between counterparty pairs likely are not known or easily obtained by an SBSEF, the Commission is not including a requirement that the SBSEF provide a written record of any such terms.[91]

The Commission seeks comment on the following:

61. Do you believe in general that Regulation SE should include a rule regarding enforceability of contracts entered into on an SBSEF that is modelled on § 37.6? Why or why not?

62. In particular, do you agree with the specific language proposed by the Commission to adapt § 37.6 into proposed Rule 812? If not, how would you revise that language?

63. Are there any provisions of § 37.6 that the Commission is proposing to adapt into Rule 812 that you believe would be inappropriate, or fail to create any benefit, in a Commission rule applicable to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

64. Do you believe that any of the provisions of § 37.6 for which the Commission has not proposed an analog warrant inclusion? If so, which one(s) and why?

65. Rule 15Fi–2(f)(1) under the SEA[92] provides SBS dealers and major SBS participants with an exception from the trade acknowledgment and verification requirements for SBS transactions ''executed on [an SBSEF] or national securities exchange, provided that the rules, procedures or processes of the [SBSEF] or national securities exchange provide for the acknowledgment and verification of *all terms* of the security-based swap transaction no later than the time required by [Rule 15Fi–2(b) and (d)(2)]'' (emphasis added). Proposed Rule 812(b) would require an SBSEF to provide a written record only of the terms of the transaction that are agreed to on the SBSEF. As a result, if the Commission were to adopt Rule 812(b) substantially as proposed, the exception in Rule 15Fi–2(f)(1) would not be available where the counterparty pair has agreed to other terms of the SBS transaction away from the SBSEF. Do you agree with this result? If not, how would an SBSEF be able to provide a record of *all terms* of an SBS transaction effected on or pursuant to the rules of the SBSEF when there are one or more pre-existing agreements between the counterparty pair where the counterparties agree to additional terms?

C. Rule 813—Prohibited Use of Data Collected for Regulatory Purposes

Section 37.7 of the CFTC's rules provides that a SEF shall not use for business or marketing purposes any proprietary data or personal information that it collects or receives from or on behalf of any person for the purpose of fulfilling its regulatory obligations. The SEF may use data or information for business or marketing purposes if the person consents, but the SEF may not condition access to the SEF on the person's providing such consent. Finally, § 37.7 provides that a SEF, where necessary for regulatory purposes, may share such data or information with another SEF or a DCM.

Proposed Rule 813 is modelled on § 37.7. Persons who trade on an SBSEF may have to provide proprietary data or

[90] The Commission is not adapting into proposed Rule 812 paragraphs (a)(2) and (a)(3) of § 37.6, which provide that a transaction on a SEF may not be invalidated by CFTC proceedings that alter or supplement SEF rules, terms, and conditions, because the Commission has no authority in the SEA analogous to the CFTC's authority under section 8a(7) of the CEA to conduct such proceedings. *See supra* note 66 and accompanying text.

[91] Section 37.6(b) requires a SEF to provide a written record of ''all of the terms of the transaction which shall legally supersede any previous agreement and serve as a confirmation of the transaction.'' In the adopting release for the final part 37 rules, the CFTC explained that, with respect to uncleared swaps, a SEF could satisfy this requirement by incorporating by reference terms set forth in agreements previously negotiated by the counterparties, provided that such agreements had been submitted to the SEF ahead of execution. *See* 2013 CFTC Final SEF Rules Release, 78 FR at 33491, n. 195. The CFTC staff has provided no-action relief with respect to the confirmation requirements for uncleared swaps in response to assertions by industry participants that it is impracticable for a SEF to satisfy the written confirmation requirements by incorporating by reference terms from previously negotiated agreements between the counterparties if the SEF must receive copies of such agreements prior to execution. *See* CFTC No Action Letter 17–17 (March 24, 2017) (issued by the CFTC's Division of Market Oversight). In so doing, the CFTC staff indicated that it was continuing to assess confirmation requirements, including establishing a permanent solution to the issues raised. Given these circumstances, the Commission preliminarily believes that it is appropriate to require an SBSEF to provide counterparties with a written record of only those terms that are agreed to on the SBSEF.

[92] 17 CFR 240.15Fi–2(f)(1).

personal information to the SBSEF from time to time to allow the SBSEF to carry out its regulatory obligations. The Commission preliminarily believes, in general, that an SBSEF using that information for business or marketing purposes would be a misappropriation, because the SBSEF's powers to compel production of that information by its members is for regulatory purposes, not for the benefit of the SBSEF's business interests. While a member of the SBSEF could consent to the SBSEF using this information for business or marketing purposes, the Commission preliminarily believes that access to the SBSEF should not be conditioned on such consent being given. The Commission preliminarily believes that § 37.7 is well understood by market participants and well designed for adaptation to the SBS market to deter such misappropriation. Therefore, the Commission preliminarily believes that close harmonization with § 37.7 is appropriate.

The Commission seeks comment on the following:

66. Do you believe in general that Regulation SE should include a rule that prohibits an SBSEF from using for business or marketing purposes any proprietary data or personal information that it collects or receives from or on behalf of any person for the purpose of fulfilling its regulatory obligations? Why or why not?

67. In particular, do you agree with the specific language proposed by the Commission to adapt § 37.7 into proposed Rule 813? If not, how would you revise that language?

68. Are there any provisions of § 37.7 that are adapted into proposed Rule 813 that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

D. Rule 814—Entity Operating Both a National Securities Exchange and SBSEF

Section 37.8 of the CFTC's rules applies to a board of trade that operates both a DCM and a SEF. Paragraph (a) of § 37.8 requires the board of trade to separately register the DCM and the SEF with the CFTC under the respective rules for each type of market. Paragraph (b) requires a board of trade that operates both types of market and that uses the same electronic trade execution system for executing and trading swaps on both markets to clearly identify to market participants whether an execution of a swap took place on the DCM or on the SEF.

Proposed Rule 814 is modelled on § 37.8. Paragraph (a) of proposed Rule 814 would provide that an entity intending to operate both a national securities exchange and an SBSEF shall separately register the two facilities pursuant to section 6 of the SEA and Rule 803 thereunder. Paragraph (b), although adapted generally from § 37.8(b), draws its specific language from section 3D(c) of the SEA.[93] Section 3D(c) contemplates that a single entity may operate both a national securities exchange and an SBSEF, and would provide that a national securities exchange shall, to the extent that the exchange also operates an SBSEF and uses the same electronic trade execution system for listing and executing trades of SBS on or through the exchange and the facility, identify whether electronic trading of SBS is taking place on or through the national securities exchange or the SBSEF. Proposed Rule 814(b) copies section 3D(c) of the SEA verbatim.

The Commission preliminarily believes that it is appropriate for proposed Regulation SE to include a rule that clarifies the registration status of an entity that operates both an exchange and an SBSEF, and that broadly parallels § 37.8.

The Commission seeks comment on the following:

69. Do you believe in general that Regulation SE should include a rule that clarifies the registration status of an entity that operates both an exchange and an SBSEF? Why or why not?

70. In particular, do you agree with the specific language proposed by the Commission in Rule 814? If not, how would you revise that language?

71. Do you believe that more detailed rules are necessary to address the extent to which an entity should keep separate its exchange and its SBSEF or, conversely, areas where overlapping functionality or personnel should expressly be allowed? If so, please discuss.

E. Rule 815—Methods of Execution for Required and Permitted Transactions

A key goal of the Dodd-Frank Act is to bring trading of swaps and SBS onto regulated markets, as reflected in the statutory requirements for mandatory clearing and mandatory trade execution of certain swap and SBS products.[94] If the relevant agency makes a mandatory clearing determination regarding a product, the product becomes subject to mandatory trade execution if at least one DCM/exchange or SEF/SBSEF makes the product ''available to trade.'' The legislative history of the Dodd-Frank Act indicates that exchange trading is a mechanism to ''provide pre- and post-trade transparency for end users, market participants, and regulators.'' [95] Exchange trading also enhances market efficiency by allowing multiple market participants the opportunity to compete for individual transactions on price, in contrast to the bilateral, dealer-driven market that prevailed before the Dodd-Frank Act.[96] The Dodd-Frank Act does not require, however, that all products be subject to mandatory clearing and/or mandatory trade execution, and does not impose any execution requirements for transactions in such products. Section 37.9 of the CFTC's rules addresses these issues using the concepts of ''Required Transaction'' and ''Permitted Transaction.'' The Commission is proposing Rule 815 of Regulation SE to adapt § 37.9 for SBSEFs.

Section 37.9(a) defines a ''Required Transaction'' as any transaction involving a swap that is subject to the trade execution requirement in section 2(h)(8) of the CEA, subject to certain exceptions. Section 37.9(c) defines a ''Permitted Transaction'' as the obverse of a Required Transaction: Any transaction involving a swap that is *not* subject to the CEA's trade execution requirement. Section 37.9(c) provides that a SEF may offer any method of execution for a Permitted Transaction.

[93] 15 U.S.C. 78c–4(c).

[94] *See* 7 U.S.C. 2(h)(1)(A) (mandatory clearing for swaps) and 2(h)(8) (mandatory trade execution for swaps); 15 U.S.C. 78c–3(a)(1) (mandatory clearing for SBS) and 78c–3(h) (mandatory trade execution for SBS). The heads of the Group of Twenty countries (''G20'') have also emphasized the importance of exchange-trading of OTC derivatives, noting in 2009 that ''[a]ll standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest.'' *See* G20, *Leaders' Statement: The Pittsburgh Summit* (September 24–25, 2009) at p. 9.

[95] S. Rep. No. 111–176, at 34 (2010). *See also* Mark Jickling & Kathleen Ann Ruane, ''The Dodd-Frank Wall Street Reform and Consumer Protection Act: Title VII, Derivatives,'' Cong. Research Serv., R41398, at 7 (August 30, 2010) (explaining that the goal of the trade execution requirement is to promote pre-trade price transparency).

[96] *See id.* at 34 (quoting Stanford University Professor Darrel Duffie: ''The relative opaqueness of the OTC market implies that bid/ask spreads are in many cases not being set as competitively as they would be on exchanges. This entails a loss in market efficiency''). *See also id.* (quoting International Risk Analytics co-founder Christopher Whalen: ''The absence of an exchange trading mandate provides 'supra normal returns paid to the dealers in the closed OTC derivatives market [and] are effectively a tax on other market participants, especially investors who trade on open, public exchanges'').

In addition, § 37.9(a) provides that a Required Transaction that is not a block trade must generally be executed by a SEF using an order book [97] or a request-for-quote (''RFQ'') system.[98]

Under § 37.9(a)(3), a SEF that offers an RFQ system in connection with a Required Transaction must, at the same time that the requester receives the first responsive bid or offer, communicate to the requester any firm bid or offer pertaining to the same instrument resting on any of the SEF's order books. In addition, the SEF must provide the requester with the ability to execute against such firm resting bids or offers along with any responsive orders. Finally, the SEF must ensure that its trading protocols provide each of its market participants with equal priority in receiving requests for quotes and in transmitting and displaying for execution responsive orders.

Section 37.9(b) establishes a time-delay requirement for a Required Transaction on an order book. Under the rule, a SEF must require that a broker or dealer who seeks to either execute against its customer's order or to execute two of its customers' orders against each other through the SEF's order book (following some form of pre-arrangement or pre-negotiation of such orders) be subject to at least a 15-second time delay between the entry of those two orders into the order book, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction, whether for the broker's or dealer's own account or for the second customer, is submitted for execution.[99]

Paragraphs (a) through (c) of proposed Rule 815 are modelled on paragraphs (a) through (c) of § 37.9. Proposed Rule 815(a)(1), based on § 37.9(a)(1), would define ''Required Transaction'' as ''any transaction involving a security-based swap that is subject to the trade execution requirement in section 3C(h) of the Act.'' Proposed Rule 815(a)(2), based on § 37.9(a)(2), would specify execution methods for Required Transactions. Proposed Rule 815(a)(3), based on § 37.9(a)(3), would define an RFQ system as ''a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all such market participants may respond'' and specify other requirements for an RFQ system to be recognized as such under the rule. The three market participants could not be affiliates of or controlled by the requester and shall not be affiliates of or controlled by each other. Also, an SBSEF that offers an RFQ system in connection with a Required Transaction would be required, at the same time that the requester receives the first responsive bid or offer, to communicate to the requester any firm bid or offer pertaining to the same SBS resting on any of the SBSEF's order books. In addition, the SBSEF would be required to provide the requester with the ability to execute against such firm resting bids or offers along with any responsive orders. Finally, the SBSEF would be required to ensure that its trading protocols provide each of its members with equal priority in receiving requests for quotes and in transmitting and displaying for execution responsive orders.

Paragraph (b) of proposed Rule 815 is modelled on § 37.9(b) and would provide for a time delay requirement for Required Transactions on an order book. Section 37.9(b) recognizes that there are situations where a broker or dealer might seek to trade against a customer order (a ''facilitation cross'') or cross two customer orders (a ''customer cross'') where the product being traded is subject to mandatory trade execution. Under § 37.9(b), the broker or dealer must expose customer orders on the SEF order book for a required minimum period so that other market participants have the opportunity to offer a better price than the broker or dealer had intended for the cross. Proposed Rule 815(b) closely follows the order-handling requirements of § 37.9(b) for facilitation and customer crosses that are Required Transactions.

The Commission preliminarily believes that the CFTC's rules relating to Required Transactions are reasonably designed to promote price competition in products that are subject to the trade execution requirement. The Commission recognizes that, when considering rules for SBS that are subject to mandatory clearing and mandatory trade execution, additional or different criteria could plausibly achieve the goal of promoting price competition. It is debatable, for example, whether slightly different standards—such as RFQ-to-4 or RFQ-to-2 in lieu of RFQ-to-3, or a 30-second book-exposure requirement instead of 15 seconds—might promote these ends more effectively. However, the Commission's determination to propose rules that are closely modelled on those in § 37.9 reflects the baseline established by the CFTC rules. Most if not all SBSEFs will be dually registered with the CFTC as SEFs, and most if not all market participants in the SBS market will likely be participants in the swap market. The Commission appreciates that different or additive requirements—particularly for the key concept of a ''Required Transaction''—could introduce complexity and confusion if one set of trading protocols applied to Required Transactions for SBS but different protocols—ones that have been understood and utilized for many years—applied to Required Transactions for swap transactions.

Under both the CEA and SEA, Core Principle 2 requires a SEF/SBSEF to specify trading procedures to be used in entering and executing orders on the facility, including block trades.[100] The CFTC implements this provision by excepting block trades from the required execution methods in § 37.9(a)(2). That rule cross-references § 43.2, which defines the term ''block trade'' for purposes of public dissemination of swap transactions.

The Commission preliminarily believes that it should adopt an approach to block trades in Regulation SE that closely aligns with the approach taken by the CFTC. The purpose of having a block exception to the required methods of execution is to balance the promotion of price competition and all-to-all trading against the potential costs to market participants who wish to trade large orders. Forcing a market participant who seeks liquidity to expose a large order to a SEF/SBSEF order book or to utilize RFQ-to-3 could cause the market to move against the liquidity requester before it can obtain an execution. Under the CFTC's rules, a block trade in a product that is subject to mandatory trade execution may be traded on-SEF using flexible means of execution on the SEF's non-order-book trading system or platform, or away from a SEF's trading system or platform,

[97] Section 37.9(a)(2)(i)(A) defines ''order book'' by cross-referencing to § 37.3(a)(3) for a definition of ''order book,'' which in turn relies on cross-references to other provisions of the CEA for the embedded terms ''trading facility'' and ''electronic trading facility.''

[98] Section 37.9(a)(3) defines ''request for quote system'' as a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all such market participants may respond. § 37.9(a)(3) further provides that, to meet the definition, the three market participants shall not be affiliates or controlled by the requester, and shall not be affiliates of or controlled by each other.

[99] Section 37.9(b) permits a SEF to adjust the time-delay requirement to something other than 15 seconds, based on a swap's liquidity or other product-specific considerations. However, any such adjustment must still be for a sufficient length so that an order is exposed to the market and other market participants have a meaningful opportunity to execute against it.

[100] 15 U.S.C. 78c–4(d)(2)(C); 7 U.S.C. 7b–3(f)(2)(C).

provided that it is executed pursuant to the SEF's rules and procedures.

Proposed Rule 815(a)(2) would exclude block trades from the required execution methods using language closely modelled on § 37.9(a)(2). The Commission also preliminary believes that it should align the definition of ''block trade'' in proposed Regulation SE as closely as possible to the CFTC's definition. Therefore, the proposed definition—located in proposed Rule 802 of Regulation SE—is based on the four-pronged definition found in § 43.2(a), but with one modification. The third prong of the CFTC definition characterizes a block trade in a particular swap as having ''a notional or principal amount at or above the appropriate minimum block size applicable to such swap.'' Appendix F to the CFTC's part 43 divides swap asset classes into a number of categories, and sets forth a minimum block size threshold to each category. SBS are not within the CFTC's jurisdiction, so the CFTC has never considered what an appropriate minimum block size threshold would be for any SBS asset class. In this respect, there is no threshold for the SEC to harmonize with, so the Commission is proposing to establish a threshold tailored specifically for the SBS market.

For the third prong of the ''block trade'' definition, the Commission is proposing that the SBS is based on a single credit instrument (or issuer of credit instruments) or a narrow-based index of credit instruments (or issuers of credit instruments) having a notional size of $5 million or greater. The Commission previously employed a $5 million block threshold for credit SBS as a condition to one prong of its no-action statement regarding Regulation SBSR.[101] In imposing that condition, the Commission noted that the Financial Industry Regulatory Authority (''FINRA'') applies a $5 million cap when disseminating transaction reports of economically similar cash debt securities.[102]

The proposed definition of ''block trade'' in Rule 802 does not include any equity SBS. In this regard, the Commission's approach follows the CFTC's; appendix F to the CFTC's part 43 does not include a block threshold for any type of equity swap. Accordingly, no equity swap may qualify for the exception to required means of execution for block trades provided in § 37.9(a)(2), and no equity SBS could qualify for the exception to required means of execution for block trades in proposed Rule 815(a)(2).

Paragraphs (d) and (e) of § 37.9 provide additional exceptions that allow for flexible methods of execution for what would otherwise be Required Transactions. The Commission would include similar exceptions in proposed Rules 815(d) and (e).

Paragraph (d) of § 37.9 allows for flexible methods of execution for package transactions that meet certain enumerated criteria. § 37.9(d)(1) defines ''package transaction'' as two or more component transactions executed between two or more counterparties where at least one component is a Required Transaction, execution of each component is contingent upon the execution of all other components, and the component transactions are priced or quoted together as one economic transaction with simultaneous (or near-simultaneous) execution of all components. Section 37.9(d)(2) provides that a Required Transaction that is executed as a component of a package transaction that includes a component swap that is subject exclusively to the CFTC's jurisdiction, but is not subject to mandatory clearing, may be executed on a SEF using any method of execution as if it were a Permitted Transaction. Section 37.9(d)(3) provides that a Required Transaction that is executed as a component of a package transaction that includes a component that is not a swap may be executed on a SEF using any method of execution as if it were a Permitted Transaction. Section 37.9(d)(3) further states that this general exception, which allows flexible means of execution for certain package transactions, shall not apply to a Required Transaction that is executed as a component of a package transaction in which all other non-swap components are U.S. Treasury securities; a Required Transaction that is executed as a component of a package transaction in which all other non-swap components are contracts for the purchase or sale of a commodity for future delivery; a Required Transaction that is executed as a component of a package transaction in which all other non-swap components are agency mortgage-backed securities; or a Required Transaction that is executed as a component of a package transaction that includes a component transaction that is the issuance of a bond in a primary market.

Proposed Rule 815(d) is closely modelled on § 37.9(d) and is designed to balance the goal of promoting transparency in the SBS market through required methods of execution against the market efficiency of allowing multiple instruments to trade as a package using flexible methods of execution.[103] A rule that was too lenient could subvert the goal of promoting transparency and competition through all-to-all trading, while a rule that was too strict could cause market participants to break the package into its individual components, thereby increasing transaction costs and reducing the economic purpose and efficiency of the package transaction. The Commission preliminarily believes that the CFTC has struck an appropriate balance between these competing policy goals in § 37.9(d), and is therefore proposing to align its own rule closely with the CFTC's. The Commission recognizes, however, that the kinds of packages described in § 37.9(d)(3) might be used only in the swap market and might not be utilized in the SBS market. The Commission seeks comment on that matter below.

Section 37.9(e) sets out procedures for resolution of operational and clerical error trades, which could be for swaps that otherwise would be subject to required means of execution. Section 37.9(e)(1) defines the terms ''correcting trade,'' ''error trade,'' and ''offsetting trade'' that are used in the rule. Section 37.9(e)(2) requires a SEF to maintain rules and procedures that facilitate the resolution of error trades and sets forth certain requirements designed to promote resolution in a fair, transparent, and consistent manner. As their names suggest, these types of trades are necessary to reverse errors. They are not conducted for the purpose of competitive price discovery and thus

[101] *See* SEA Release No. 87780 (December 18, 2019), 85 FR 6270, 6347 (February 4, 2020) (''ANE Adopting Release and No-Action Statement'') (stating, in relevant part, that there would not be a basis for a Commission enforcement action if ''a registered SDR does not disseminate an SBS transaction in a manner consistent with Rule 902 [of Regulation SBSR] but instead disseminates (or does not disseminate), the SBS transaction in a manner consistent with part 43 of the CFTC's swap reporting rules in force at the time of the transaction, provided that for an SBS based on a single credit instrument or a narrow-based index of credit instruments having a notional size of $5 million or greater, the registered SDR that receives the report of the SBS transaction does not utilize any capping or bucketing convention under part 43 of the CFTC's swap reporting rules but instead disseminates a capped size of $5 million (*e.g.,* '$5MM+' or similar) in lieu of the true notional size'').

[102] *See id.* at n. 768 (citing FINRA Regulatory Notice 12–39, available at *https://www.finra.org/rules-guidance/notices/12-39*).

[103] To the extent that counterparties may be facilitating a package transaction that involves a ''swap,'' as defined in section 1(a)(47) of the CEA, 7 U.S.C. 1a(47), or any contract for the purchase or sale of a commodity for future delivery (or option on such a contract), or any component agreement, contract, or transaction over which the Commission does not have exclusive jurisdiction, the Commission does not opine on whether such activity complies with other applicable law and regulations.

the pre-trade transparency goals for SEF/SBSEF trading are not implicated.

Proposed Rule 815(e) is modelled on § 37.9(e), although definitions of the terms ''correcting trade,'' ''error trade,'' and ''offsetting trade'' would be included in proposed Rule 802 rather than in proposed Rule 815(e).[104] A fair and orderly market needs rules to address error trades when they occur, and such rules should be fair, transparent, and consistent. The market might need to make correcting trades or offsetting trades to reverse the effect of the original error trade. The CFTC's rules for addressing error trades are well articulated and well understood by the market, so the Commission preliminarily believes that they serve as an appropriate model for the Commission's rules. Furthermore, because most if not all SBSEFs also will be registered with the CFTC as SEFs, close harmonization in this regard would allow dually registered entities to employ the same procedures for addressing error trades, whether they arise in the context of swap trading or SBS trading.

Section 37.9(f) addresses counterparty anonymity and is widely referred to as the prohibition on ''post-trade name give-up.'' Section 37.9(f) generally prohibits any person, directly or indirectly (including through a third-party service provider), from disclosing the identity of a counterparty to a swap that is executed anonymously on a SEF and intended to be cleared, and requires the SEF to establish and maintain rules to that effect. Section 37.9(f) provides that ''executed anonymously'' as used in the rule includes a swap that is pre-arranged or pre-negotiated anonymously, including by a SEF participant. Finally, § 37.9(f) provides that, where a package transaction includes a component swap that is not intended to be cleared, disclosing the identity of a counterparty would not violate § 37.9.

Proposed Rule 815(f) is modelled on § 37.9(f). The Commission preliminarily agrees with the CFTC that prohibiting post-trade name give-up is reasonably necessary to facilitate and promote trading on SEFs.[105] The practice of requiring disclosure of one counterparty's name to the other counterparty (*i.e.,* ''name give-up'') increases the risk of information leakage and can deter participation by liquidity seekers on SEFs and SBSEFs. The Commission preliminarily believes, like the CFTC, that prohibiting post-trade name give-up will promote pre-trade price transparency by encouraging a greater number, and a more diverse set, of market participants to anonymously post bids and offers on regulated markets. Therefore, the Commission preliminarily that it should incorporate the same prohibition into Regulation SE.

The Commission seeks comment on the following:

72. Do you believe in general that the CFTC's concepts of ''Required Transactions'' and ''Permitted Transactions'' should be incorporated into proposed Regulation SE? Why or why not?

73. In particular, do you believe that the execution methods set forth in § 37.9 for Required Transactions are appropriate for SBSEFs and the SBS market? Why or why not? Do you observe differences between swap and SBS products that warrant different or additional criteria for Required Transactions on SBSEFs? If so, please describe those differences, and suggest and justify any different execution methods for Required Transactions in SBS that you believe appropriate.

74. Do you believe that proposed Rule 815 should harmonize with the CFTC rule for handling facilitation and customer crosses in products subject to the trade execution requirement? Why or why not? If not, please suggest and justify any different order-handling requirements that you believe appropriate.

75. Do you agree in general with excepting block trades from the required methods of execution? Why or why not?

76. Do you agree in general with the Commission's proposed approach of adapting the CFTC definition of ''block trade'' from § 43.2 for SBSEFs? Why or why not?

77. Do you agree in particular with the $5 million prong of the SEC's proposed definition of ''block trade''? Why or why not? Do you believe that a threshold other than $5 million would be appropriate? If so, what numerical threshold and why? Do you believe that there should be different thresholds for different asset classes (or sub-asset classes)? If so, please discuss.

78. Do you believe in general that the Commission, like the CFTC in § 37.9(d), should allow for flexible means of execution for an SBS subject to the trade execution requirement when it is part of a package trade? Why or why not?

79. If so, do you believe that the exceptions to required methods of execution for package transactions set forth in proposed Rule 815(d) are appropriate? Why or why not? Are there aspects of the CFTC's criteria that are not relevant for the SBS market and should be omitted? If so, which provision(s) and why? Are there different types of packages that involve SBS that are not prevalent in the swap market that should be incorporated into the SEC's exceptions? If so, please describe these packages and suggest an appropriate way to characterize them in Rule 815(d).

80. Do you agree with how the Commission is proposing to harmonize with the § 37.9(d)(3)'s ''exceptions to the exception'' for package trades in proposed Rule 815(d)(3)? Why or why not? Are the kinds of packages described in § 37.9(d)(3) unique to the swap market? If there are other types of package transactions involving SBS that you believe should be subject to required means of execution despite allowing other types of packages to use flexible means of execution, please describe these types of packages and explain why you believe they should nevertheless be subject to required means of execution.

81. Do you believe in general that the Commission, like the CFTC in § 37.9(e), should allow for flexible means of execution for products that otherwise would be subject to the trade execution requirement when an SBSEF is performing a correcting, error, or offsetting trade? Why or why not?

82. If so, do you believe that the SEC's proposed definitions for these terms, which are closely modelled on the CFTC's definitions, are appropriate? Why or why not? If not, what alternative definition(s) would you suggest, and why?

83. Do you agree in general that the SEC rules for SBSEFs, like the CFTC rules for SEFs, should prohibit post-trade name give-up? Why or why not? If so, do you agree with the manner in which the Commission is proposing to implement it (*i.e.,* close harmonization with § 37.9(f))? Why or why not?

[104] *See* proposed Rule 802 (defining ''correcting trade'' as a trade executed and submitted for clearing to a registered clearing agency with the same terms and conditions as an error trade other than any corrections to any operational or clerical error and the time of execution; defining ''error trade'' as any trade executed on or subject to the rules of an SBSEF that contains an operational or clerical error; and defining ''offsetting trade'' as a trade executed and submitted for clearing to a registered clearing agency with terms and conditions that economically reverse an error trade that was accepted for clearing). These proposed definitions are modelled on the definitions of the same terms in § 37.9(e)(1).

[105] CFTC, *Post Trade Name Give-Up on Swap Execution Facilities,* 85 FR 44693, 44695 (July 24, 2020).

F. Rule 816—Trade Execution Requirement and Exemptions Therefrom

Section 3C of the SEA [106] sets out a procedure whereby an SBS becomes subject to mandatory clearing. Section 3C(h) of the SEA provides that, if a transaction involving an SBS is subject to the mandatory clearing requirement, the counterparties shall execute the transaction on an exchange, on an SBSEF registered under section 3D of the SEA, or on an SBSEF that is exempt from registration under section 3D(e) of the SEA, unless no exchange or SBSEF makes the SBS available to trade or if the SBS transaction is subject to an exception from the clearing requirement under section 3C(g) of the SEA. This obligation under section 3C(h) is commonly referred to as the ''trade execution requirement.'' Proposed Rule 816 of Regulation SE would establish procedures for an SBSEF to make an SBS available to trade (assuming it is also subject to the clearing requirement), thereby activating the trade execution requirement with respect to that SBS. Proposed Rule 816 also would include three proposed exemptions from the trade execution requirement.

1. Process for an SBSEF To Make an SBS Product Available To Trade

Paragraphs (a) through (d) of proposed Rule 816 are modelled on § 37.10 of the CFTC's rules and would establish a process whereby an SBS product is ''made available to trade'' (''MAT'') by an SBSEF. An SBSEF may list an SBS that is subject to mandatory clearing, but listing the product does not by itself subject the product to the trade execution requirement in section 3C(h) of the SEA. Only if a product that is subject to mandatory clearing is listed *and* MAT would the SBS then become subject to the trade execution requirement. A MAT determination would have to be made and filed by an SBSEF pursuant to proposed Rule 816 to trigger the trade execution requirement, similar to the MAT process of § 37.10.

Paragraph (a)(1) of proposed Rule 816, like § 37.10(a)(1), would provide that an SBSEF that makes an SBS available to trade in accordance with paragraph (b) of this section, must submit to the Commission its determination with respect to such SBS as a rule, pursuant to the procedures under proposed Rule 806 or 807. Paragraph (a)(2), modelled on § 37.10(a)(2), would provide that an SBSEF that makes an SBS available to trade must demonstrate that it lists or offers that SBS for trading on its trading system or platform.

Paragraph (b) of proposed Rule 816 would set out the factors that an SBSEF must consider when making a MAT determination for an SBS product. Proposed Rule 816(b) would incorporate the same six factors enumerated in § 37.10(b): (1) Whether there are ready and willing buyers and sellers; (2) The frequency or size of transactions; (3) The trading volume; (4) The number and types of market participants; (5) The bid/ask spread; and (6) The usual number of resting firm or indicative bids and offers.

Paragraph (c) of proposed Rule 816, modelled on § 37.10(c), would provide that, upon a determination that an SBS is MAT on an SBSEF or SBS exchange,[107] all other SBSEFs and SBS exchanges shall comply with the requirements of section 3C(h) of the SEA in listing or offering such SBS for trading. Paragraph (d) of proposed Rule 816, like § 37.10(d), would provide that the Commission may issue a determination that an SBS is no longer MAT upon determining that no SBSEF or SBS exchange lists such SBS for trading.

The Commission preliminarily believes that it is appropriate for Regulation SE to establish a mechanism whereby an SBSEF can MAT an SBS product, and that this mechanism should align with the CFTC's as closely as possible. The CFTC's procedures are well articulated and well understood by SEFs, so the Commission preliminarily believes that closely harmonizing with these procedures would yield comparable regulatory benefits while minimizing burdens on SBSEFs. In particular, the Commission preliminarily believes that the criteria for MAT consideration are equally applicable to the SEF and SBSEF markets, and thus the Commission is not proposing any different or additional criteria that would have to be considered by an SBSEF when it wishes to MAT an SBS product.

The Commission seeks comment on the following:

84. Do you believe in general that Regulation SE should establish a process whereby an SBSEF can MAT an SBS product that harmonizes closely with § 37.10? Why or why not?

85. In particular, do you object to any of the specific language choices made to adapt § 37.10 into proposed Rules 816(a) to (d)? If so, what alternative language would you suggest?

86. Are there any provisions of § 37.10 that are adapted into proposed Rules 816(a) to (d) that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

2. Exemptions From Trade Execution Requirement

Paragraph (e) of proposed Rule 816 has no analog in § 37.10, but instead is adapted from § 36.1, which sets out certain exemptions from the trade execution requirement. The exemptions incorporated into § 36.1 result from the CFTC's many years of experience in administering the CEA's trade execution requirement. The Commission preliminarily believes that it should borrow from the CFTC's experience and incorporate the same exemptions into Regulation SE.

Paragraph (e)(1) of proposed Rule 816, modelled on § 36.1(a), would provide that an SBS transaction that is executed as a component of a package transaction that also includes a component transaction that is the issuance of a bond in a primary market is exempt from the trade execution requirement in section 3C(h) of the SEA. In addition, paragraph (e)(1), like § 36.1(a), would provide that, for purposes of paragraph (e), a package transaction would consist of two or more component transactions executed between two or more counterparties where at least one component transaction is subject to the trade execution requirement in section 3C(h) of the SEA; execution of each component transaction is contingent upon the execution of all other component transactions; and the component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

For the same reasons identified by the CFTC,[108] the Commission, pursuant to section 36(a)(1) of the SEA,[109] preliminarily believes that it is necessary or appropriate in the public interest, and is consistent with the

[106] 15 U.S.C. 78c–3.

[107] An SBS exchange, like all national securities exchanges, must submit any rule change—including a rule change to list a new derivative securities product and/or to MAT an SBS product—pursuant to SEA Rule 19b–4, 17 CFR 240.19b–4. The Commission is not proposing to establish a new procedure for SBS exchanges to list or MAT SBS products.

[108] *See* CFTC, *Swap Execution Facility Requirements,* 85 FR 82313, 82320 (December 18, 2020).

[109] 15 U.S.C. 78mm(a)(1).

protection of investors, to exempt SBS from the trade execution requirement in section 3C(h) of the SEA if the criteria in proposed Rule 816(e)(1) are met.

Section 36.1(b) provides that section 2(h)(8) of the CEA does not apply to a swap transaction that qualifies for the exception under section 2(h)(7) of the CEA or an exception or exemption under part 50 of the CFTC's rules, and for which the associated requirements are met.[110] The Commission is proposing to adapt § 36.1(b) as paragraph (e)(2) of proposed Rule 816, to provide that section 3C(h) of the SEA does not apply to an SBS transaction that qualifies for an exception [111] under section 3C(g) of the SEA, or any exemption from the clearing requirement that is granted by the Commission, for which the associated requirements are met.[112] Unlike the CFTC, the Commission does not have a specific rule to cite to regarding exemptions from the clearing requirement, so proposed Rule 816(e)(2) would refer only generally to such exemptions.

When adopting § 36.1(b), the CFTC found that exempting swaps that qualified for an exemption from or exception to the clearing requirement was consistent with its authority under section 4(c) of the CEA.[113] The CFTC also noted Congress's intent to link the clearing requirement with the trade execution requirement, so that a swap that was exempted or excepted from the former also should be exempted from the latter.[114] For the same reasons identified by the CFTC, the Commission, pursuant to section 36(a)(1) of the SEA, preliminarily believes that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to exempt an SBS from the trade execution requirement in section 3C(h) of the SEA if the SBS qualifies for an exception under section 3C(g) of the SEA, or benefits from any exemption from the clearing requirement that is granted by the Commission, for which the associated requirements are met.

Section 36.1(c) provides that section 2(h)(8) of the CEA does not apply to a swap transaction that is executed between counterparties that have eligible affiliate counterparty status pursuant to paragraph (a) of § 50.52 of the CFTC's rules, which provides an exception from the clearing requirement for inter-affiliate swaps, subject to conditions. Counterparties to a swap that have eligible affiliate counterparty status may rely on the § 36.1(c) even if they clear the swap transaction. The Commission is proposing to adapt § 36.1(c) as paragraph (e)(3) of proposed Rule 816 to provide that section 3C(h) of the SEA does not apply to an SBS transaction that is executed between counterparties that qualify as ''eligible affiliate counterparties.'' Since the Commission does not have an equivalent to § 50.52 to reference, the Commission is proposing instead to define the term ''eligible affiliate counterparties'' directly in proposed Rule 816(e)(3).

Counterparties would be ''eligible affiliate counterparties'' for purposes of proposed Rule 816(e)(3) if: (i) One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, and the counterparty that holds the majority interest in the other counterparty reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned counterparty; or (ii) a third party, directly or indirectly, holds a majority ownership interest in both counterparties, and the third party reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of both of the counterparties. In addition, for purposes of proposed Rule 816(e)(3), a counterparty or third party directly or indirectly would hold a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership. These definitions closely are modelled on the equivalent definitions used in § 50.52, which are incorporated into § 36.1(c).

When adopting § 36.1(c), the CFTC noted that it was codifying previously issued no-action relief.[115] The CFTC also stated that these transactions are not intended to be arm's-length, market-facing, or competitively executed under any circumstance, irrespective of the type of swap involved. Therefore, these transactions would not contribute to the price discovery process if executed on a SEF or DCM.[116] The CFTC recognized the efficiency benefits associated with entering into inter-affiliate swaps via internal processes and acknowledged that applying the trade execution requirement to such transactions could inhibit affiliated counterparties from efficiently executing these types of transactions for risk management, operational, and accounting purposes.[117] The CFTC concluded, therefore, that—as with the exemptions set forth in § 36.1(a) and (b)—granting an exemption from the trade execution requirement for swap transactions that are executed between counterparties that have eligible affiliate counterparty status was consistent with its exemptive authority under the CEA, regardless of whether the swap is submitted to clearing.[118] For the same reasons identified by the CFTC, the Commission, pursuant to section 36(a)(1) of the SEA, preliminarily believes that it is appropriate to exempt from the trade execution requirement an SBS that is executed between counterparties that qualify as eligible affiliate counterparties, even if the counterparties clear the SBS transaction. The Commission also preliminarily believes that it is appropriate in the public interest to adapt into proposed Rule 816 the definition of ''eligible affiliate counterparties'' used in the CFTC's rules because this term is generally well understood by market participants. Furthermore, the Commission preliminarily believes that market participants should be permitted to apply the same standard for determining whether an inter-affiliate swap or SBS will be exempt from the trade execution requirement.

The Commission seeks comment on the following:

87. Do you believe in general that Regulation SE should incorporate similar exemptions from the trade

[110] By its terms, section 2(h)(8) of the CEA provides that the trade execution requirement does not apply to swaps that are excepted from the clearing requirement pursuant to section 2(h)(7) of the CEA. However, when adopting § 36.1(b), the CFTC noted that it also has adopted exemptions from the clearing requirement pursuant to other statutory authority (*i.e.,* its exemptive authority under CEA section 4(c)). *See* CFTC, *Exemptions From Swap Trade Execution Requirement,* 86 FR 8993, 8995 (February 11, 2021) (''CFTC Swap Trade Execution Exemptions Release'') (discussing exemptions relating to cooperatives and inter-affiliate swaps).

[111] The Commission notes that section 3C(g) of the SEA is entitled ''*Exceptions,*'' not ''*Exemptions.*''

[112] As with section 2(h)(8) of the CEA, section 3C(h) of the SEA provides that the trade execution requirement does not apply to SBS that are excepted from the clearing requirement pursuant to section 3C(g) of the SEA. However, the Commission could, like the CFTC, grant exemptions from the clearing requirement pursuant to other statutory authority, such as section 36 of the SEA.

[113] *See* CFTC, Swap Trade Execution Exemptions Release, 86 FR at 8996.

[114] *See id.*

[115] *See id.* at 8997.

[116] *See id.*

[117] *See id.*

[118] *See id.* at 8998.

execution requirement that the CFTC provides in § 36.1? Why or why not?

88. In particular, do you object to any of the specific language choices made to adapt § 36.1 into proposed Rule 816(e)? If so, what alternative language would you suggest?

89. Do you believe that the exemption in proposed Rule 816(e)(1) is even necessary? In other words, do market participants engage in package transactions involving SBS and new issuance bonds of the type described in § 36.1(a), or do these types of packages involve only IRS and thus would not be applicable to the SBS market?

90. Are there any other provisions of § 36.1 that are adapted into proposed Rule 816(e) that you believe would be inappropriate, or would not create any benefit, in a Commission rule applying to SBSEFs? If so, please identify any such provision, explain why it would be inappropriate or unnecessary for SBSEFs, and what economic benefit that you believe would result from omitting it from the Commission's final rule.

91. Are there any types of SBS that you believe *should* be exempt from the trade execution requirement that have no analog in the swap market and thus are not reflected in the CFTC's list of exemptions to the CEA trade execution requirement in § 36.1? If so, please describe and justify any potential exemptions that you believe should be added to proposed Rule 816(e).

G. Rule 817—Trade Execution Compliance Schedule

Proposed Rule 817 is modelled on § 37.12 of the CFTC's rules, which is designed to inform market participants of the precise date on which the trade execution requirement for a particular product commences. Section 37.12(a) provides that a swap becomes subject to the trade execution requirement upon the later of the applicable deadline established under the compliance schedule provided under § 50.25(b) or 30 days after the available-to-trade determination submission or certification for that swap is, respectively, deemed approved under § 40.5 or deemed certified under § 40.6.

The Commission does not have a close equivalent to § 50.25(b). However, Rule 3Ca–1 under the SEA [119] provides that the Commission may determine, following a submission from a clearing agency, that an SBS (or a group, category, type, or class of SBS) must be cleared. This determination could follow a stay of the clearing requirement for additional review. Accordingly, paragraph (a) of proposed Rule 817 would provide that an SBS transaction shall be subject to the requirements of section 3C(h) of the SEA upon the later of (1) a determination by the Commission that the SBS is required to be cleared as set forth in section 3C(a) or any later compliance date that the Commission may establish as a term or condition of such determination or following a stay and review of such determination pursuant to section 3C(c) of the SEA and Rule 3Ca–1 thereunder; and (2) 30 days after the available-to-trade determination submission or certification for that SBS is, respectively, deemed approved under Rule 806 or deemed certified under Rule 807.

Paragraph (b) of proposed Rule 817, modelled on § 37.12(b), would provide that a counterparty may voluntarily comply with the trade execution requirement sooner than required by paragraph (a).

The Commission seeks comment on the following:

92. Do you believe in general that Regulation SE should include a trade execution compliance schedule similar to that in § 37.12? Why or why not?

93. In particular, do you agree with the language that the Commission is proposing to adapt from § 37.12 into Rule 817? If not, what alternative language would you suggest, and why?

VIII. Implementation of Core Principles

Section 3D(d) of the SEA [120] sets forth 14 Core Principles with which SBSEFs must comply. These provisions, with one exception, correspond to the 15 Core Principles for SEFs set forth in section 5h(f) of the CEA.[121]

Core principle title	CEA No.	SEA No.
Compliance with Core Principles	1	1
Compliance with Rules	2	2
(Security-Based) Swaps Not Readily Susceptible to Manipulation	3	3
Monitoring of Trading and Trade Processing	4	4
Ability to Obtain Information	5	5
Position Limits or Accountability	6	n/a
Financial Integrity of Transactions	7	6
Emergency Authority	8	7
Timely Publication of Trading Information	9	8
Recordkeeping and Reporting	10	9
Antitrust Considerations	11	10
Conflicts of Interest	12	11
Financial Resources	13	12
System Safeguards	14	13
Designation of Chief Compliance Officer	15	14

The Commission preliminarily believes generally that it would be appropriate to closely harmonize with the CFTC rules that implement the SEF Core Principles, although there are some instances where close harmonization is not practicable. Where there are substantive differences between an existing CFTC rule and an SEC-proposed rule, the Commission will note and discuss the proposed difference and seek comment. The Commission also will note when there is not, or at least not intended to be, a difference between the SEC rule and the analogous CFTC rule.

Part 37 of the CFTC's rules includes an appendix B, setting forth ''Guidance on, and Acceptable Practices in, Compliance with Core Principles.'' The introduction to appendix B provides that the guidance for the Core Principle is illustrative only and ''is not intended to be used as a mandatory checklist.''

[119] 17 CFR 240.3Ca–1.

[120] 15 U.S.C. 78c–4(d).

[121] *Compare* 7 U.S.C. 7b–3(f) (enumerating 15 Core Principles for SEFs) *with* 15 U.S.C. 78c–4(d) (enumerating 14 Core Principles for SBSEFs). CEA Core Principle 6 for SEFs (Position Limits or Accountability) has no analog in the SEA, so the numbering of the subsequent Core Principles between the two statutes differs by one.

Where the CFTC includes guidance and/or accepted practices pertaining to a Core Principle for SEFs, the Commission will explain how (if at all) the Commission proposes to incorporate the substance of these statements into Regulation SE.

A. Rule 818—Core Principle 1—Compliance With Core Principles

Core Principle 1 [122] requires an SBSEF, to be registered and maintain registration as an SBSEF, to comply with the Core Principles and any requirement that the Commission may impose by rule or regulation. Core Principle 1 also provides that an SBSEF shall have reasonable discretion in establishing the manner in which it complies with the Core Principles. CEA Core Principle 1 [123] is substantively identical.

The CFTC implemented Core Principle 1 for SEFs in subpart B of part 37. Section 37.100 repeats the statutory text of SEF Core Principle 1. There are no other rules in subpart B. Proposed Rule 818 also would repeat the statutory text of the Core Principle.

The Commission seeks comment on the following:

94. Do you agree with how the Commission is proposing to implement SEA Core Principle 1? Why or why not?

B. Rule 819—Core Principle 2—Compliance With Rules

Core Principle 2 [124] requires an SBSEF to establish and enforce compliance with any rule that is established by the SBSEF, including the terms and conditions of the SBS that it trades or processes, and any limitation on access to the SBSEF. It further requires the SBSEF to establish and enforce trading, trade processing, and participation rules that will deter abuses, and to have the capacity to detect, investigate, and enforce those rules, including the means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred. Finally, Core Principle 2 requires an SBSEF to establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades. Core Principle 2 for SEFs [125] is substantively identical, except that it includes an additional paragraph requiring a SEF to provide in its rules that, when a swap dealer or major swap participant enters into or facilitates a swap that is subject to the mandatory clearing requirement, the swap dealer or major swap participant shall be responsible for compliance with the trade execution requirement.[126]

1. Rules Modelled on Subpart C of Part 37

The CFTC implemented Core Principle 2 for SEFs in subpart C of part 37. Section 37.200 of subpart C repeats the statutory text of CEA Core Principle 2, including the paragraph not present in SEA Core Principle 2 pertaining to swaps subject to the mandatory clearing requirement. Section 37.201 requires a SEF to establish rules governing the operation of the facility, including, but not limited to, rules specifying trading procedures to be followed by members and market participants when entering and executing orders traded or posted on the SEF. Section 37.201 also requires a SEF to establish and impartially enforce compliance with the SEF's rules, including, but not limited to the terms and conditions of any swaps traded or processed on or through the SEF, access to the SEF, trade practice rules, audit trail requirements, disciplinary rules, and mandatory trading requirements.

Section 37.202 imposes access requirements on SEFs. Section 37.202(a) requires a SEF to provide any eligible contract participant (''ECP'') and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays. Furthermore, the SEF must have criteria governing access that are impartial, transparent, and applied in a fair and nondiscriminatory manner; procedures whereby ECPs provide the SEF with written or electronic confirmation of their status as ECPs before obtaining access; and comparable fee structures for ECPs and independent software vendors receiving comparable access to, or services from, the SEF. Section 37.202(b) requires a SEF, before granting any ECP access to its facilities, to require that the ECP consent to its jurisdiction. Section 37.202(c) requires the SEF to establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar access to the SEF, including when such decisions are made as part of a disciplinary or emergency action taken by the SEF.

Section 37.203 requires a SEF to establish and enforce trading, trade processing, and participation rules that will deter abuses and to have the capacity to detect, investigate, and enforce those rules. Section 37.203 includes lengthy and detailed provisions relating to that goal. Section 37.203(a) requires a SEF to prohibit, among other things, front-running, wash trading, pre-arranged trading (except for block trades), fraudulent trading, money passes, and any other trading practices that the SEF deems to be abusive. Section 37.203(b) requires the SEF to have arrangements and resources to collect information and documents on both a routine and non-routine basis, including the authority to examine books and records kept by the SEF's members. Section 37.203(c) requires the SEF to have sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. Section 37.203(d) requires the SEF to maintain an automated trade surveillance system capable of detecting potential trade practice violations, and imposes certain performance requirements on that system. Section 37.203(e) requires the SEF to conduct real-time market monitoring of all trading activity to identify any market or system anomalies, and to have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by system malfunctions. Section 37.203(f) requires the SEF to establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations and imposes various requirements relating to those investigations.

Section 37.204 allows a SEF to contract with a regulatory services provider to assist in complying with the supervisory functions noted above. Section 37.204 also imposes requirements on the SEF's relationship with the regulatory services provider and provides that the SEF must retain exclusive authority in all substantive decisions made by its regulatory service provider, including decisions involving the cancellation of trades, the issuance of disciplinary charges against members or market participants, and denials of access.

Section 37.205 requires a SEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the swap execution facility.

[122] Section 3D(d)(1) of the SEA, 15 U.S.C. 78c–4(d)(1).

[123] 7 U.S.C. 7b–3(f)(1).

[124] Section 3D(d)(2) of the SEA, 15 U.S.C. 78c–4(d)(2).

[125] 7 U.S.C. 7b–3(f)(2).

[126] *See* 7 U.S.C. 7b–3(f)(2)(D).

Section 37.205 includes lengthy and detailed provisions relating to the elements of an acceptable audit trail program, requirements for the transaction history database, electronic analysis capability, and safe storage capability. Furthermore, § 37.205 requires a SEF to enforce its audit trail and recordkeeping requirements through at least annual reviews of all members to verify their compliance, and to establish a program for effective enforcement of its audit trail and recordkeeping requirements. An effective program must identify members subject to the SEF's recordkeeping rules that have failed to maintain high levels of compliance with such requirements, and impose meaningful sanctions when deficiencies are found.

Section 37.206 requires a SEF to establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members or market participants that violate the SEF's rules. Accordingly, § 37.206 requires the SEF to establish disciplinary panels and procedures for disciplinary hearings that meet certain enumerated requirements, and provides that disciplinary sanctions imposed by the SEF shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other market participants.

Appendix B to part 37 includes detailed guidance to facilitate compliance with the rules that implement CEA Core Principle 2. The guidance addresses, for example, the use of warning letters by SEF compliance staff, potential conflicts of interest of the SEF's enforcement staff, the serving of notices of charges, a respondent's right to representation, providing sufficient time to answer a charge, consequences of a respondent admitting to or failing to deny a charge, right to a hearing, settlement offers, right of appeal and appeal procedures, final decisions, summary fines for violations of rules relating to the failure to timely submit accurate records required for clearing or verifying each day's transactions, and emergency disciplinary actions.

Proposed Rule 819 would implement Core Principle 2 and is adapted from subpart C of part 37. Paragraph (a) of proposed Rule 819, like § 37.200, would repeat the statutory text of Core Principle 2. Paragraph (b) is closely modelled on § 37.201 and would require an SBSEF to specify trading procedures (including for block trades, if offered) and to establish and impartially enforce compliance with the rules of the SBSEF.

Paragraph (c) of proposed Rule 819 is closely modelled on § 37.202 and would require an SBSEF to provide any ECP and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays. An SBSEF also would be required, among other things, to establish comparable fee structures for ECPs and independent software vendors receiving comparable access to, or services from the SBSEF, and to establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar an ECP's access to the SBSEF, including when a decision is made as part of a disciplinary or emergency action taken by the SBSEF.

Paragraph (d) of proposed Rule 819 is closely modelled on § 37.203. Paragraph (d)(1) of proposed Rule 819 would require an SBSEF to prohibit abusive trading practices generally, enumerating certain practices in particular.[127] Paragraph (d)(2) would require an SBSEF to have arrangements and resources for effective enforcement of its rules, including the authority to collect information and documents on both a routine and non-routine basis and to supervise its market to determine whether a rule violation has occurred. Paragraph (d)(3) would require an SBSEF to establish and maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. Paragraph (d)(4) would require an SBSEF to maintain an automated trade surveillance system that meets certain criteria. Paragraph (d)(5) would require real-time market monitoring of all trading activity on the SBSEF. The SBSEF also would be required to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its system(s) or platform(s) or errors in orders submitted by members. Paragraph (d)(6) is modelled on § 37.203(f), again using the same structure and rule text. Like § 37.203(f), proposed Rule 819(d)(6) would address investigations and investigation reports and includes provisions relating to procedures, timeliness, when a reasonable basis does or does not exist for finding a violation, and warning letters.[128]

Paragraph (e) of proposed Rule 819 is modelled on § 37.204 and would allow an SBSEF to contract with a regulatory services provider. If it does so, the SBSEF would have to ensure that such provider has the capacity and resources necessary to provide timely and effective regulatory services, retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf, hold regular meetings with the regulatory service provider, and conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. The SBSEF would at all times remain responsible for the performance of any regulatory services received and retain exclusive authority in all substantive decisions made by its regulatory service provider. Proposed Rule 819(e)(1) makes a slight modification to § 37.204(a)'s list of entities that can serve as a regulatory service provider.[129]

Paragraph (f) of proposed Rule 819 is modelled on § 37.205, using the same paragraph structure and rule text. Paragraph (f) would require an SBSEF to capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses and impose other requirements on the SBSEF's audit trail pertaining to the records that must be kept, electronic analysis capability, safe-storage capability, and enforcement of the audit trail requirements.

Paragraph (g) of proposed Rule 819 is based on § 37.206 and would generally track all of its rule text, but includes additional language derived from the

[127] To promote uniformity throughout proposed Regulation SE, the Commission believes that it is appropriate to denote all persons who have a right to participate in an SBSEF's market as ''members.'' Section 37.203(a) provides that a SEF shall prohibit abusive trading practices on its markets by members and market participants. The equivalent provision in proposed Rule 819(d) would provide that an SBSEF shall prohibit abusive trading practices on its markets by members (without reference to ''market participants'').

[128] Proposed Rule 819(d)(6)(v) would provide that the rules of an SBSEF may authorize its compliance staff to issue a warning letter to a person or entity under investigation or to recommend that a disciplinary panel take such an action, and that no more than one warning letter could be issued to the same person or entity found to have committed the same rule violation within a rolling 12-month period. The first provision is derived from the CFTC's guidance pertaining to CEA Core Principle 2 for SEFs; the second provision is from the text of § 37.203(f)(5).

[129] Under § 37.204(a), a regulatory services provider for a SEF can be a registered futures association, FINRA, or ''another registered entity.'' ''Registered entity'' is a term of art in the CEA that does not exist in the SEA. Therefore, the Commission is proposing instead that a regulatory services provider for an SBSEF can be a registered futures association (under section 17 of the CEA), a national securities exchange, a national securities association (which would include FINRA), or another SBSEF.

appendix B guidance that is interwoven throughout. In converting the guidance to proposed rule text, the Commission preliminarily believes that grouping conceptually related items together would yield the most coherent and readable ruleset, instead of incorporating the guidance into a stand-alone section of the rules. Accordingly, paragraph (g)(1)(i) of proposed Rule 819 is taken from § 37.206(a) and would require an SBSEF to establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the SBSEF. Paragraphs (g)(1)(ii) through (iv) are taken from the appendix B guidance and would provide, respectively, that:

- The enforcement staff of an SBSEF shall [130] not include members or other persons whose interests conflict with their enforcement duties.
- A member of the enforcement staff shall not operate under the direction or control of any person or persons with trading privileges at the SBSEF.
- The enforcement staff of an SBSEF may operate as part of the SBSEF's compliance department.

Paragraph (g)(2) of proposed Rule 819 is modelled on § 37.206(b) and would require an SBSEF to establish one or more disciplinary panels that are authorized to fulfill their obligations under Rule 819. Section 37.206(b) provides that disciplinary panels must meet the composition requirements of part 40. To help ensure fairness and prevent special treatment or preference of any person or member and to provide for consistency of the makeup of members of SBSEF major disciplinary committees and hearing panels, the Commission is proposing instead to require the disciplinary panels established under proposed Rule 819(g)(2) to meet the composition requirements of proposed Rule 834(d), which would apply to each major disciplinary committee and hearing panel of an SBSEF.[131]

Paragraphs (g)(3) through (8) of proposed Rule 819 have no parallel in § 37.206 itself, but derive from the guidance in appendix B pertaining to § 37.206, following the paragraph structure and wording of the guidance closely. Paragraph (g)(3) would impose procedural requirements relating to the notice of charges made to a respondent. Paragraph (g)(4) would provide that a respondent has a right to representation. Paragraph (g)(5) would provide that a respondent must be given adequate time to respond to any charges. Paragraph (g)(6) would state that the rules of an SBSEF may provide that, if a respondent admits or fails to deny any of the charges, a disciplinary panel may find that the violations alleged in the notice of charges have been committed. Paragraph (g)(6) would further state that, if the SBSEF's rules so provide, then: (i) The disciplinary panel may impose a sanction for each violation found to have been committed; (ii) The disciplinary panel shall promptly notify the respondent in writing of any sanction to be imposed and shall advise the respondent that the respondent may request a hearing on such sanction within the period of time, which shall be stated in the notice; and (iii) The rules of the SBSEF may provide that, if a respondent fails to request a hearing within the period of time stated in the notice, the respondent will be deemed to have accepted the sanction.

Paragraph (g)(7) of proposed Rule 819 would provide that, where a respondent has requested a hearing on a charge that is denied, or on a sanction set by the disciplinary panel, the respondent shall be given an opportunity for a hearing in accordance with the rules of the security-based swap execution facility. Paragraph (g)(8) would address settlement offers.

Paragraph (g)(9) of proposed Rule 819 returns to the text of § 37.206(c) for provisions regarding hearings. Paragraph (g)(9)(i) is modelled on § 37.206(c)(1) and would require an SBSEF to have rules requiring a hearing to be fair, conducted before members of the disciplinary panel, and promptly convened after reasonable notice to the respondent. The Commission is proposing an additional provision, which derives from the guidance, that an SBSEF need not apply the formal rules of evidence for a hearing; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing.

Paragraphs (g)(9)(ii) through (vi) of proposed Rule 819 are also adapted from the guidance. Paragraph (g)(9)(ii) would bar a member of the disciplinary panel for the hearing from having a financial, personal, or other direct interest in the matter under consideration. Paragraph (g)(9)(iii) would address the respondent's access to evidence in the SBSEF's possession. Paragraph (g)(9)(iv) would provide that the SBSEF's enforcement and compliance staffs shall [132] be parties to the hearing, and the enforcement staff shall present their case on those charges and sanctions that are the subject of the hearing. Paragraph (g)(9)(v) would provide that the respondent shall be entitled to appear personally at the hearing, to cross-examine any persons appearing as witnesses at the hearing, to call witnesses, and to present such evidence as may be relevant to the charges. Paragraph (g)(9)(vi) would provide that the SBSEF shall require persons within its jurisdiction who are called as witnesses to participate in the hearing and produce evidence.

Paragraph (g)(9)(vii) of proposed Rule 819 is modelled on the text of § 37.206(c)(2) and would require that, if the respondent has requested a hearing, a copy of the hearing shall be made and shall become a part of the record of the proceeding. Paragraph (g)(9)(vii) would not require the record to be transcribed unless the transcript is requested by Commission staff or the respondent, the decision is appealed pursuant to the rules of the SBSEF, or the decision is reviewed by the Commission pursuant to § 201.442.[133] In all other instances, a summary record of a hearing is permitted.

Paragraph (g)(10) of proposed Rule 819 is modelled on § 37.206(d) and would provide that, promptly following a hearing conducted in accordance with the rules of the SBSEF, the disciplinary panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The written decision would have to include six enumerated elements, all of which are closely modelled on those in § 37.206(d).

Paragraph (g)(11) of proposed Rule 819 would address emergency disciplinary actions and is drawn from the appendix B guidance. It would provide that an SBSEF may impose a sanction, including suspension, or take other summary action against a person

[130] In this bullet and the next bullet, the word used in the corresponding CFTC guidance was ''should'' but the Commission is proposing the word ''shall'' in both places to convert the guidance into an enforceable rule.

[131] Proposed Rule 834(d) would require each SBSEF and SBS exchange to ensure that its disciplinary processes preclude any member, or group or class of its members, from dominating or exercising disproportionate influence on the disciplinary process, and that each major disciplinary committee or hearing panel include sufficient different groups or classes of its members so as to ensure fairness and to prevent special treatment or preference for any person or member in the conduct of the responsibilities of the committee or panel. *See infra* section X.

[132] The CFTC's guidance in appendix B that is adapted into paragraphs (g)(9)(ii) through (vi) of proposed Rule 819 uses the word ''should'' here and in other similar instances. The Commission is proposing to use the word ''shall'' in such instances instead.

[133] *See infra* section XVI(E) (discussing proposed Rule 442, which would establish the right to appeal to the Commission certain actions taken by an SBSEF, and setting out certain procedural matters relating to any such appeal).

or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the market place. Furthermore, any emergency disciplinary action would have to be taken in accordance with an SBSEF's procedures that provide for notice (if practicable), rights for representation in all proceedings, an opportunity for a hearing as soon as reasonably practicable, and the rendering of a written decision promptly following the hearing based upon the weight of the evidence contained in the record. Proposed Rule 819(g)(11) seeks to balance the need to allow an SBSEF to take summary action against the need to afford due process to respondents.[134]

Paragraph (g)(12) of proposed Rule 819 also is drawn from the appendix B guidance and provides that, if the rules of the SBSEF permit appeals,[135] the SBSEF shall establish an appellate panel that is authorized to hear appeals. The composition of the panel would have to be consistent with proposed Rule 834(d)[136] and could not include any members of the SBSEF's compliance staff or any person involved in adjudicating any other stage of the same proceeding. Promptly following the appeal or review proceeding, the appellate panel would be required to issue a written decision and to provide a copy to the respondent.

Paragraph (g)(13) of proposed Rule 819 is adapted partly from § 37.206(e) and partly from the appendix B guidance. Paragraph (g)(13)(i) is drawn from § 37.206(e) and would provide that all disciplinary sanctions imposed by an SBSEF or its disciplinary panels shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other members. All disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, would be required to take into account the respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction would also be required to include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined. Paragraph (g)(13)(i) is adapted from the guidance and would allow an SBSEF to adopt a summary fine schedule for violations of rules relating to the failure to timely submit accurate records required for clearing or verifying each day's transactions.

The Commission preliminarily believes that combining text from § 37.206 with the associated guidance from appendix B provides a logical set of procedures for addressing Core Principle 2 (Compliance with Rules), from requirements relating to enforcement staff generally (proposed Rule 819(g)(1)); to the composition of disciplinary panels and notices of charges (proposed Rules 819(g)(1) and (g)(2)); to rights to representation (proposed Rule 819(g)(4)), answer to charges and admission or failure to deny charges (proposed Rules 819(g)(5) and (g)(6)), denial of charges and right to a hearing (proposed Rule 819(g)(7)), settlement offers (proposed Rule 819(g)(8)); and, finally, hearings (proposed Rule 819(g)(9)), decisions (proposed Rule 819(g)(10)), emergency disciplinary actions (proposed Rule 819(g)(11)), right to appeal (proposed Rule 819(g)(12)), and disciplinary sanctions (proposed Rule 819(g)(13)).

The Commission recognizes that a set of rules that govern compliance and enforcement matters for SBSEFs could, in the abstract, differ in a number of details from the rules adopted by the CFTC in subpart C of part 37 and still plausibly satisfy the requirements of Core Principle 2. However, in light of the baseline set by the CFTC's rules, the Commission is concerned that implementing rules for SBSEFs having major or even minor differences with the rules applicable to SEFs could increase compliance costs and cause confusion for dually registered SEF/SBSEFs and market participants. This would particularly be the case if a potential violation involved a rule that was not specific to the swap or SBS market, but rather involved member conduct generally. No regulatory purpose would be served if the SEF/SBSEF had to pursue one cause of action against a member pursuant to a CFTC rule and a slightly different cause of action pursuant to an SEC rule, for the same underlying facts.

The Commission seeks comment on the following:

95. Do you agree generally with the manner in which the Commission is proposing to implement Core Principle 2? Why or why not?

96. In particular, do you agree with the proposed access requirements in Rule 819(c)? Why or why not? Do you see differences between the swap and SBS markets that warrant different requirements for access to a SEF than to an SBSEF? If so, please describe.

97. Do you see differences between the swap and SBS markets that warrant different audit trail requirements or trade surveillance capability for SBSEFs than for SEFs? If so, please describe.

98. Do you believe that SBSEFs, like SEFs, should be able to utilize regulatory service providers? What entities currently serve as regulatory service providers for SEFs? Do you believe that the types of regulatory service providers that could be utilized by SBSEFs under proposed Rule 819(e)(1) are appropriate? If not, what other regulatory service providers should be permitted?

99. Do you agree with how the Commission is proposing to implement requirements for disciplinary procedures and sanctions in proposed Rule 819(g)? Why or why not?

100. In particular, do you agree with the manner in which the Commission is proposing to incorporate significant portions of the appendix B guidance into proposed Rule 819(g)? Why or why not? Are there provisions from the guidance that the Commission is proposing to incorporate that you believe should be revised or omitted entirely? If so, please describe. Are there provisions from the guidance that the Commission has not proposed to incorporate but that you believe should be incorporated? If so, please describe.

101. Do existing SEFs treat the appendix B guidance as if it were mandatory? By converting the non-binding guidance applicable to SEFs into formal rules that would apply to SBSEFs, would dually registered entities be compelled to deviate from their present practices? If so, please describe.

102. Do you believe that proposed Rule 819(g)(12) should be revised to require an SBSEF to permit appeals of enforcement decisions to an appellate panel established by the SBSEF, despite the fact that neither subpart C of part 37 nor the CFTC's associated guidance requires appeals? Why or why not?

2. Provisions of Rule 819 Adapted From Other SEF Requirements

Proposed Rule 819 includes four paragraphs—(h), (i), (j), and (k)—that are not derived from subpart C of part 37,

[134] *Compare* proposed Rule 819(g)(11)(i) (allowing an SBSEF to impose a sanction, including suspension, or take other summary action against a person or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the market place) *with* proposed Rule 819(g)(11)(ii)(A) (providing that, if practicable, a respondent should be served with a notice before the action is taken, or otherwise at the earliest possible opportunity).

[135] Neither § 37.206 or the associated guidance from appendix B requires a SEF to allow appeals. The guidance states, rather, that a SEF's rules ''may permit'' appeals and includes certain procedural requirements only if the rules of a swap execution facility permit appeals. The Commission is adhering to this permissive approach in this proposal but seeks comment on whether the final rules should require an SBSEF to create an appeals procedure.

[136] *See supra* note 131.

which directly implements CEA Core Principle 2, or from the associated guidance in appendix B to part 37. Instead, these four paragraphs are modelled on requirements for SEFs located in other parts of the CFTC's rules. Because these requirements fall under the general heading of ''Compliance with Rules,'' the Commission is proposing them as part of Rule 819, which implements SEA Core Principle 2.

a. Rule 819(h)—Activities of SBSEF's Employees, Governing Board Members, Committee Members, and Consultants

Paragraph (h) of proposed Rule 819 generally would prohibit persons who are employees of an SBSEF, or who otherwise might have access to confidential information because of their role with the SBSEF, from improperly utilizing that information. Proposed Rule 819(h) is modelled on § 1.59 of the CFTC's rules, which requires an SRO (which term, under § 1.3 of the CFTC regulations, includes a SEF) to place restrictions on trading by its governing board members, committee members, consultants, and employees and to prohibit any such person from disclosing any material, non-public information obtained as a result of their official duties with the SRO.

In particular, § 1.59(b)(1)(i) requires an SRO to maintain in effect rules that, at a minimum, prohibit employees of the SRO from trading, directly or indirectly, in:

- Any ''commodity interest'' [137] traded on or cleared by the employing contract market, SEF, or clearing organization;
- Any ''related commodity interest''; [138]
- A commodity interest traded on a contract market or SEF or cleared by a DCO other than the employing SRO if the employee has access to material, non-public information concerning such commodity interest;
- A commodity interest traded on or cleared by a ''linked exchange'' if the employee has access to material, non-public information concerning such commodity interest.

The Commission is proposing to adapt § 1.59(b)(1) into Regulation SE in a simplified way. The Commission preliminarily believes that, in the SBS market, the policy goals of the rule can be achieved without the complexities of the CFTC definitions of ''commodity interest'' and ''related commodity interest.'' Paragraph (h)(2)(i) of proposed Rule 819 would require an SBSEF to maintain in effect rules that, at a minimum, prohibit an employee of the SBSEF from trading, directly or indirectly, any ''covered interest.'' Proposed Rule (h)(1)(i) would define ''covered interest'' to mean, with respect to an SBSEF: An SBS that trades on the SBSEF; a security of an issuer that has issued a security that underlies an SBS that is listed on the SBSEF; or a derivative based on a security that falls within the immediately preceding prong. The Commission preliminarily believes that the opportunity to observe order submission and trading in an SBS on an SBSEF could yield material non-public information about the future performance not just of that SBS, but of all securities issued by that entity. The single-name CDS market, in particular, is a market for assessing the creditworthiness of particular issuers. Non-public information derived from activity on the SBSEF pertaining to the market's assessment of an issuer's creditworthiness is likely to be material to the markets for that issuer's cash securities as well as to markets for derivatives based on the issuer's cash securities (*e.g.,* single-stock options).

Paragraph (h)(2)(ii), modelled on § 1.59(b)(1)(ii), would prohibit an SBSEF employee from disclosing to any other person any material non-public information which such employee obtains as a result of their employment at the SBSEF, and where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any covered interest. In addition, paragraph (h)(2)(ii), like § 1.59(b)(1)(ii), would provide an exception for disclosures made in the course of an employee's duties, or disclosures made to another SBSEF, court of competent jurisdiction, or representative of any agency or department of the Federal or State government acting in their official capacity.

Paragraph (h)(3) of Rule 819, modelled on § 1.59(b)(2), would allow an SBSEF to adopt rules setting forth circumstances under which exemptions from the employee trading prohibition may be granted. In particular, paragraph (h)(3) would include the following possible carve-outs from the employee trading prohibition: (1) Participation by an employee in a ''pooled investment vehicle'' where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicle; (2) trading by an employee in a derivative based on such a pooled investment vehicle; (3) trading by an employee in a derivative based on an index in which no covered interest constitutes more than 10% of the index; and (4) trading by an employee under circumstances enumerated in rules which the SBSEF determines are not contrary to applicable law, the public interest, or just and equitable principles of trade. The first and the fourth carve-outs listed above are comparable to those listed in § 1.59(b)(2). The Commission is proposing to include the second and third carve-outs to permit an SBSEF employee to trade derivatives that provide indirect exposure to a covered interest where the exposure to the covered interest is sufficiently diluted. In such cases, it would be unlikely that the employee would be using material non-public information about the covered interest to gain an unfair advantage when trading the derivative.

The Commission is proposing to depart from the CFTC definition of ''pooled investment vehicle'' [139] to adapt it for the SBS and securities markets. Proposed Rule (h)(1)(ii) would define ''pooled investment vehicle'' to mean an investment company registered under the Investment Company Act of 1940 in which no covered interest constitutes more than 10% of the investment company's assets. Thus, under this definition, if an SBSEF were to list a single-name CDS on company XYZ, a ''pooled investment vehicle'' would include a broad-based mutual fund or ETF that contains a security issued by company XYZ, assuming that

[137] *See* § 1.59(a)(8) (defining ''commodity interest'' to mean ''any commodity futures, commodity option or swap contract traded on or subject to the rules of a contract market, a swap execution facility or linked exchange, or cleared by a derivatives clearing organization, or cash commodities traded on or subject to the rules of a board of trade which has been designated as a contract market'').

[138] *See* § 1.59(a)(9) (defining ''related commodity interest'' to mean ''any commodity interest which is traded on or subject to the rules of a contract market, swap execution facility, linked exchange, or other board of trade, exchange, or market, or cleared by a derivatives clearing organization, other than the self-regulatory organization by which a person is employed, and with respect to which: (i) such employing self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment between that other commodity interest and a commodity interest which is traded on or subject to the rules of the employing self-regulatory organization; or (ii) such other self-regulatory organization has recognized or established intermarket spread margins or other special margin treatment with another commodity interest as to which the person has access to material, nonpublic information'').

[139] *See* § 1.59(a)(10) (defining ''pooled investment vehicle'' to mean ''a trading vehicle organized and operated as a commodity pool within the meaning of § 4.10(d) of this chapter, and whose units of participation have been registered under the Securities Act of 1933, or a trading vehicle for which § 4.5 of this chapter makes available relief from regulation as a commodity pool operator, *i.e.,* registered investment companies, insurance company separate accounts, bank trust funds, and certain pension plans'').

the XYZ security does not exceed 10% of the fund's holdings. The proposed 10% limit on a covered interest's composition of the fund is designed to permit SBSEF employees to trade most index-based mutual funds and ETFs that contain covered interests, except those where a component of the fund becomes sufficiently large that material non-public information about an issuer derived from activity on the SBSEF could provide an unfair advantage to an SBSEF employee when trading that fund.

Finally, the Commission notes that, under proposed Rule 819(h)(3)—as with § 1.59(b)(2)—the exemptions from the trading restrictions would not be automatically available to SBSEF employees. Proposed Rule 819(h)(3) still would require the SBSEF to adopt rules that set forth circumstances under which exemptions from the trading prohibition may be granted. Furthermore, proposed Rule 819(h)(3), which is modelled on § 1.59(b)(2), would state that any exemption must be administered by the SBSEF ''on a case-by-case basis.''

Paragraph (h)(4) of proposed Rule 819, like § 1.59(d),[140] would address prohibited conduct not just of employees of an SBSEF, but also of governing board members, committee members, and consultants of the SBSEF. Paragraph (h)(4)(i)(A) is modelled on § 1.59(d)(1)(i) and would prohibit any employee, governing board member, committee member, or consultant of the SBSEF from trading for such person's own account, or for or on behalf of any other account, in any covered interest on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant. Paragraph (h)(4)(i)(B), modelled on § 1.59(d)(1)(ii), would prohibit any employee, governing board member, committee member, or consultant of the SBSEF from disclosing for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties. Paragraph (h)(4)(ii), modelled on § 1.59(d)(2), would provide that no person shall trade for such person's own account, or for or on behalf of any other account, in any covered interest on the basis of any material, non-public information that such person knows was obtained in violation of paragraph (h)(4) of this section from an employee, governing board member, committee member, or consultant.

The Commission preliminarily believes that persons who have professional duties with an SBSEF should not trade on material non-public information derived from the SBSEF or improperly disclose that information to third parties, and therefore that harmonizing with the comparable CFTC rule as closely as practicable, taking into account the difference in products subject to the respective jurisdictions of the SEC and CFTC, is an appropriate means of furthering that policy goal. If the Commission adopts Rule 819(h) in substantially the same form as proposed herein, dually registered SEF/SBSEFs would be able to utilize the same rules and procedures for complying with Rule 819(h) as they do for § 1.59. The Commission recognizes that the scope of assets under restriction would differ in Rule 819(h) than in § 1.59, as reflected in the SEC's use of the term ''covered interest'' rather than ''commodity interest'' in the analogous CFTC provisions, as well as the significant differences in the potential exemptions from the trading restriction (including in the ''pooled investment vehicle'' definition). Nevertheless, SBS are different from swaps, so the material non-public information that can be obtained from observing order submission and SBS trading on an SBSEF is different from the material non-public information that can be obtained from observing order submission and swap trading on a SEF. The Commission preliminarily believes, therefore, that it is appropriate for Rule 819(h) to utilize a definition of ''covered interest'' to denote the scope of the trading restrictions in the proposed rule—and a definition of ''pooled investment vehicle'' to denote the scope of one of the potential exemptions from those restrictions—that is customized for the SBS and securities markets.

The Commission seeks comment on the following:

103. Do you believe in general that the Commission should incorporate into Regulation SE a rule that restricts how persons with official duties at an SBSEF may utilize information that they obtain in the course of their official duties? Why or why not?

104. Do you agree with the specific language proposed by the Commission to adapt § 1.59 into proposed Rule 819(h)? If not, how would you revise the proposed rule?

105. In particular, do you agree with the Commission's proposed definition of ''covered interest''? Why or why not? Do you believe that the term ''covered interest'' should be expanded to include securities underlying an index swap and other securities issued by an issuer whose securities underlie an index swap that trade on a dually registered SEF/SBSEF? Why or why not?

106. Do you agree with the proposed potential exemptions from the trading restrictions in proposed Rule 819(h)(3)? For example, do you believe in general that an SBSEF should be permitted to allow its employees, governing board members, committee members, and consultants to hold covered interests through pooled investment vehicles? Why or why not?

107. Do you agree with the Commission's proposed definition of ''pooled investment vehicle''? Why or why not? Do you agree with the Commission's proposed requirement that no covered interest may constitute more than 10% of the pooled investment vehicle? Why or why not? If you believe another threshold would be more appropriate, please justify that threshold.

108. Are there additional provisions of § 1.59 that the Commission has omitted but which you believe should be incorporated into Regulation SE? If so, which provisions and why?

b. Rule 819(i)—Service on SBSEF Governing Boards or Committees by Persons With Disciplinary Histories

Paragraph (i) of proposed Rule 819 would bar persons with specified disciplinary histories from serving on the governing board or committees of an SBSEF and impose certain other duties on the SBSEF associated with that fundamental requirement. Proposed Rule 819(i) is modelled on § 1.63 of the CFTC's rules, which imposes similar requirements in connection with SROs (which term, under the CEA, includes SEFs).

Section 1.63(b) requires each SRO to maintain in effect rules that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels, or governing board [141] who meets any of six enumerated criteria. These criteria generally relate to a disciplinary offense having been committed by that person within the past three years. While

[140] Section 1.59(c) applies only to national futures associations and is not considered here.

[141] Section 1.63 uses the term ''governing board'' throughout. Certain other CFTC rules that the Commission is proposing to adapt into Regulation SE use ''board of directors'' to denote the same concept. As noted above, the Commission is proposing to utilize the term ''governing board'' throughout Regulation SE, even when the parallel CFTC rule on which an SEC rule is based uses ''board of directors.'' *See supra* note 29.

§ 1.63(b) requires the SRO to implement rules imposing a bar, § 1.63(c) in addition imposes a bar on such persons directly, stating that no person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of an SRO if such person is subject to any of the conditions listed in § 1.63(b). Section 1.63(d) requires an SRO to maintain, keep current, and provide to the CFTC and the public a list of the rule violations which constitute disciplinary offenses that would trigger the bar in § 1.63. Section 1.63(e) requires an SRO to submit to the CFTC, within 30 days of the end of each calendar year, a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels, or governing board pursuant to § 1.63 during the prior year.

Paragraph (i) of proposed Rule 819 is closely modelled on § 1.63. Paragraph (i)(1), like § 1.63(b), would require an SBSEF to maintain rules [142] that render a person ineligible to serve on its disciplinary committees,[143] arbitration panels, oversight panels,[144] or governing boards who falls into any of six enumerated criteria, all of which are modelled closely on the criteria in § 1.63(b).[145] Paragraph (i)(2), modelled on § 1.63(c), would impose a direct bar on any person from serving on a disciplinary committee, arbitration panel, oversight panel, or governing board of an SBSEF who meets any of the six criteria enumerated in proposed Rule 819(i)(1). Paragraph (i)(3), modelled on § 1.63(d), would require an SBSEF to submit to the Commission a schedule listing the rule violations which constitute disciplinary offenses that would trigger the bar and, to the extent necessary to reflect revisions, would have to submit an amended schedule within 30 days of the end of each calendar year. The SBSEF would be required to maintain and keep current this schedule and post it on its website so that it is in a public place designed to provide notice to members and otherwise ensure its availability to the general public. Paragraph (i)(4), like § 1.63(e), would require an SBSEF to submit to the Commission within 30 days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels, or governing board pursuant to Rule 819(i) during the prior year. Paragraph (i)(5), modelled on § 1.63(f), would provide that, whenever an SBSEF finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that SBSEF's disciplinary committees, arbitration panels, oversight panels, or governing board, the SBSEF shall inform the Commission of that finding and the length of the ineligibility, in a form and manner specified by the Commission.

Paragraph (i)(6) of proposed Rule 819(i) would define the terms ''arbitration panel,'' ''disciplinary offense,'' and ''final decision'' which are used in proposed Rule 819(i).[146] These definitions are closely modelled on those provided in § 1.63(a).[147]

The Commission preliminarily believes that it is appropriate to bar persons with inappropriate disciplinary histories from serving on the disciplinary committees, arbitration panels, oversight panels, or governing board of an SBSEF, and that closely modelling a rule in Regulation SE on § 1.63 would be an appropriate means of furthering that policy goal. The requirements of § 1.63 should be well understood by SEFs, who have been complying with them for several years, and incorporating similar requirements into Regulation SE should impose few if any additional costs on dually registered SEF/SBSEFs. The Commission preliminarily believes, in particular, that establishing criteria for the bar that are as similar as possible to the CFTC's criteria would avoid a situation where a person is ineligible under one agency's rules to serve on a disciplinary committee, arbitration panel, oversight panel, or the governing board, but would be eligible under the other agency's rules.

The Commission seeks comment on the following:

109. Do you believe in general that Regulation SE should include a rule that prohibits persons having an inappropriate disciplinary history from serving on the disciplinary committees, arbitration panels, oversight panels, or governing board of an SBSEF? Why or why not?

110. In particular, do you agree with the specific language proposed by the Commission to adapt § 1.63 into proposed Rule 819(i)? If not, how would you revise the rule?

[142] Section 1.63(b), in relevant part, requires a SEF to maintain rules that have been submitted to the Commission pursuant to section 5c(c) of the CEA and part 40 of the CFTC's rules. As noted above, the Commission is proposing to adapt §§ 40.5 (Voluntary submission of rules for Commission review and approval) and 40.6 (Self-certification of rules) into proposed Rules 806 and 807, respectively. Therefore, proposed Rule 819(i)(1) would require an SBSEF to maintain in effect rules which have been submitted to the Commission pursuant to Rules 806 or 807.

[143] Proposed Rule 802 would define ''disciplinary committee'' as any person or committee of persons, or any subcommittee thereof, that is authorized by an SBSEF or SBS exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the SBSEF or SBS exchange, except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions, or other similar activities. The CFTC rules contain two slightly different definitions of ''disciplinary committee'' that appear in § 1.63(a)(2) and § 1.69(a)(1), respectively. Because the definition in § 1.69(a)(1) is more comprehensive, the Commission is modelling its proposed definition of ''disciplinary committee'' on § 1.69(a)(1) rather than on § 1.63(a)(2). The Commission is locating the definition in proposed Rule 802, since the term is used by multiple rules in Regulation SE.

[144] Proposed Rule 802 would define ''oversight panel'' as any panel, or any subcommittee thereof, authorized by an SBSEF or SBS exchange to recommend or establish policies or procedures with respect to the surveillance, compliance, rule enforcement, or disciplinary responsibilities of the SBSEF or SBS exchange. The CFTC's definitions of ''oversight panel'' are contained in § 1.63(a)(4) and § 1.69(a)(4), respectively. Because the definition in § 1.69(a)(4) is more comprehensive, the Commission is modelling its proposed definition of ''oversight panel'' on § 1.69(a)(4) rather than on § 1.63(a)(4). As with the definition of ''disciplinary committee,'' the Commission is locating the definition of ''oversight panel'' in proposed Rule 802, since the term is used by multiple rules in Regulation SE.

[145] Section 1.63(b)(5) provides that one criterion for the bar would be that the person in question is subject to or has had imposed on him within the prior three years a CFTC registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any of the felonies listed in section 8a(2)(D)(ii) through (iv) of the CEA. Since the SEC is not subject to the CEA and cannot cross-reference those provisions, the Commission is proposing for the equivalent criterion in Rule 819(i)(1)(v) that a person would be barred for having been convicted within the prior three years of any felony, without limitation on the type of felony.

[146] Proposed Rule 819(i)(6)(i) would define ''arbitration panel'' as any person or panel empowered by an SBSEF to arbitrate disputes involving the SBSEF's members or their customers. Proposed Rule 819(i)(6)(ii) would define ''disciplinary offense'' as: Any violation of the rules of an SBSEF, except a violation resulting in fines aggregating to less than $5,000 within a calendar year involving decorum or attire, financial requirements, or reporting or recordkeeping; any rule violation which involves fraud, deceit, or conversion or results in a suspension or expulsion; any violation of the SEA or the Commission's rules thereunder; or any failure to exercise supervisory responsibility when such failure is itself a violation of either the rules of the SBSEF, the SEA, or the Commission's rules thereunder. Proposed Rule 819(i)(6)(iii) would define ''final decision'' as a decision of an SBSEF which cannot be further appealed within the SBSEF, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or any decision by an administrative law judge, a court of competent jurisdiction, or the Commission which has not been stayed or reversed.

[147] Since these terms are used only in proposed Rule 819(i) and not elsewhere in Regulation SE, the Commission is defining them in proposed Rule 819(i) and not the omnibus definitions rule in Regulation SE (Rule 802).

111. Are there additional provisions of § 1.63 that the Commission has not adapted into proposed Rule 819(i) but which you believe should be incorporated? If so, which provisions and why?

112. Proposed Rule 819(i)(1)(iv) would require an SBSEF to have rules that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels, or governing board if that person is subject to an agreement with the Commission, an SBSEF, or an SRO not to apply for registration with the Commission or membership in any SRO. Should similar agreements with any other types of entities be included in the ineligibility provision of proposed Rule 819(i)(1)(iv)? For example, should registered futures associations such as the NFA be included in this list? Why or why not?

c. Rule 819(j)—Notification of Final Disciplinary Action Involving Financial Harm to a Customer

Paragraph (j) of proposed Rule 819 is a modified version of § 1.67 of the CFTC's rules. Section 1.67(b) provides, in relevant part, that upon any final disciplinary action [148] in which a contract market or SEF finds that a member has committed a rule violation that involved a transaction for a customer,[149] whether executed or not, and that resulted in harm to the customer, the contract market or SEF must promptly provide notice of the disciplinary action to the futures commission merchant or other registrant. The futures commission merchant or other registrant that receives the notice must promptly provide written notice of the disciplinary action to the customer as disclosed on its books and records. Such written notice must include the principal facts of the disciplinary action and a statement that the contract market or SEF has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer.

Paragraph (j)(1) of proposed Rule 819 is designed to replicate for SBSEFs the fundamental duty of § 1.67 and would provide that, upon any final disciplinary action in which an SBSEF finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer, the SBSEF must promptly provide written notice of the disciplinary action to the member. In addition, the SBSEF would be required to have established a rule pursuant to Rule 806 or 807 that requires a member that receives such a notice to promptly provide that notice to the customer, as disclosed on the member's books and records.[150] Paragraph (j)(2) would provide that the written notice must include the principal facts of the disciplinary action and a statement that the SBSEF has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer.

Paragraph (j)(3) of proposed Rule 819 would provide definitions for two terms used in Rule 819(j). The proposed definition for ''final disciplinary action'' is closely modelled on the CFTC's definition in § 1.67(a).[151] The proposed definition of ''customer'' is only loosely modelled on the definition of ''customer'' provided in § 1.3, which includes complexities deriving from the CEA that the Commission does not believe are necessary or appropriate to adapt into a rule that applies to SBSEFs.[152] The Commission is proposing to define ''customer'' in proposed Rule 819(j)(3)(i) as a person that utilizes an agent in connection with trading on an SBSEF.

The Commission preliminarily believes that, if an SBSEF member commits a rule violation that involved a transaction for the customer and financial harm to the customer results, the customer should be apprised of that fact. The Commission preliminarily believes, therefore, that closely modelling a rule in Regulation SE on § 1.67 would be an appropriate means of furthering that policy goal. The requirements of § 1.67 should be well understood by SEFs, who have been complying with them for several years, and incorporating similar requirements into Regulation SE should impose lower compliance costs on dually registered SEF/SBSEFs.

The Commission seeks comment on the following:

113. Do you believe in general that Regulation SE should include a rule designed to provide a customer of an SBSEF member notice if the member commits a violation of an SBSEF rule that results in harm to the customer? Why or why not?

114. In particular, do you agree with the specific language proposed by the Commission to adapt § 1.67 into proposed Rule 819(j)? If not, how would you revise that language?

115. Do you agree with the proposed definition of ''customer'' in proposed Rule 819(j)? If not, how would you revise it?

d. Rule 819(k)—Designation of Agent for Non-U.S. Member

Paragraph (k) of proposed Rule 819 would require non-U.S. persons who trade on an SBSEF to have an agent for service process, which could be an agent of its own choosing or, by default, the SBSEF. Proposed Rule 819(k) is modelled on § 15.05(i) of the CFTC's rules, which concerns the designation of agents for foreign persons participating on ''reporting markets,'' a category in the CFTC's rules that includes SEFs.[153] With respect to SEFs, § 15.05(i) provides that a SEF that permits a foreign trader to effect contracts, agreements, or transactions on the SEF shall be deemed to be the agent of the foreign trader with respect to any such contracts, agreements, or transactions executed by the foreign trader. § 15.05(i) further provides that service or delivery of any communication issued by or on behalf

[148] *See* § 1.67(a) (defining ''final disciplinary action'' as any decision by or settlement with a contract market or swap execution facility in a disciplinary matter which cannot be further appealed at the contract market or swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction).

[149] *See* § 1.3 (defining ''customer'' as any person who uses a futures commission merchant, introducing broker, commodity trading advisor, or commodity pool operator as an agent in connection with trading in any commodity interest; *Provided, however,* an owner or holder of a proprietary account as defined in this section shall not be deemed to be a customer within the meaning of section 4d of the CEA, the regulations that implement sections 4d and 4f of the CEA and § 1.35, and such an owner or holder of such a proprietary account shall otherwise be deemed to be a customer within the meaning of the CEA and §§ 1.37 and 1.46 and all other sections of these rules, regulations, and orders which do not implement sections 4d and 4f of the CEA).

[150] The provision on which proposed Rule 819(j)(1)(i)(B) is based, § 1.67(b)(1)(ii), requires a futures commission merchant or other registrant that receives such a notice to forward it to the injured customer. Because of differences in the respective agencies' statutory authority, the Commission is proposing to require the SBSEF to establish a rule that requires the relevant member to forward the notice, not to propose a Commission rule that would impose such a duty on the member directly.

[151] *See* proposed Rule 819(j)(3)(ii) (defining ''final disciplinary action'' as any decision by or settlement with an SBSEF in a disciplinary matter which cannot be further appealed at the SBSEF, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction).

[152] The Commission notes, finally, that the definitions of ''customer'' and ''final disciplinary action'' would apply only within proposed Rule 819(j), so they are not included in the omnibus definitions rule for proposed Regulation SE (Rule 802).

[153] A ''reporting market'' is defined in § 15.00(q) to mean a DCM or registered entity under section 1a(40) of the CEA. The term ''registered entity'' as defined in section 1a(40) of the CEA includes SEFs, among other entities.

of the CFTC to the SEF shall constitute valid and effective service upon the foreign trader, and that a SEF that has been served with, or to which there has been delivered, a communication issued by or on behalf of the CFTC to a foreign trader shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the CFTC in the communication, to the foreign trader.

Paragraph (i)(1) of § 15.05 provides, with respect to SEFs, that it shall be unlawful for a SEF to permit a foreign trader to effect contracts on the SEF unless the SEF has informed the foreign trader of the requirements of § 15.05. Paragraph (i)(2) of § 15.05 permits a foreign trader to appoint its own agent for service of process if it provides a copy of the agency agreement to the SEF, and the SEF files the agreement with the CFTC. Paragraph (i)(3) of § 15.05 provides that the foreign trader would have to notify the CFTC immediately if that agreement is no longer in effect.

Paragraph (k)(1) of proposed Rule 819 is modelled on § 15.05(i) and would provide that an SBSEF that admits a non-U.S. person as a member shall be deemed to be the agent of the ''non-U.S. member'' [154] with respect to any SBS executed by the non-U.S. member. Under proposed Rule 819(k)(1), service or delivery of any communication issued by or on behalf of the Commission to the SBSEF shall constitute valid and effective service upon the non-U.S. member. If an SBSEF is served with a communication issued by or on behalf of the Commission to a non-U.S. member, the SBSEF would be required to transmit the communication to the non-U.S. member. Paragraph (k)(2) of proposed Rule 819 is modelled on § 15.05(i)(1) and would provide that it shall be unlawful for an SBSEF to permit a non-U.S. member to execute SBS transactions on the facility unless the SBSEF informs the non-U.S. member in writing of the requirements of proposed Rule 819(k).

Paragraph (k)(3) of proposed Rule 819 is modelled on § 15.05(i)(2) and would permit a non-U.S. member of an SBSEF to utilize an agent for service of process other than the SBSEF. The non-U.S. member would have to provide a copy of its agreement with the alternate agent to the SBSEF, and the SBSEF would then have to file the agreement with the Commission, before executing any transaction on the SBSEF. Paragraph (k)(4) of proposed Rule 819, modelled on § 15.05(i)(3), would require the non-U.S. member to notify the Commission if the agency agreement is no longer in effect.

The Commission preliminarily believes that, for an SBSEF to have an effective regulatory program and thereby comply with Core Principle 2 (Compliance with Rules), the SBSEF must have jurisdiction over all of its members, including members who are not U.S. persons. Proposed Rule 819(k) would further an SBSEF's ability to ensure compliance by its non-U.S. members with its rules by requiring each non-U.S. member of the SBSEF to have an agent for service of process, whether an agent of its own choosing that has been disclosed to the SBSEF and the Commission or, as a default, the SBSEF itself. This would eliminate any question of how to provide valid notice to a non-U.S. member of any proceedings involving potential rule violations.

The Commission preliminarily believes that the CFTC has adequately addressed these concerns with § 15.05(i), and therefore that proposed Rule 819 should include provisions adapted from § 15.05(i) for application to SBSEFs. If the Commission ultimately adopts Rule 819(k) in the same or similar form as it is proposed, non-U.S. members of dually registered SEF/SBSEFs that trade both swaps and SBS should already be in compliance with these requirements.

The Commission seeks comment on the following:

116. Do you believe in general that Regulation SE should include a provision making an SBSEF the default agent for service of process for its non-U.S. members? Why or why not?

117. Do you agree with the specific language proposed by the Commission to adapt § 15.05(i) into proposed Rule 819(k)? If not, how would you revise the rule?

118. Are there additional provisions of § 15.05 that the Commission has omitted but which you believe should be incorporated into proposed Rule 819(k)? If so, which provisions and why?

119. Do you anticipate that SBSEFs will have any non-U.S. members? Do you believe that proposed Rule 819(k) will even be necessary?

120. Do you agree with the proposed definition of ''non-U.S. member'' in Rule 802? If not, how would you revise it?

C. Rule 820—Core Principle 3—SBS Not Readily Susceptible to Manipulation

Core Principle 3 [155] provides that an SBSEF may permit trading only in SBS that are not readily susceptible to manipulation. CEA Core Principle 3 for SEFs is substantively identical.[156]

The CFTC implemented Core Principle 3 in subpart D of part 37. Section 37.300 of subpart D repeats the statutory text of CEA Core Principle 3. § 37.301 provides that, for a SEF to demonstrate its compliance with the core principle, it must, at the time it submits a new swap contract pursuant to part 40, provide the applicable information as set forth in appendix C to part 38 (Demonstration of Compliance That a Contract is not Readily Susceptible to Manipulation).[157] Section 37.301 also states that a SEF may refer to the guidance provided in appendix B of part 37, which provides in relevant part that, when identifying a reference price, a SEF should either calculate its own reference price using suitable and well-established acceptable methods or carefully select a reliable third-party index.

Proposed Rule 820 would implement Core Principle 3. Although, like § 37.300, proposed Rule 820 repeats the statutory text of the Core Principle, the Commission preliminarily believes that it is not necessary or appropriate to harmonize with the CFTC guidance

[154] ''Non-U.S. member'' would be a defined term in proposed Rule 819(k) that does not appear in § 15.05 of the CFTC's rules but which, the Commission preliminarily believes, appropriately conveys the meaning of the CFTC rule for purposes of SBSEFs in proposed Rule 819(k). A foreign trader that executes contracts on a trading platform such as an SBSEF must be a member of that platform. Therefore, to promote uniformity throughout Regulation SE, the Commission is using the term ''member'' for this concept. Furthermore, the Commission has defined the term ''U.S. person'' for purposes of the cross-border application of its Title VII rules—*see* Rule 3a71–3(a)(4), § 240.3a71–3(a)(4)—and thus is proposing to define ''non-U.S. member'' in Rule 802 as ''a member of a security-based swap execution facility that is not a U.S. person.''

[155] Section 3D(d)(3) of the SEA, 15 U.S.C. 78c–4(d)(3).

[156] *See* section 5h(f)(3) of the CEA, 7 U.S.C. 7b–3(f)(3).

[157] Appendix C to part 38 provides, *inter alia,* that careful consideration should be given to the potential for manipulation or distortion of the cash settlement price of a swap, as well as the reliability of that price as an indicator of cash market values. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash settlement price. Documentation demonstrating that the settlement price index is a reliable indicator of market values and conditions and is highly regarded by industry/market agents should be provided. Such documentation may take on various forms, including carefully documented interviews with principal market trading agents, pricing experts, marketing agents, etc. Appropriate consideration also should be given to the commercial acceptability, public availability, and timeliness of the price series that is used to calculate the cash flows of the swap.

referenced in § 37.301, as this guidance was developed for products other than SBS.

The Commission seeks comment on the following:

121. Do you agree with how the Commission is proposing to implement Core Principle 3? Why or why not? If not, what other rules would you suggest?

D. Rule 821—Core Principle 4—Monitoring of Trading and Trade Processing

Core Principle 4 [158] requires an SBSEF to establish and enforce rules or terms and conditions defining or specifications detailing: (1) Trading procedures to be used in entering and executing orders traded on or through the facilities of the SBSEF; and (2) procedures for trade processing of SBS on or through the facilities of the SBSEF. Core Principle 4 also requires an SBSEF to monitor trading in SBS to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions. CEA Core Principle 4 for SEFs [159] is substantively identical.

The CFTC implemented Core Principle 4 in subpart E of part 37. Section 37.401 of subpart E provides that a SEF must collect and evaluate data on its market participants' market activity; demonstrate an effective program for conducting real-time monitoring to detect and resolve abnormalities; demonstrate the ability to comprehensively and accurately reconstruct daily trading; and demonstrate that it has access to sufficient information to assess whether trading in the swaps on its market, in the index or instruments used as a reference price, or other underlying instruments is being used to affect prices on its market. Sections 37.402 and 37.403 impose additional requirements for physical-delivery swaps and cash-settled swaps, respectively. Section 37.404(a) requires a SEF to demonstrate that it has access to sufficient information to assess whether trading in swaps listed on its market, in the index or instrument used as a reference price, or in the underlying commodity for its listed swaps is being used to affect prices on its market. Section 37.404(b) requires a SEF to have rules that require its market participants to keep records of their trading, including records of their activity in the index or instrument used as a reference price, the underlying commodity, and related derivatives markets, and make such records available, upon request, to the SEF or, if applicable, to its regulatory service provider, and the CFTC. Section 37.405 requires a SEF to establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the SEF. Section 37.406 requires a SEF to have the ability to reconstruct all trading on its facility, and requires that all audit-trail data and reconstructions shall be made available to the CFTC in a form, manner, and time that is acceptable to the CFTC. Section 37.407 requires a SEF to comply with subpart E of part 37 through a dedicated regulatory department or by contracting with a regulatory services provider. Section 37.408 provides that SEFs may refer to the guidance in appendix B to part 37 to demonstrate compliance with subpart E of part 37.[160]

Proposed Rule 821 would implement Core Principle 4 and is closely modelled on the rules in subpart E of part 37. The Commission preliminarily believes that the CFTC has implemented Core Principle 4 for SEFs in an appropriate way, and that closely harmonizing with the CFTC rule would yield comparable regulatory benefits while imposing only marginal additional costs. The Commission does not observe any differences between the swap and SBS markets sufficient to warrant a different approach to how a SEF/SBSEF should monitor trading and trade processing.

As noted above, the Commission preliminarily believes, in attempting to harmonize with the CFTC's regulatory regime for SEFs, that it would be preferable to adapt the CFTC's guidance and acceptable practices from appendix B to part 37 into formal rules, where appropriate. Although the Commission considered proposing a stand-alone rule that adapts the guidance pertaining to Core Principle 4, the Commission is proposing instead to weave concepts—and, in some cases, specific language—from the guidance together with the CFTC's original rule text, as the guidance itself follows the structure of the rule. The Commission illustrates its approach in the following proposed rules, where the analogous CFTC rule language is in plain text and language adapted from the guidance is italicized:

- Proposed Rule 821(b)(3): An SBSEF shall: ''Demonstrate an effective program for conducting real-time monitoring of trading for the purpose of detecting and resolving abnormalities. *A security-based swap execution facility shall employ automated alerts to detect abnormal price movements and unusual trading volumes in real time and instances or threats of manipulation, price distortion, and disruptions on at least a T+1 basis. The T+1 detection and analysis should incorporate any additional data that becomes available on a T+1 basis, including the trade reconstruction data.*''
- Proposed Rule 821(d)(2): ''For cash-settled security-based swaps listed on the security-based swap execution facility where the reference price is formulated and computed by the security-based swap execution facility, the security-based swap execution facility shall demonstrate that it monitors the continued appropriateness of its methodology for deriving that price *and shall promptly amend any methodologies that result, or are likely to result, in manipulation, price distortions, or market disruptions, or impose new methodologies to resolve the threat of disruptions or distortions.*''
- Proposed Rule 821(d)(3): ''For cash-settled security-based swaps listed on the security-based swap execution facility where the reference price relies on a third-party index or instrument, including an index or instrument traded on another venue, the security-based swap execution facility shall demonstrate that it monitors for pricing abnormalities in the index or instrument used to calculate the reference price *and shall conduct due diligence to ensure that the reference price is not susceptible to manipulation.*''
- Proposed Rule 821(e)(1): ''A security-based swap execution facility shall demonstrate that it has access to sufficient information to assess whether trading in security-based swaps listed on its market, in the index or instrument used as a reference price, or in the underlying asset for its listed security-based swaps is being used to affect prices on its market. *The security-based swap execution facility shall demonstrate that it can obtain position and trading information directly from members that conduct substantial trading on its facility or through an information-sharing agreement with other venues or a third-party regulatory service provider. If the position and trading information is not available*

[158] Section 3D(d)(4) of the SEA, 15 U.S.C. 78c–4(d)(4).

[159] Section 5h(f)(4) of the CEA, 7 U.S.C. 7b–3(f)(4).

[160] The guidance pertaining to Core Principle 4 has subsections entitled ''general requirements,'' ''physical-delivery swaps,'' ''cash-settled swaps,'' ''ability to obtain information,'' and ''risk controls for trading.''

directly from its members but is available through information-sharing agreements with other trading venues or a third-party regulatory service provider, the security-based swap execution facility should cooperate in such information-sharing agreements.''

• Proposed Rule 821(e)(2): ''A security-based swap execution facility shall have rules that require its members to keep records of their trading, including records of their activity in the underlying asset, and related derivatives markets, and make such records available, upon request, to the security-based swap execution facility or, if applicable, to its regulatory service provider and the Commission. *The security-based swap execution facility may limit the application of this requirement to only those members that conduct substantial trading on its facility.*''

• Proposed Rule 821(f): ''A security-based swap execution facility shall establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the security-based swap execution facility. *Such risk control mechanisms shall be designed to avoid market disruptions without unduly interfering with that market's price discovery function. The security-based swap execution facility may choose from among controls that include: pre-trade limits on order size, price collars or bands around the current price, message throttles, daily price limits, and intraday position limits related to financial risk to the clearing member, or design other types of controls, as well as clear error-trade and order-cancellation policies. Within the specific array of controls that are selected, the security-based swap execution facility shall set the parameters for those controls, so that the specific parameters are reasonably likely to serve the purpose of preventing market disruptions and price distortions.*''

The Commission also is proposing a stand-alone provision derived from the appendix B guidance as Rule 821(b)(5), which would provide than an SBSEF must have rules in place that allow it to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the security-based swap execution facility shall take steps to prevent the market disruption or reduce its severity.

Finally, in several instances in subpart E of part 37, the CFTC uses the term ''commodity'' with respect to the swap underlier. In proposed Rule 821, the Commission is proposing instead to use the more generic term ''asset'' to refer to the underlier.

The Commission seeks comment on the following:

122. Do you agree in general with the Commission's approach to implementing Core Principle 4? Why or why not? In particular, do agree with how the Commission is proposing to adapt the CFTC guidance on Core Principle 4 by converting appropriate parts of it into a formal rule? Why or why not?

123. In particular, is there any language that the Commission is proposing to adapt from subpart E of part 37 into proposed Rule 821 that you believe is not appropriate? If so, how would you revise it?

124. Are there any aspects of proposed Rule 821 that derive from the guidance that you believe are inappropriate for the Commission to incorporate into its own rules, or that you believe the Commission is proposing to incorporate inappropriately? If so, please discuss.

125. Are there any aspects of the CFTC's guidance that you believe should also be incorporated into the SEC rule but are not present in proposed Rule 821? If so, please describe.

E. Rule 822—Core Principle 5—Ability To Obtain Information

Core Principle 5 [161] requires an SBSEF to establish and enforce rules that will allow the SBSEF to obtain any necessary information to perform any of the functions described in the Core Principles, provide the information to the Commission on request, and have the capacity to carry out such international information-sharing agreements as the Commission may require. CEA Core Principle 5 for SEFs [162] is substantively identical.

The CFTC implemented Core Principle 5 in subpart F of part 37. Section 37.500 of subpart F repeats the statutory text of Core Principle 5. Section 37.501 requires a SEF to establish and enforce rules that will allow the SEF to have the ability and authority to obtain sufficient information to allow it to fully perform its operational, risk management, governance, and regulatory functions and any requirements under the rule, including the capacity to carry out international information-sharing agreements as the Commission may require. Section 37.502 requires a SEF to have rules that allow it to collect information on a routine basis, allow for the collection of non-routine data from its market participants, and allow for its examination of books and records kept by the market participants on its facility. Section 37.503 requires a SEF to provide information in its possession to the CFTC upon request, in a form and manner that the CFTC approves. Section 37.504 requires a SEF to share information with other regulatory organizations, data repositories, and third-party data reporting services as required by the CFTC or as otherwise necessary and appropriate to fulfill its self-regulatory and reporting responsibilities. Section 37.504 further provides that appropriate information-sharing agreements can be established with such entities or the CFTC can act in conjunction with the SEF to carry out such information sharing.

Proposed Rule 822 would implement Core Principle 5 and is substantively identical to subpart F of part 37. Paragraph (a) of proposed Rule 822 repeats the statutory text of Core Principle 5. Paragraph (b), modelled on § 37.501, would require that an SBSEF establish and enforce rules that will allow the SBSEF to have the ability and authority to obtain sufficient information to allow it to fully perform its operational, risk management, governance, and regulatory functions and any requirements under Regulation SE. Paragraph (c), like § 37.502, would require an SBSEF to have rules that allow it to collect information on a routine basis, allow for the collection of non-routine data from its members, and allow for its examination of books and records kept by members on its facility.[163] Paragraph (d), like § 37.503, would require that an SBSEF provide information in its possession to the Commission upon request, in a form and manner specified by the Commission. Finally, paragraph (e), like § 37.504, would require an SBSEF to share information with other regulatory organizations, data repositories, and third-party data reporting services as required by the Commission or as otherwise necessary and appropriate to fulfill its regulatory and reporting responsibilities, and that appropriate information-sharing agreements can be established with such entities, or the Commission can act in conjunction with the SBSEF to carry out such information sharing.

[161] Section 3D(d)(5) of the SEA, 15 U.S.C. 78c–4(d)(5).

[162] Section 5h(f)(5) of the CEA, 7 U.S.C. 7b–3(f)(5).

[163] While § 37.502 of subpart F uses the term ''market participant,'' proposed Rule 822 substitutes the term ''member'' in these places, since the rule pertains to market participants who are acting as members of the SEF/SBSEF. *See supra* note 53.

The Commission preliminarily believes that closely harmonizing with the CFTC's rules associated with CEA Core Principle 5 would appropriately implement SEA Core Principle 5. By harmonizing with the CFTC's approach, a SEF/SBSEF could have the same information-collection rules and information-sharing agreements. The Commission could thus obtain comparable regulatory benefits while imposing few if any additional costs on SEF/SBSEFs.

The Commission seeks comment on the following:

126. Do you agree generally with how the Commission is proposing to implement Core Principle 5? Why or why not?

127. In particular, do you believe that closely harmonizing with subpart F of the CFTC's rules is appropriate? Why or why not? If not, please identify any provision(s) in the CFTC rules that you believe should not be adapted for SBSEFs and explain your reasoning.

F. Rule 823—Core Principle 6—Financial Integrity of Transactions

SEA Core Principle 6 [164] requires an SBSEF to establish and enforce rules and procedures for ensuring the financial integrity of SBS entered on or through the facilities of the SBSEF, including the clearance and settlement of SBS pursuant to section 3C(a)(1) of the SEA.[165] CEA Core Principle 7 for SEFs [166] is substantively identical to SEA Core Principle 6.

The CFTC implemented CEA Core Principle 7 in subpart H of part 37. Section 37.700 of subpart H repeats the statutory text of Core Principle 7. Section 37.701 provides that transactions executed on or through the SEF that are required to be cleared or are voluntarily cleared by the counterparties shall be cleared through a registered or exempt DCO. Section 37.702 requires a SEF to provide for the financial integrity of its transactions by establishing minimum financial standards for its members, which shall at a minimum require members to be ECPs. Section 37.702 further requires a SEF to provide for the financial integrity of its transactions by ensuring that the SEF, for transactions cleared by a DCO, has the capacity to route transactions to the DCO in a manner acceptable to the DCO; and by coordinating with each DCO to which it submits transactions for clearing in the development of rules and procedures to facilitate prompt and efficient transaction processing. Section 37.703 requires a SEF to monitor its members to ensure that they continue to qualify as ECPs.

Proposed Rule 823 would implement SEA Core Principle 6 and is substantively identical to subpart H of part 37. Paragraph (a) of proposed Rule 823 repeats the statutory text of the Core Principle. Paragraph (b), like § 37.701, would require that transactions executed on or through the SBSEF that are required to be cleared under section 3C(a)(1) of the SEA or are voluntarily cleared by the counterparties shall be cleared through a registered clearing agency [167] or a clearing agency that has obtained an exemption from clearing agency registration to provide central counterparty services for SBS. Paragraph (c), like § 37.702, would require an SBSEF to provide for the financial integrity of its transactions by establishing minimum financial standards for its members, which shall, at a minimum, require that each member qualify as an ECP. In addition, for transactions cleared by a registered clearing agency, an SBSEF must provide for the financial integrity of its transactions by ensuring that it has the capacity to route transactions to the registered clearing agency in a manner acceptable to the clearing agency for purposes of clearing, and by coordinating with each registered clearing agency to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing. Finally, paragraph (d), like § 37.703, would require that an SBSEF monitor its members to ensure that they continue to qualify as ECPs.

The Commission preliminarily believes that closely harmonizing with the CFTC's rules associated with CEA Core Principle 7 would appropriately implement SEA Core Principle 6. By harmonizing with the CFTC's approach, a SEF/SBSEF could have the same financial standards and requirements for its members, and develop the same processes for submitting swaps and SBS for clearing, thus promoting efficiency among its respective SEF and SBSEF operations. The Commission could thus obtain comparable regulatory benefits while imposing few if any additional costs on SEF/SBSEFs.

The Commission seeks comment on the following:

128. Do you agree generally with how the Commission is proposing to implement Core Principle 6? Why or why not?

129. In particular, do you believe that closely harmonizing with subpart H of the CFTC's rules is appropriate? Why or why not? If not, please identify any provision(s) in the CFTC rules that you believe should not be adapted for SBSEFs and explain your reasoning.

130. Are there any differences in the SBS market relative to the swap market that warrant imposing different or additive requirements with respect to the rules for implementing SEA Core Principle 6? If so, please explain.

G. Rule 824—Core Principle 7—Emergency Authority

SEA Core Principle 7 [168] requires an SBSEF to adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any SBS or to suspend or curtail trading in an SBS. CEA Core Principle 8 for SEFs [169] is substantively identical.

The CFTC implemented Core Principle 8 for SEFs in subpart I of part 37. Section 37.800 of subpart I repeats the statutory text of the Core Principle. Section 37.801 provides that a SEF ''may refer'' to the guidance in appendix B to part 37 ''to demonstrate to the Commission compliance with [Core Principle 8].'' Paragraph (a)(1) of that guidance states that a SEF should have rules that authorize it to take certain actions in the event of an emergency. Furthermore, a SEF should have the authority to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the SEF's market or as part of a coordinated, cross-market intervention. A SEF should have the flexibility and independence to address market emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the SEF are made in good faith to protect the integrity of the markets. However, the SEF should also have rules that allow it to take market actions as may be directed by the CFTC. Additionally, in situations where a swap is traded on

[164] Section 3D(d)(6) of the SEA, 15 U.S.C. 78c–4(d)(6).

[165] 15 U.S.C. 78c–3(a)(1). *See supra* note 94 and accompanying text (discussing mandatory clearing provisions).

[166] Section 5h(f)(7) of the CEA, 7 U.S.C. 7b–3(f)(7).

[167] While subpart H of part 37 uses the term ''derivatives clearing organization,'' proposed Rule 823 substitutes the term ''registered clearing agency'' in these places, the analogous term under the SEA.

[168] Section 3D(d)(7) of the SEA, 15 U.S.C. 78c–4(d)(7).

[169] Section 5h(f)(8) of the CEA, 7 U.S.C. 7b–3(f)(8).

more than one platform, emergency action to liquidate or transfer open interest shall be as directed, or agreed to, by the CFTC or its staff. The SEF's rules should include procedures and guidelines for decision-making and implementation of emergency intervention that avoid conflicts of interest, and include alternate lines of communication and approval procedures to address emergencies associated with real time events. To address perceived market threats, the SEF should have rules that allow it to take emergency actions, including imposing or modifying position limits, imposing or modifying price limits, imposing or modifying intraday market restrictions, imposing special margin requirements, ordering the liquidation or transfer of open positions in any contract, ordering the fixing of a settlement price, extending or shortening the expiration date or the trading hours, suspending or curtailing trading in any contract, transferring customer contracts and the margin, or altering any contract's settlement terms or conditions, or, if applicable, providing for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services.

Paragraph (a)(2) of the guidance provides that a SEF should promptly notify the CFTC of its exercise of emergency action, explaining its decision-making process, the reasons for using its emergency authority, and how conflicts of interest were minimized, including the extent to which the SEF considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contracts traded on its facility, including similar markets on other trading venues. Furthermore, information on all regulatory actions carried out pursuant to a SEF's emergency authority should be included in a timely submission of a certified rule pursuant to part 40.

Proposed Rule 824 would implement SEA Core Principle 7 and is closely modelled on subpart I of part 37 and the guidance for CEA Core Principle 8 in appendix B to part 37. Paragraph (a) of proposed Rule 824 would repeat the statutory text of the Core Principle. Paragraph (b) of proposed Rule 824 would incorporate much of the language in paragraph (a)(1) of the CFTC's guidance on CEA Core Principle 8. Under paragraph (b), an SBSEF would be required to adopt rules that are reasonably designed to:

(1) Allow the SBSEF to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the SBSEF's market or as part of a coordinated, cross-market intervention;

(2) Have the flexibility and independence to address market emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the SBSEF are made in good faith to protect the integrity of the markets;

(3) Take market actions as may be directed by the Commission, including, in situations where an SBS is traded on more than one platform, emergency action to liquidate or transfer open interest as directed, or agreed to, by the Commission or the Commission's staff;

(4) Include procedures and guidelines for decision-making and implementation of emergency intervention that avoid conflicts of interest;

(5) Include alternate lines of communication and approval procedures to address emergencies associated with real-time events;

(6) Allow the SBSEF, to address perceived market threats, to impose or modify position limits, impose or modify price limits, impose or modify intraday market restrictions, impose special margin requirements, order the liquidation or transfer of open positions in any contract, order the fixing of a settlement price, extend or shorten the expiration date or the trading hours, suspend or curtail trading in any contract, transfer customer contracts and the margin, or alter any contract's settlement terms or conditions, or, if applicable, provide for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services.

Paragraph (c) of proposed Rule 824 is based on paragraph (a)(2) of the CFTC's guidance on CEA Core Principle 8 and would require an SBSEF to promptly notify the Commission of its exercise of emergency action, explaining its decision-making process, the reasons for using its emergency authority, and how conflicts of interest were minimized, including the extent to which the SBSEF considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contracts traded on its facility, including similar markets on other trading venues. In addition, proposed Rule 824(c) would require information on all regulatory actions carried out pursuant to an SBSEF's emergency authority to be included in a timely submission of a certified rule pursuant to Rule 807.

The Commission preliminarily believes that adapting the CFTC's guidance associated with CEA Core Principle 8 into proposed Rule 824 would appropriately implement SEA Core Principle 7. In particular, the Commission preliminarily agrees with the CFTC's principles-based approach to emergency situations, requiring SEF/SBSEFs to establish rules *ex ante* that generally would facilitate emergency actions but providing flexibility and independence with regard to specific actions that might be necessary. The Commission also preliminarily believes, as reflected in proposed Rule 824(c), that an SBSEF that exercises its emergency authority should be required to promptly notify the Commission of such exercise and to explain the basis for its actions. By harmonizing with the CFTC's approach, the Commission's intent is that, in many or even all instances, the SEF/SBSEF could file the same information regarding the situation to both agencies, rather than having to prepare one submission for the SEC and a different submission for the CFTC.

The Commission seeks comment on the following:

131. Do you agree generally with the Commission's approach to implementing SEA Core Principle 7? Why or why not?

132. In particular, do you agree with how the Commission is proposing to adapt the guidance from appendix B to part 37 regarding CEA Core Principle 8? Is there language adapted from the guidance into proposed Rule 824 that you believe should be omitted or revised? If so, please describe.

H. Rule 825—Core Principle 8—Timely Publication of Trading Information

SEA Core Principle 8 [170] requires an SBSEF to make public timely information on price, trading volume, and other trading data on SBS to the extent prescribed by the Commission, and to have the capacity to electronically capture and transmit and disseminate trade information with respect to transactions executed on or through the facility. CEA Core Principle 9 [171] is substantively identical to SEA Core Principle 8.

The CFTC implemented CEA Core Principle 9 in subpart J of part 37. Section 37.900 of subpart J repeats the statutory language of the Core Principle. § 37.901 provides that, with respect to swaps traded on or through a SEF, the

[170] Section 3D(d)(8) of the SEA, 15 U.S.C. 78c–4(d)(8).

[171] Section 5h(f)(9) of the CEA, 7 U.S.C. 7b–3(f)(9).

SEF shall report specified swap data as provided in parts 43 and 45 of the CFTC's rules. Section 37.901 also requires the SEF to comply with part 16 of the CFTC's rules, which requires a ''reporting market'' (which term includes a SEF) to provide certain reports to the CFTC regarding trading activity on the SEF and to make certain of that information publicly available without charge.

Proposed Rule 825 would implement SEA Core Principle 8 and is closely modelled on subpart J of part 37. Paragraph (a) of proposed Rule 825, like § 37.900, repeats the statutory language of the Core Principle. While § 37.901 provides that a SEF shall report swap transaction data pursuant to Parts 43 and 45 of the CFTC's rules, paragraph (b) of proposed Rule 825 would direct SBSEFs to report SBS transaction data in a manner specified in the SEC's Regulation SBSR.[172]

In addition, the Commission preliminarily believes that it would be appropriate to incorporate requirements for SBSEFs that are modelled on the requirements for SEFs in the CFTC's part 16. Unlike part 16, however, the Commission is *not* proposing to require SBSEFs to submit any information directly to the Commission.[173] Rather, the Commission is proposing in paragraph (c) of Rule 825 to require only the publication, on an SBSEF's website, of a ''Daily Market Data Report.'' The data fields that the Commission is proposing to require for the Daily Market Data Report approximate, although they are not the same as, those required by part 16. The Commission preliminarily believes that the differences in the product markets (*i.e.,* SBS vs. swaps and futures products) necessitate certain adaptations in the data fields so as to render the reports published by SBSEFs meaningful to SBS market participants and market observers.

Under proposed Rule 825(c)(1), the Daily Market Data Report for a business day would be required to contain the following information for each tenor of each SBS traded on that SBSEF during that business day:

(i) The trade count (including block trades but excluding error trades, correcting trades, and offsetting trades);

(ii) The total notional amount traded (including block trades but excluding error trades, correcting trades, and offsetting trades [174]);

(iii) The number of block trades;

(iv) The total notional amount of block trades;

(v) The opening and closing price;

(vi) The price that is used for settlement purposes, if different from the closing price; and

(vii) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the SBSEF reasonably determines accurately reflects market conditions. Bids and offers vacated or withdrawn shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

Paragraph (c)(2) of proposed Rule 825 would require an SBSEF to provide certain explanatory information regarding data presented on the Daily Market Data Report:

(i) The method used by the SBSEF in determining nominal prices and settlement prices; and

(ii) If discretion is used by the SBSEF in determining the opening and/or closing ranges or the settlement prices, an explanation that certain discretion may be employed by the SBSEF and a description of the manner in which that discretion may be employed. Discretionary authority would have to be noted explicitly in each case in which it is applied (for example, by use of an asterisk or footnote).

Paragraph (c)(3) of proposed Rule 825 would set out various requirements regarding the form and manner by which an SBSEF makes available its Daily Market Data Report. Paragraph (c)(3)(i) would require the SBSEF to post on its website its Daily Market Data Report in a downloadable and machine-readable format using the most recent versions of the associated XML schema and PDF renderer as published on the Commission's website. This proposed requirement is similar to existing Commission requirements for broker-dealer reports on order routing and execution [175] and is designed to allow the Daily Market Data Report to be automatically recognized and processed by a variety of software applications, thus making it immediately available for users to search, aggregate, compare, and analyze.[176] This should enable SBS market participants and other market observers to obtain timely and consistent information on price, trading volume, and other SBSEF trading data in a manner that would facilitate search capabilities, and statistical and comparative analyses across SBSEFs and date ranges. In addition, requiring SBSEFs to use a PDF renderer as specified by the Commission would provide a corresponding human-readable version of the machine-readable data, allowing end users without access to analytical software to read the disclosed information.

Paragraph (c)(3)(ii) of proposed Rule 825 would require the SBSEF to make available its Daily Market Data Report without fees or other charges. Paragraph (c)(3)(iii) would prohibit the SBSEF from imposing any encumbrances on access or usage restrictions with respect to the Daily Market Data Report. Paragraph (c)(3)(iv) would prohibit the SBSEF from requiring a user to agree to any terms before being allowed to view or download the Daily Market Data Report, such as by waiving any requirements of proposed Rule 825(c)(3). Paragraph (c)(3)(iv) would further provide that any such waiver agreed to by a user would be null and void.[177] The Commission preliminarily believes that proposed Rule 825(c)(3) could be subverted if an SBSEF could, for example, require that users—as a condition to viewing or downloading the Daily Market Data Report—waive any of the protections afforded under proposed Rule 825(c)(3).

Proposed Rule 825(c)(3) is designed to promote wide use of the SBS trading information contained in the Daily Market Data Report by prohibiting an SBSEF from imposing any financial, legal, or operational burdens on that use. The approach taken in proposed Rule 825(c)(3) is similar to the approach taken by the Commission in Regulation SBSR, which uses the term ''widely

[172] Section 13(m)(1) of the SEA, 15 U.S.C. 78m(m)(1), authorizes the Commission to make SBS transaction, volume, and pricing data available to the public in such form and at such times as the Commission determines appropriate to enhance price discovery. The Commission has adopted rules relating to the reporting and public dissemination of SBS transaction and pricing data as Regulation SBSR. Rule 901(a)(1) of Regulation SBSR, 17 CFR 242.901(a)(1), imposes certain reporting duties on SBSEFs.

[173] *Contra* § 16.00(a) (requiring a reporting market to submit clearing member reports to the CFTC for each business day).

[174] Each of these terms is defined in proposed Rule 802 and also used in proposed Rule 815.

[175] *See* 17 CFR 242.606.

[176] XML (eXtensible Markup Language) is an open standard that defines, or ''tags,'' data using standard definitions. The tags establish a consistent structure of identity and context, which allows for automatic recognition and processing by software applications.

[177] The presence of any such waiver requirements on a click-through screen could chill use of the Daily Market Data Report, because the user would be compelled to agree to the waiver even to view the report. The Commission recognizes that individual users may not have the time or the incentive to contest the appropriateness of any such waiver provisions in order to secure access. Proposed Rule 825(c)(3)(iv) is designed to assure such users that, even if an SBSEF were to insist on the waiver click-through as a condition of access, users would not in fact be sacrificing their ability to use the data free of charges and usage restrictions because the waiver would be null and void.

accessible'' [178] to prohibit registered SDRs from charging fees for or imposing usage restrictions on the SBS transaction data that they are required to publicly disseminate under Regulation SBSR.[179] When adopting the definition of ''widely accessible,'' the Commission noted that a registered SDR has a monopoly position over the SBS transaction information that it publicly disseminates and stated that ''there would be no other source from which the user could freely obtain this transaction information.'' [180] The Commission preliminarily believes that a registered SBSEF is similarly situated, because it is the sole source of information about SBS trading activity on its market. The Commission also stated that the prohibition on usage restrictions encompasses an SDR-imposed restriction on bulk redistribution by third parties of the regulatorily mandated transaction data that the registered SDR publicly disseminates.[181] For the same reasons, the proposed prohibition against an SBSEF imposing any usage restrictions on its Daily Market Data Report necessarily would encompass a prohibition on bulk redistribution of the Daily Market Data Report or any information contained therein. The Commission seeks to encourage market observers to access the Daily Market Data Report and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to the information contained in the report as they see fit.

Paragraph (c)(4) of proposed Rule 825 would require the SBSEF to publish the Daily Market Data Report on its website no later than the SBSEF's commencement of trading on the next business day after the day to which the information pertains. Proposed Rule 825(c)(4) is designed to require an SBSEF to provide its market data in a timely fashion so that it can be assessed and utilized by the next business day. Finally, paragraph (c)(5) would require the SBSEF to keep each Daily Market Data Report available on its website in the same location as all other Daily Market Data Reports for no less than one year after the date of first publication. Proposed Rule 825(c)(5) is designed to allow market observers to consult a reasonable number of previous reports on the SBSEF's website; the reports would be of less utility if an SBSEF could take down reports shortly after they are posted.

The Commission seeks comment on the following:

133. Do you agree in general with the Commission's approach for implementing SEA Core Principle 8? Why or why not?

134. Do you agree with the adaptions that the Commission is proposing to the CFTC's part 16 for inclusion in proposed Rule 825(c)? In particular, do you concur with the Commission's proposal to require only the Daily Market Data Report (to be published on the SBSEF's website) and not to require any daily reports to the Commission? Why or why not? If not, what market data do you believe should be reported directly to the Commission, and why?

135. Do you agree with the fields proposed by the Commission for the Daily Market Data Report in paragraphs (c)(1) and (2) of proposed Rule 825? If not, which fields do you believe are not appropriate, and why?

136. Do you believe that any of the fields should be defined differently or more precisely? If so, please explain.

137. Do you believe that the Commission should require additional fields? If so, what fields and why?

138. Do you agree with the proposed requirement in Rule 825(c)(3) that the Daily Market Data Report should be available free of charge and without usage restrictions or encumbrances? Why or why not? Are there any clarifications that you would recommend to help promote free and unencumbered access to and use of the Daily Market Data Report and any information contained therein? If so, please discuss.

139. Do you agree with the proposed requirement that the Daily Market Data Report should be made available in a downloadable and machine-readable format using the most recent version of the associated XML schema and PDF renderer as published on the Commission's website? Why or why not? Is there some other format that the Commission should require? If so, what format and why?

140. Do you agree with the proposed requirement in Rule 825(c)(4) that an SBSEF must publish the Daily Market Data Report on its website no later than the SBSEF's commencement of trading on the next business day after the day to which the information pertains? Why or why not? What is the current practice for the approximate time of day at which CFTC reporting markets make available their daily market data?

141. Do you agree with the proposed requirement in Rule 825(c)(5) that an SBSEF keep each Daily Market Data Report available on its website in the same location as all other Daily Market Data Reports for no less than one year after the date of first publication? Why or why not? Do you believe that a longer or shorter period would be appropriate? If so, please explain.

I. Rule 826—Core Principle 9—Recordkeeping and Reporting

SEA Core Principle 9 [182] sets forth recordkeeping and reporting obligations for SBSEFs. Core Principle 9 requires an SBSEF to maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years. The Core Principle further requires an SBSEF to report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform its duties. Finally, under Core Principle 9, the Commission must adopt data collection and reporting requirements for SBSEFs that are comparable to requirements for clearing agencies and SBS data repositories.[183] CEA Core Principle 10 for SEFs, although it includes an additional clause not present in the equivalent SEA Core Principle 9,[184] is substantively identical.

The CFTC implemented Core Principle 10 for SEFs in subpart K of part 37. Section 37.1000 of subpart K repeats the statutory language of the Core Principle. Section 37.1001 requires a SEF to maintain records of all

[178] *See* Rule 900(tt) of Regulation SBSR, 17 CFR 242.900(tt) (defining ''widely accessible'').

[179] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* SEA Release No. 78321 (July 14, 2016), 81 FR 53546, 53586–89 (August 12, 2016) (''Regulation SBSR Adopting Release II'').

[180] *Id.* at 53587.

[181] *Id.* (stating that: ''The Commission continues to believe that allowing unencumbered redistribution best serves the policy goals of wide availability of the data and minimization of information asymmetries in the [SBS] market. Because the Commission is prohibiting registered SDRs from imposing a restriction on bulk redistribution, third parties . . . will be able to take in the full data set and scrub, reconfigure, aggregate, analyze, repurpose, or otherwise add value to those data, and potentially sell that value-added product to others'').

[182] Section 3D(d)(9) of the SEA, 15 U.S.C. 78c–4(d)(9).

[183] As discussed below in this section, the Commission is proposing Rule 826 to require an SBSEF to maintain records of all activities relating to the business of the SBSEF for a period of not less than five years. Similarly, Rule 17a–1 under the SEA, 17 CFR 240.17a–1, requires a clearing agency to keep and preserve one copy of all documents made or received in the course of its business and conduct of its self-regulatory activities for a period of not less than five years. In addition, Rule 13n–7(b) under the SEA, 17 CFT 240.13n–7(b), requires an SBS data repository to keep and preserve a copy of all documents made or received by it in the course of its business for at least five years.

[184] CEA Core Principle 10 includes a clause stating that a SEF shall keep any records relating to certain swaps open to inspection and examination by the SEC. *See* 7 U.S.C. 7b–3(f)(10)(A)(iii).

activities relating to the business of the facility, in a form and manner acceptable to the CFTC, for a period of at least five years, and that a SEF shall maintain such records, including a complete audit trail for all swaps executed on or subject to the rules of the SEF, investigatory files, and disciplinary files. Section 37.1001 does not itself set forth detailed record retention requirements. Instead, § 37.1001 directs SEFs to maintain the required records in accordance with § 1.31 and part 45 of the CFTC's rules.

Section 1.31 imposes on ''records entities'' (which term includes SEFs) various requirements relating to record retention and production. Section 1.31(a) sets out definitions of terms used throughout § 1.31. Section 1.31(b) sets out the duration of retention for different types of records. In particular, a records entity must keep regulatory records of any swap from the date that the regulatory record was created until at least five years after the termination, maturity, expiration, transfer, assignment, or novation of such swap. Section 1.31(c) sets out the required form and manner of retention. Section 1.31(d) provides that a records entity must, at its own expense, produce or make regulatory records accessible for inspection to CFTC staff or to the U.S. Department of Justice, and includes other details regarding production requests.

Section 45.2 imposes various recordkeeping, retention, and retrieval requirements applicable to SEFs (among others) to support trade reporting. Section 45.2(a), among other things, requires a SEF to keep all records required by part 37. Section 45.2(c) sets out a record retention requirement.[185] Section 45.2(d) imposes requirements on the form of retention. § 45.2(e) imposes requirements on record retrievability. Section 45.2(h)[186] imposes requirements for record inspection; in particular, all records required to be kept by § 45.2 shall be open to inspection upon request by any representative of the CFTC, the U.S. Department of Justice, the SEC, or by any representative of a prudential regulatory as authorized by the CFTC.

To implement SEA Core Principle 9, the Commission is proposing Rule 826, which would roughly approximate §§ 1.31 and 45.2 while also drawing on concepts from the books and records requirements applicable to brokers, SEC-registered SROs, and other SEC-registered entities.[187]

Paragraph (a) of proposed Rule 826 repeats the statutory text of the Core Principle. Paragraph (b) would require an SBSEF to keep full, complete, and systematic records,[188] together with all pertinent data and memoranda, of all activities relating to its business with respect to SBS. Under paragraph (b), such records would be required to include, without limitation, the audit trail information required under proposed Rule 819(f) and all other records that an SBSEF is required to create or obtain under Regulation SE.

Paragraph (c) of proposed Rule 826 would require an SBSEF to keep records of any SBS from the date of execution until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction, and for a period of not less than five years, the first two years in an easily accessible place, after such date. Paragraph (c) also would require an SBSEF to keep each record (other than a record of an SBS noted in the previous sentence) for a period of not less than five years, the first two years in an easily accessible place, from the date on which the record was created. The proposed five-year retention requirements are consistent with section 3D(d) of the SEA[189] and are modelled on the requirements for SEFs in §§ 1.31 and 45.2. The proposed requirement that the records be kept ''in an easily accessible place'' for the first two years derives from an analogous requirement in the Commission's principal books and records rule for exchange members, brokers, and dealers.[190]

Paragraph (d)(1) of proposed Rule 826 would require an SBSEF to retain all records in a form and manner that ensures the authenticity and reliability of such records in accordance with the Act and the Commission's rules thereunder. Paragraph (d)(2) would require an SBSEF, upon request of any representative of the Commission, to promptly[191] furnish to the representative legible, true, complete, and current copies of any records required to be kept and preserved under Rule 826. Paragraph (d)(3) would provide that an electronic record shall be retained in a form and manner that allows for prompt production at the request of any representative of the Commission. Paragraph (d)(3) also would include provisions modelled on § 1.31(c)(2) requiring an SBSEF that maintains electronic records to establish appropriate systems and controls that ensure the authenticity and reliability of electronic records, including, without limitation:

(A) Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic records and to monitor compliance with the SEA and the Commission's rules thereunder;

(B) Systems that ensure that the SBSEF is able to produce electronic records in accordance with Rule 826, and ensure the availability of such electronic records in the event of an emergency or other disruption of the SBSEF's electronic record retention systems; and

(C) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic records.

Sections 1.31 and 43.2 include provisions that govern inspection and production of records. While the Commission believes that its rules for SBSEFs also should address those topics, the Commission does not believe that adapting a CFTC rule would be the most appropriate way to do so. Paragraph (e) of proposed Rule 826 would provide instead that, because a registered SBSEF is also a registered broker, all records required to be kept by an SBSEF pursuant to Rule 826 would

[185] *See* 7 CFR 45.2(c) (''All records required to be kept pursuant to this section shall be retained with respect to each swap throughout the life of the swap and for a period of at least five years following the final termination of the swap''). Section 45.2(b) imposes duties on certain swap counterparties and is not germane to SEFs; therefore, the Commission is not considering adapting it into proposed Rule 826.

[186] Section 45.2(f) and (g) are marked as ''reserved.''

[187] *See infra* section XIII (discussing in the context of proposed new Rule 15a–12 that an SBSEF registered with the Commission is also a registered broker and, as such, is subject to the SEA's recordkeeping and reporting requirements applicable to brokers).

[188] While § 1.31(a) defines the terms ''regulatory records'' and ''electronic regulatory records'' and utilizes them throughout § 1.31, the Commission is utilizing instead the term ''records,'' which is defined in section 3(a)(37) of the SEA, 15 U.S.C. 78c(a)(37). In doing so, the Commission seeks to avoid any ambiguities or inconsistencies that could arise by using variants of a term that is defined in the Commission's governing statute. The Commission is including a definition of ''records'' in proposed Rule 802 that cross-references section 3(a)(37) of the SEA.

[189] *See* 15 U.S.C. 78c–4(d)(9)(A)(i) (requiring an SBSEF to ''maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission, *for a period of five years*'') (emphasis added).

[190] *See* Rule 17a–4(b) under the SEA, 17 CFR 240.17a–4(b).

[191] In this context, ''prompt'' or ''promptly'' means making reasonable efforts to produce records that are requested by the staff during an examination without delay. The Commission believes that, in many cases, an SBSEF could, and therefore would be required to, furnish records immediately or within a few hours of a request. An SBSEF should produce records within 24 hours unless there are unusual circumstances.

be subject to examination by any representative of the Commission pursuant to section 17(b) of the SEA. As noted above, section 17(b) is the source of the Commission's examination authority for registered brokers (among other types of registered entities). Proposed Rule 826(e) is designed only to remind SBSEFs of this statutory authority and does not seek to limit or expand that authority using the Commission's powers over SBSEFs in section 3D of the SEA.

Proposed Rule 826 includes a paragraph (f) that is not modelled on any provision of § 1.31 or 43.2, but rather on § 1.37(c) of the CFTC's rules, which provides: ''Each designated contract market and swap execution facility shall keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any foreign trader executing transactions on the facility or exchange. In addition, upon request, a designated contract market or swap execution facility shall provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such foreign trader.'' Proposed Rule 826(f) is modelled closely on § 1.37(c), except that it uses the term ''non-U.S. member'' rather than ''foreign trader.'' [192]

The recordkeeping and reporting requirements proposed in Rule 826 are designed to be generally consistent with the requirements applicable to SEFs and with the Commission's requirements under section 17(a) of the SEA. The Commission preliminarily believes that proposed Rule 826 would therefore achieve similar regulatory benefits as the CFTC rules applicable to SEFs while imposing only marginal costs, since dually registered SEF/SBSEFs are familiar with the CFTC requirements and have invested in systems, policies, and procedures to comply with them. The Commission intends that the same systems, policies, and procedures could be used to comply with parallel SEC requirements.

The Commission seeks comment on the following:

142. Do you agree in general with the Commission's approach to implementing SEA Core Principle 9? Why or why not?

143. Do you believe that the Commission should subject registered SBSEFs to section 17(a) of the SEA and the Commission's rules thereunder? Why or why not? If not, are there nevertheless specific provisions of the Commission's rules under section 17(a) that you believe should nevertheless be incorporated into Rule 826 using the Commission's statutory authority over SBSEFs in section 3D of the SEA? If so, which provision(s) and why?

144. Are there any provisions of proposed Rule 826 that are significantly different from, or even in conflict with, any recordkeeping requirements imposed on SEFs by any CFTC rule? If so, please discuss and suggest how you would resolve any such conflict.

145. Are there any provisions of § 1.31 or § 45.2 that the Commission has *not* proposed to incorporate into proposed Rule 826 that you believe should be applied to SBSEFs? If so, which provision(s) and why?

146. Are there any recordkeeping provisions elsewhere in the CFTC rules that the Commission has *not* proposed to incorporate into proposed Rule 826 that you believe should be applied to SBSEFs? If so, which provision(s) and why?

147. Do you believe that the Commission should adapt § 1.37 into proposed Rule 826(f)? Why or why not? Do you believe that the Commission's proposed term ''non-U.S. member'' used in Rule 826(f) is an appropriate substitute for ''foreign trader'' used in § 1.37? Why or why not?

J. Rule 827—Core Principle 10—Antitrust Considerations

SEA Core Principle 10 [193] provides that, unless necessary or appropriate to achieve the purposes of the SEA, an SBSEF shall not: (1) Adopt any rules or take any actions that result in any unreasonable restraint of trade, or (2) impose any material anticompetitive burden on trading or clearing. CEA Core Principle 11 [194] is substantively identical.

The CFTC implemented CEA Core Principle 11 in subpart L of part 37. Section 37.1100 of subpart L repeats the statutory text of Core Principle 11. Section 37.1101 provides that a SEF ''may refer'' to the guidance in appendix B to part 37 to demonstrate compliance with Core Principle 11. The guidance states that an entity seeking registration as a SEF may request that the CFTC consider, under the provisions of section 15(b) of the CEA,[195] any of the entity's rules—including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading—at the time of registration or thereafter. The guidance further states that the CFTC intends to apply CEA section 15(b) to its consideration of issues under CEA Core Principle 11 in a manner consistent with that previously applied to contract markets.

Proposed Rule 827 would implement SEA Core Principle 10 and, like § 37.1100, reiterates the statutory text of the Core Principle. The Commission is not adapting the guidance from appendix B pertaining to CEA Core Principle 11 into a proposed rule.[196]

The Commission seeks comment on the following:

148. Do you agree with how the Commission is proposing to implement SEA Core Principle 10? Why or why not?

[192] Since a ''foreign trader'' in § 1.37(c) is executing transactions on the SEF, it must be a member of the SEF. Because the term ''member'' is used elsewhere in the CFTC rules pertaining to SEFs, the Commission is proposing to use the term ''member'' throughout Regulation SE and would define ''member'' in Rule 802. The term ''non-U.S. member,'' also found in proposed Rule 802, would be defined as ''a member of a security-based swap execution facility that is not a U.S. person.''

[193] Section 3D(d)(10) of the SEA, 15 U.S.C. 78c–4(d)(10).

[194] Section 5h(f)(11) of the CEA, 7 U.S.C. 7b–3(f)(11).

[195] 7 U.S.C. 19(b) (providing that the CFTC shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter of the CEA, as well as the policies and purposes of this chapter of the CEA, in issuing any order or adopting any CFTC rule or regulation (including any exemption), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association).

[196] The guidance in appendix B of part 37 pertaining to CEA Core Principle 10 for SEFs states: ''An entity seeking registration as a [SEF] may request that the [CFTC] consider under the provisions of section 15(b) of the [CEA], any of the entity's rules, including trading protocols or policies, and including both operational rules and the terms or conditions of products listed for trading, at the time of registration or thereafter. The [CFTC] intends to apply section 15(b) of the [CEA] to its consideration of issues under this core principle in a manner consistent with that previously applied to contract markets.'' Section 15(b) of the CEA, 7 U.S.C. 19(b) states: ''The [CFTC] shall take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of this chapter, as well as the policies and purposes of this chapter, in issuing any order or adopting any [CFTC] rule or regulation (including any exemption under section 6(c) or 6c(b) of this title), or in requiring or approving any bylaw, rule, or regulation of a contract market or registered futures association established pursuant to section 21 of this title.'' The Commission does not believe that it is appropriate to adapt this guidance into a rule that applies to SBSEFs because the SEA (which applies to SBSEFs) does not have a provision that is closely comparable to section 15(b) of the CEA (which applies to SEFs). Furthermore, the guidance pertaining to CEA Core Principle 10 for SEFs sets out only a general approach to how the CFTC addresses antitrust issues applying to SEFs and does not include provisions that can readily be adapted into rule text.

K. Rule 828—Core Principle 11—Conflicts of Interest

SEA Core Principle 11 [197] requires an SBSEF to establish and enforce rules to minimize conflicts of interest in its decision-making process and to establish a process for resolving the conflicts of interest. CEA Core Principle 12 [198] is substantively identical.

The CFTC implemented CEA Core Principle 12 in subpart M of part 37. Section 37.1200 of subpart M repeats the statutory text of Core Principle 12. There are no other provisions in subpart M, nor is there any guidance or acceptable practices associated with Core Principle 12 in appendix B to part 37.[199]

Proposed Rule 828 would implement SEA Core Principle 11. Paragraph (a) of proposed Rule 828, like § 37.1200, repeats the statutory text of the Core Principle. Paragraph (b) would direct an SBSEF to comply with the requirements of proposed Rule 834, which, as discussed below, would implement section 765 of the Dodd-Frank Act for both SBSEFs and SBS exchanges.[200]

The Commission seeks comment on the following:

149. Do you agree with how the Commission is proposing to implement SEA Core Principle 11 in Rule 828? Why or why not?

150. The Commission is proposing to subject SBS exchanges and SBSEFs to the same conflicts-of-interest requirements, in Rule 834. Therefore, proposed Rule 828 cross-references proposed Rule 834 rather than enumerating conflicts-of-interest requirements for SBSEFs separate from those for SBS exchanges. Do you believe that this is an appropriate way to structure the proposed rules? Why or why not? Are there any conflicts-of-interest requirements that you believe should be applied to SBSEFs *but not* to SBS exchanges? If so, what requirement(s) and why?

[197] Section 3D(d)(11) of the SEA, 15 U.S.C. 78c–4(d)(11).

[198] 7 U.S.C. 7b–3(f)(12).

[199] The CFTC has proposed additional rules regarding the mitigation of conflicts of interest but has not adopted any such rules. *See* CFTC, *Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities Regarding the Mitigation of Conflicts of Interest,* 75 FR 63732 (October 18, 2010); CFTC, *Governance Requirements for Derivatives Clearing Organizations, Designated Contract Markets, and Swap Execution Facilities; Additional Requirements Regarding the Mitigation of Conflicts of Interest,* 76 FR 722 (January 6, 2011).

[200] *See infra* section X.

L. Rule 829—Core Principle 12—Financial Resources

SEA Core Principle 12 [201] has a paragraph (A) that requires an SBSEF to have adequate financial, operational, and managerial resources to discharge each responsibility of the SBSEF, as determined by the Commission. Paragraph (B) of SEA Core Principle 12 provides that the financial resources of an SBSEF shall be considered to be adequate if the value of the financial resources: (i) Enables the organization to meet its financial obligations to its members and participants notwithstanding a default by the member or participant creating the largest financial exposure for that organization in extreme but plausible market conditions; and (ii) exceeds the amount that would enable the SBSEF to cover operating costs of the SBSEF for a one-year period, as calculated on a rolling basis. CEA Core Principle 13 for SEFs [202] is substantively identical with respect to paragraphs (A) and (B)(ii) of SEA Core Principle 12, but lacks an equivalent to paragraph (B)(i) of SEA Core Principle 12.

The CFTC implemented CEA Core Principle 13 for SEFs in subpart N of part 37. Section 37.1300 of subpart N repeats the statutory text of CEA Core Principle 13. Section 37.1301 provides that financial resources shall be considered adequate if their value exceeds the total amount that would enable a SEF to cover its projected operating costs necessary for the SEF to comply with section 5h of the CEA and applicable CFTC regulations for a one-year period, calculated on a rolling basis. Section 37.1302 describes the types of financial resources that may satisfy the requirements of § 37.1301. Section 37.1303 provides that the financial resources allocated by the SEF to meet the financial resources requirements shall include unencumbered, liquid financial assets equal to at least the greater of three months of projected operating costs or the projected costs needed to wind down the SEF's operations. If a SEF lacks sufficient unencumbered, liquid financial assets, it may satisfy this obligation by obtaining a committed line of credit in an amount at least equal to the deficiency. Section 37.1304 requires a SEF, each fiscal quarter, to make a reasonable calculation of its projected operating costs and wind-down costs in order to determine its applicable obligations under this section. It further provides that the SEF shall have reasonable discretion in determining the methodology used to compute such amounts, provided that the CFTC may review the methodology and require changes as appropriate. Section 37.1305 provides that, no less than each fiscal quarter, a SEF must compute the current market value of each financial resource used to meet its obligations under §§ 37.1301 and 37.1303 and that reductions in value to reflect market and credit risk (''haircuts'') shall be applied as appropriate.

Section 37.1306 addresses reporting to the CFTC. Paragraph (a) of § 37.1306 provides that, each fiscal quarter, or at any time upon CFTC request, a SEF shall report the amount of financial resources necessary to meet the requirements of §§ 37.1301 and 37.1303 and the market value of each financial resource available, and provide the CFTC with financial statements, including the balance sheet, income statement, and statement of cash flows of the SEF, prepared in accordance with U.S. generally acceptable accounting principles (''GAAP''). Paragraph (a) further provides that the financial statements of a SEF that is not domiciled in the United States and is not otherwise required to prepare financial statements in accordance with U.S. GAAP may instead prepare its financial statements in accordance with either International Financial Reporting Standards issued by the International Accounting Standards Board or a comparable international standard as the CFTC may otherwise accept in its discretion. Paragraph (b) provides that the calculations required under paragraph (a) shall be made as of the last business day of the SEF's fiscal quarter. Paragraph (c) requires the SEF to provide the CFTC with sufficient documentation to explain its methodology for computing its financial requirements under §§ 37.1301 and 37.1303. Further, paragraph (c) of § 37.1306 *requires that the* documentation must allow the CFTC to reliably determine, without additional requests for information, that the SEF has made reasonable calculations pursuant to § 37.1304. Paragraph (d) of § 37.1306 provides that these reports and supporting documentation shall be filed within 40 calendar days of the end of the SEF's first three fiscal quarters, and within 90 calendar days of the end of the SEF's fourth fiscal quarter, or at such later time as the CFTC may permit. Paragraph (e) requires a SEF to provide notice to the CFTC no later than 48 hours after it knows or reasonably should know that it no longer meets its

[201] Section 3D(d)(12) of the SEA, 15 U.S.C. 78c–4(d)(12).

[202] Section 5h(f)(13) of the CEA, 7 U.S.C. 7b–3(f)(13).

obligations under §§ 37.1301 and 37.1303.

Proposed Rule 829 would implement SEA Core Principle 12 and is based closely on subpart N of part 37.[203] Because this Core Principle relates to the business operations of the trading venue, very few modifications are necessary to adapt the CFTC rule to apply to SBSEFs. Therefore, proposed Rule 829 is closely modelled on the rules in subpart N.

However, one slight difference in the rule text stems from the Commission's global approach to adapting the CFTC's guidance and acceptable practices from appendix B to part 37 into formal rules, where appropriate. Although the Commission considered proposing a separate rule that adapts the guidance in appendix B pertaining to CEA Core Principle 13, the Commission is proposing instead to weave the concepts and some of the specific language from the CFTC guidance relating to financial resources into paragraph (e) of proposed Rule 829, as the guidance relates only to that portion of the proposed rule. Proposed Rule 829(e) begins by incorporating the provisions of § 37.1304 regarding computation of costs to meet the financial resources requirement. Proposed Rule 829(e) then appends language based on the CFTC guidance concerning the following topics, all of which relate to computation of costs: (i) Reasonableness of calculating projected operating costs and what may be excluded from such calculation; (ii) proration of expenses; and (iii) allocation of expenses among affiliates.

Another non-substantive difference between proposed Rule 829 and subpart N of part 37 is the requirement in proposed Rule 829(g)(6) for an SBSEF to submit reports and documentation to the Commission using the EDGAR system as an Interactive Data File, in accordance with Rule 405 of Regulation S–T. The Commission is proposing this requirement here and in other locations to implement the Inline XBRL and EDGAR electronic filing requirements for various documents that would have to be provided to the Commission under proposed Regulation SE.

The Commission preliminarily believes that the CFTC has implemented its equivalent Core Principle in an appropriate way, and that closely harmonizing with the CFTC rule would provide comparable regulatory benefits while imposing only marginal additional costs. Given that most if not all entities that will seek to register with the SEC as SBSEFs are already registered with the CFTC as SEFs, these entities already have in place the processes and controls to designed to comply with subpart N. Furthermore, the Commission recognizes that the swap business of a dually registered SEF/SBSEF is likely to be much larger than its SBS business. Therefore, the greatest risk to a dually registered entity is likely to arise from the swap business rather than the SBS business, so it would be logical for the SEC to defer to the CFTC's approach for ensuring that SEFs have adequate financial resources. Different or additive requirements imposed by the SEC could increase costs for SEF/SBSEFs while generating benefits that are marginal at best. The Commission does not observe any differences in the SBS market relative to the swap market that warrant imposing different or additive financial resource requirements on SBSEFs.

The Commission seeks comment on the following:

151. Do you agree in general with the Commission's approach to implementing SEA Core Principle 12? Why or why not?

152. In particular, do you agree with how the Commission is proposing to adapt the language of subpart N of part 37 into proposed Rule 829? If not, how would you revise that language?

153. How does the anticipated size of the SBS trading business on dually registered SEF/SBSEFs relative to the size of swap trading business affect your view of the financial resource requirements that the SEC should impose on dually registered entities? Do you agree that there would be only marginal additional costs imposed on dually registered entities to provide the same financial information at the same times to both the SEC and CFTC (pursuant to proposed Rule 829 and subpart N, respectively)? Why or why not?

154. Are there provisions of subpart N that the SEC should *not* incorporate, even if you believe that the SEC should harmonize with the majority of subpart N? In other words, are there areas where omitting a subpart N provision would reduce burdens on SBSEFs and/or their members without lessening any regulatory benefits? If so, please explain, with particular regard to the economic impacts and/or PRA burdens.

155. Should the Commission adopt different or additive financial resource requirements for SBSEFs, even if there are no analogous provisions in subpart N? If so, please explain, with particular regards to the economic impacts and/or PRA burdens. For example, do you believe that the SEC-specific provision *would impose* additional costs or burdens on SBSEFs and/or their members that are *nevertheless appropriate* in view of new and additional benefits? Or do you believe that the SEC-specific provision would be appropriate *because it would relieve costs or burdens* that are imposed on SEFs by subpart N that, in your view, are unnecessary or inappropriate for SBSEFs?

156. Do you agree with how the Commission is proposing to adapt the CFTC guidance pertaining to its equivalent Core Principle by converting it into formal rule text? Why or why not? Would adapting the CFTC guidance into the Commission's rules necessitate any changes in how financial resources are calculated?

M. Rule 830—Core Principle 13—System Safeguards

Paragraph (A) of SEA Core Principle 13[204] provides that an SBSEF must establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that are reliable and secure and that have adequate scalable capacity. Paragraph (B) requires that an SBSEF also must establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for the timely recovery and resumption of operations; and the fulfillment of the responsibilities and obligations of the SBSEF. Finally, paragraph (C) of SEA Core Principle 13 requires an SBSEF to periodically conduct tests to verify that the backup resources of the SBSEF are sufficient to ensure continued order processing and trade matching; price reporting; market surveillance; and maintenance of a comprehensive and accurate audit trail. CEA Core Principle 14[205] is substantively identical to SEA Core Principle 13.

Subpart O of part 37 is entitled ''System Safeguards'' and implements CEA Core Principle 14. Section 37.1400 of subpart O repeats the statutory text of the Core Principle. § 37.1401 sets forth detailed requirements for a SEF to comply with the Core Principle.

[203] However, paragraph (a)(2)(i) of proposed Rule 829 would include the additional language in SEA Core Principle 12 that is not present in CEA Core Principle 13. As noted above, this language relates to an SBSEF meeting financial obligations to members and participants notwithstanding a default by the member or participant creating the largest financial exposure for the SBSEF in extreme but plausible market conditions.

[204] Section 3D(d)(13)(A) of the SEA, 15 U.S.C. 78c–4(d)(13).

[205] Section 5h(f)(14) of the CEA, 7 U.S.C. 7b–3(f)(14).

Paragraph (a) of § 37.1401 requires a SEF's program of risk analysis and oversight to address enterprise risk management and governance, information security, business continuity-disaster recovery planning and resources, capacity and performance planning, systems operations, systems development and quality assurance, and physical security and operational controls. Paragraph (b) provides that, in addressing the categories of risk analysis and oversight required under paragraph (a), a SEF shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems. Paragraph (c) requires a SEF to maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and backup facilities that satisfy several enumerated criteria. Paragraph (d) explains how a SEF that is not determined by the CFTC to be a critical financial market may satisfy its requirement to be able to resume its operations and resume its ongoing fulfillment of its responsibilities and obligations during the next business day following any disruption of its operations.

Paragraph (e) of § 37.1401 requires a SEF to notify the CFTC promptly of all electronic trading halts and material system malfunctions; cyber security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity; and activations of SEF's business continuity-disaster recovery plan. Paragraph (f) requires the SEF to provide CFTC staff timely advance notice of all material planned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems; and planned changes to the SEF's program of risk analysis and oversight. Paragraph (g) sets forth recordkeeping requirements related to the SEF's system safeguards. Paragraph (h) requires the SEF to conduct testing and review of its automated systems and business continuity-disaster recovery capabilities and provides several definitions for terms used in paragraph (h). Paragraph (h) also requires the SEF to conduct ''vulnerability testing,'' ''external penetration testing,'' ''internal penetration testing,'' ''controls testing,'' ''security incident response plan testing,'' and ''enterprise technology risk assessment'' subject to various enumerated criteria.

Paragraph (i) of § 37.1401 provides that the SEF, to the extent practicable, shall coordinate its business continuity-disaster recovery plan with those of the market participants that it depends upon to provide liquidity, in a manner adequate to enable effective resumption of activity in its markets following a disruption causing activation of the SEF's business continuity-disaster recovery plan. Paragraph (i) also requires the SEF to initiate and coordinate periodic, synchronized testing of its business continuity-disaster recovery plan with those of the market participants it depends upon to provide liquidity; and to ensure that its business continuity-disaster recovery plan takes into account the business continuity-disaster recovery plans of its telecommunications, power, water, and other essential service providers.

Paragraph (j) of § 37.1401 provides that part 40 of the CFTC's rules shall govern the obligations of those registered entities that the CFTC has determined to be critical financial markets, with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day recovery time objective in the event of a wide-scale disruption. Paragraph (k) sets forth criteria for the scope for all system safeguard testing and assessment required under the rule. Paragraph (*l*) requires that both the senior management and the board of directors of the SEF shall receive and review reports setting forth the results of the testing and assessment required by the rule. Paragraph (m) requires the SEF to identify and document the vulnerabilities and deficiencies in its systems revealed by testing and assessment, conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies, and remediate in a timely manner given the nature and magnitude of the associated risk.

Proposed Rule 830 is closely modelled on subpart O of part 37 of the CFTC's rules, except in one aspect. Subpart O includes language relating to ''critical financial markets,'' [206] which is a designation applied by the CFTC to certain of its registrants that would subject them to more stringent requirements, although the CFTC has not yet adopted any such requirements.[207] A similar concept in the SEC's rules is ''SCI entity.'' [208] When adopting Regulation SCI, the Commission considered whether it should apply Regulation SCI to SBSEFs, among other entities, and determined not to do so.[209] Because SBSEFs are not SCI entities and the corresponding CFTC rule has not imposed additional requirements on critical financial markets, the Commission preliminarily believes that it is not necessary or appropriate to adapt into Rule 830 the language of subpart O applicable to critical financial markets.[210]

The Commission preliminarily believes that subpart O is reasonably designed to promote SEF operational capability, and that the most appropriate way to implement SEA Core Principle 13 would be to closely harmonize with the CFTC's rules that implement the corresponding Core Principle. As with SEA Core Principle 12 (Financial resources), the Commission recognizes that the swap business of a dually registered SEF/SBSEF is likely to be much larger than its SBS business. Therefore, the greatest operational risk to a dually registered entity is likely to arise from the swap business rather than the SBS business, so it would be logical for the SEC to defer to the CFTC's approach for ensuring that SEFs have adequate system safeguards and business continuity protocols. Different or additive requirements imposed by the SEC could increase costs for SEF/SBSEFs while generating benefits that are marginal at best. The Commission does not observe any differences in the SBS market relative to the swap market that warrant imposing different or additive operational capability requirements on SBSEFs.

[206] *See* § 37.1401(c) (providing that SEFs determined by the CFTC to be critical financial markets are subject to more stringent requirements); § 37.1401(d); § 37.1401(j) (providing that part 40 governs the obligations of registered entities that the CFTC has determined to be critical financial markets, with respect to maintenance and geographic dispersal of disaster recovery resources sufficient to meet a same-day recovery time objective in the event of a wide-scale disruption).

[207] The provisions in subpart O relating to ''critical financial markets'' reference § 40.9 of the CFTC's rules, which is marked as ''Reserved.''

[208] *See* Rule 1000 of Regulation SCI (defining ''SCI entity''). In November 2014, the Commission adopted Regulation Systems Compliance and Integrity (''SCI'') to strengthen the technology infrastructure of the U.S. securities markets, reduce the occurrence of systems issues in those markets, improve their resiliency when technological issues arise, and establish an updated and formalized regulatory framework, thereby helping to ensure more effective Commission oversight of such systems. *See Regulation Systems Compliance and Integrity,* SEA Release No. 73639 (November 19, 2014), 79 FR 72252 (December 5, 2014).

[209] *See id.,* 79 FR at 72363–64 (reviewing comments received regarding the potential application of Regulation SCI to SBSEFs, among others).

[210] The Commission also notes that, while subpart O frequently uses the term ''market participant,'' proposed Rule 830 substitutes the term ''member'' in these places, since the rule pertains to market participants who are engaging as members of the SEF/SBSEF. *See supra* note 53.

The Commission seeks comment on the following:

157. Do you agree in general with how the Commission is proposing to implement SEA Core Principle 13 in proposed Rule 830? Why or why not?

158. In particular, do you believe that close harmonization with subpart O of the CFTC's rules is appropriate? If not, is there another framework for system safeguards that would be more appropriate for SBSEFs? What would be the economic impact of the SEC adopting different or additive system safeguard requirements in the case of dually registered SEF/SBSEFs?

159. As noted above,[211] the Commission previously determined not to subject SBSEFs to Regulation SCI. Do you see any changes in the SBS market that should cause the Commission to revisit that decision?

160. Do you believe it is appropriate to omit from Rule 830 the provisions of subpart O relating to critical financial markets? Why or why not?

161. Are there provisions of subpart O that the SEC should *not* incorporate, even if the SEC opts to harmonize with most of subpart O? In other words, are there areas where omitting a subpart O provision would reduce burdens on SBSEFs and/or their members without lessening any regulatory benefits? If so, please explain, with particular regard to the economic impacts and/or PRA burdens.

162. Should the Commission adopt different or additive system safeguard requirements for SBSEFs, even if there is no analog to such provisions in subpart O? If so, please explain, with particular regards to the economic impacts and/or PRA burdens. For example, do you believe that the SEC-specific provision *would impose* additional costs or burdens on SBSEFs and/or their market participants that are *nevertheless appropriate* in view of new and additional benefits? Or do you believe that the SEC-specific provision would be appropriate *because it would relieve costs or burdens* that are imposed on SEFs by subpart O that, in your view, are unnecessary or inappropriate for SBSEFs?

N. Rule 831—Core Principle 14—Designation of Chief Compliance Officer

SEA Core Principle 14[212] requires each registered SBSEF to designate a chief compliance officer (''CCO''), and requires the CCO to review the SBSEF's compliance with the Core Principles, resolve conflicts of interest, be responsible for establishing and administering policies and procedures required under the Core Principles, establish procedures for the remediation of noncompliance, prepare and sign an annual report that describes the SBSEF's compliance, certify that the report is accurate and complete, and submit the report to the Commission. CEA Core Principle 15 for SEFs[213] is substantively identical.

The CFTC implemented CEA Core Principle 15 in subpart P of part 37. Section 37.1500 of subpart P repeats the statutory text of CEA Core Principle 15. Section 37.1501(a) sets forth definitions for the terms ''board of directors'' and ''senior officer.'' Section 37.1501(b)(1) provides that the position of CCO shall carry with it the authority and resources to develop, in consultation with the board of directors or senior officer, and enforce the SEF's policies and procedures, and that the CCO shall have supervisory authority over all staff acting at the direction of the CCO. Section 37.1501(b)(2) through (4) include provisions relating to the qualifications of the CCO, appointment and removal of the CCO, and compensation of the CCO. Section 37.1501(b)(5) through (6) state that the CCO must meet with the SEF's board of directors or senior officer at least annually, and the CCO must provide any information regarding the SEF's self-regulatory program as requested by the board of directors or the senior officer.

Section 37.1501(c) sets out the duties of the CCO, including overseeing and reviewing the SEF's compliance with the Core Principles; taking reasonable steps, in consultation with the board of directors or senior officer, to resolve any material conflicts of interest; establishing and administering written policies and procedures reasonably designed to prevent violations of the CEA and the rules of the CFTC; taking reasonable steps to ensure compliance with the CEA and CFTC rules; establishing procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the CCO; establishing and administering a compliance manual and a written code of ethics for the SEF; supervising the self-regulatory program of the SEF with respect to trade practice surveillance, market surveillance, real-time market monitoring, compliance with audit trail requirements, enforcement and disciplinary proceedings, audits, examinations, and other regulatory responsibilities; and supervising the effectiveness and sufficiency of any regulatory services provided to the SEF by a regulatory service provider.

Section 37.1501(d) requires the CCO to prepare and sign an annual compliance report that covers the prior fiscal year. The report must contain, at a minimum: A description and self-assessment of the effectiveness of the SEF's written policies and procedures, code of ethics, and conflict of interest policies; any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program; a description of the financial, managerial, and operational resources set aside for compliance with the CEA and applicable CFTC regulations; any material non-compliance matters identified and an explanation of the corresponding action taken to resolve them; and CCO certification that the annual compliance report is accurate and complete.

Section 37.1501(e) requires the CCO to provide the annual compliance report to the SEF's board of directors or a senior officer for review before submitting it to the CFTC, and the board or the senior office may not require the CCO to make any changes to the report. Section 37.1501(e) further provides that the annual compliance report shall be submitted electronically to the CFTC not later than 90 calendar days after the end of the SEF's fiscal year and concurrently with the fourth-quarter financial report pursuant to § 37.1306. Section 37.1501(e) also addresses amendments to and requests for extensions for the annual compliance report.

Section 37.1501(f) requires the SEF to maintain all records demonstrating compliance with the duties of the CCO and the preparation and submission of annual compliance report, consistent with §§ 37.1000 and 37.1001. Finally, appendix B to part 37 includes ''acceptable practices'' regarding the qualifications of a CCO and the SEF's discretion in choosing one, as well as the need to be vigilant regarding conflicts of interest when appointing a CCO.

Proposed Rule 831 would implement SEA Core Principle 14 and is closely modelled on subpart P of part 37, with two minor substantive exceptions.[214]

[211] *See supra* note 209 and accompanying text.

[212] Section 3D(d)(14) of the SEA, 15 U.S.C. 78c–4(d)(14).

[213] Section 5h(f)(15) of the CEA, 7 U.S.C. 7b–3(f)(15).

[214] In addition, the requirement in proposed Rule 831 that the CCO's annual compliance report be submitted electronically to the Commission, based on § 37.1501(e)(2), includes an added clause to provide that the submission must be made using the

Continued

The first relates to disqualification of the CCO. Section 37.1501(b)(2)(ii) states: ''No individual disqualified from registration pursuant to sections 8a(2) or 8a(3) of the [CEA] may serve as a chief compliance officer.'' The Commission preliminarily believes that SBSEFs, like SEFs, should be subject to a rule setting out criteria for disqualification of the CCO. However, the SEC cannot cross-reference provisions of the CEA, since the CEA does not apply to SBSEFs. The Commission consulted Sections 8a(2) and 8a(3) of the CEA,[215] but believes they are not easily adaptable into a rule applicable to SBSEFs and their CCOs. The Commission is proposing instead, in Rule 831(c)(2), that no individual that would be disqualified from serving on an SBSEF's governing board [216] or committees pursuant to the criteria set forth in § 242.819(i) may serve as the CCO. As noted above,[217] the disqualification criteria in proposed Rule 819(i) are adapted from § 1.63 of the CFTC's rules. Second, the Commission has adapted the acceptable practices pertaining to CEA Core Principle 15 into paragraph (c) of proposed Rule 831.[218]

The Commission preliminarily believes that the CFTC has implemented CEA Core Principle 14 for SEFs in an appropriate way, and that closely harmonizing with subpart P of part 37 would yield comparable regulatory benefits while imposing only marginal additional costs. The Commission recognizes that the swap business of a dually registered SEF/SBSEF is likely to be much larger than its SBS business. Therefore, the greatest compliance risks to a dually registered entity are likely to arise from the swap business rather than the SBS business, so it would be logical for the SEC to harmonize with the CFTC's rules regarding the CCO. There are strong economic incentives for a dually registered entity to appoint the same individual to serve as the CCO for both the swap and SBS businesses, and for the CCO to carry out their functions under a similar set of rules. Different or additive requirements imposed by the SEC could increase costs for SEF/SBSEFs while generating benefits that are marginal at best. The Commission does not observe any differences in the SBS market relative to the swap market that warrant imposing different or additive CCO requirements on SBSEFs relating to the CCO.

The Commission seeks comment on the following:

163. Do you agree in general with how the Commission is proposing to implement SEA Core Principle 14? Why or why not?

164. In particular, do you agree that close harmonization with subpart P is appropriate? Are there provisions of subpart P that the SEC should *not* incorporate, even if the SEC opts to harmonize with most of subpart P? In other words, are there areas where omitting a subpart P provision would reduce burdens on SBSEFs and/or their members without lessening any regulatory benefits? If so, please explain, with particular regard to the economic impacts and/or PRA burdens.

165. Should the Commission adopt different or additive CCO requirements for SBSEFs, even if there is no analog to such provisions in subpart P? If so, please explain, with particular regards to the economic impacts and/or PRA burdens. For example, do you believe that the SEC-specific provision *would impose* additional costs or burdens on SBSEFs and/or their members that are *nevertheless appropriate* in view of new and additional benefits? Or do you believe that the SEC-specific provision would be appropriate *because it would relieve costs or burdens* that are imposed on SEFs by subpart P that, in your view, are unnecessary or inappropriate for SBSEFs?

166. Do you agree with how the Commission is proposing to adapt the acceptable practices from appendix B relating to CEA Core Principle 15 into proposed Rule 831(c)? Why or why not?

167. Do you agree with proposed Rule 831(c)(2) using a cross-reference to proposed Rule 819(i) to incorporate disqualification criteria for the CCO? Why or why not? If not, what alternate standard would you suggest for the disqualification criteria, and why?

IX. Cross-Border Rules

A. Rule 832—Cross-Border Mandatory Trade Execution

As noted above,[219] section 3C(h) of the SEA provides that an SBS that is subject to mandatory clearing can become subject to the trade execution requirement.[220] The trade execution requirement, like other provisions of the SEA, is subject to jurisdictional constraints which are particularly germane in light of the global nature of the SBS market, where there is frequent interaction among counterparties domiciled in different jurisdictions. Proposed Rule 832 of Regulation SE is designed to address when the SEA's trade execution requirement applies to a cross-border SBS transaction.

Paragraph (a) of proposed Rule 832 would provide that the trade execution requirement set forth in section 3C(h) of the SEA shall not apply to an SBS unless at least one counterparty to the SBS is a ''covered person'' as defined in paragraph (b). Paragraph (b) of proposed Rule 832 would define the term ''covered person,'' with respect to a particular security-based swap, as any person that is a U.S. person; a non-U.S. person whose performance under an SBS is guaranteed by a U.S. person; or a non-U.S. person who, in connection with its SBS dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute a transaction.[221]

Thus, a particular SBS would fall within the jurisdictional reach of section 3C(h) of the SEA if at least one side had a connection to the United States of a type specified in paragraph (b)(1), (2), or (3) of proposed Rule 832. The trade execution requirement would not apply to an SBS transaction—even if the SBS were subject to mandatory clearing and MAT—if neither side had a connection to the United States of a type specified in proposed Rule 832.

Proposed Rule 832 is consistent with the Commission's territorial approach to applying Title VII requirements in other contexts. The Commission previously has stated that Title VII requirements

EDGAR system and must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S–T, in conformance with other rules in Regulation SE requiring electronic submissions. *See* proposed Rule 831(j)(2); *supra* note 55.

[215] 7 U.S.C. 12a(2) and 12a(3).

[216] The Commission notes that subpart P uses the term ''board of directors,'' while the Commission is proposing to use the term ''governing board'' instead throughout proposed Regulation SE. *See supra* note 29.

[217] *See supra* section VIII(B)(2)(b).

[218] Proposed Rule 831(c) provides that, in determining whether the background and skills of a potential CCO are appropriate for fulfilling the responsibilities of the role of the CCO, an SBSEF has the discretion to base its determination on the totality of the qualifications of the potential CCO, including, but not limited to, compliance experience, related career experience, training, potential conflicts of interest, and any other relevant factors.

[219] *See supra* note 106 and accompanying text.

[220] Even if an SBS is subject to mandatory clearing, it will not be subject to the trade execution requirement if no exchange or SBSEF makes the SBS available to trade or the SBS is subject to an exception from the clearing requirement under section 3C(g) of the SEA. In addition, as discussed above in section VII(F)(2), proposed Rule 816(e) would provide certain additional exemptions from the trade execution requirement.

[221] The proposed term ''covered person'' is designed to apply on a transaction-by-transaction basis. In other words, if a non-U.S. person were guaranteed by a U.S. person on a specific SBS or utilized U.S. personnel in connection with its dealing activities to arrange, negotiate, or execute a specific SBS, that person would be a covered person with respect to that SBS, but not necessarily with respect to other SBS. Because domicile is generally static, a person who is a U.S. person would be a covered person with respect to all of its SBS transactions.

''apply to all SBS transactions that exist in whole or in part within the United States, unless an exception applies.'' [222] Relevant activity need not occur wholly within the United States or solely between U.S. persons in order for Title VII requirements to apply.[223] For example, under Rule 908(a)(1) of Regulation SBSR,[224] the Title VII requirements for regulatory reporting and public dissemination apply to an SBS transaction even if only one counterparty to the transaction is a U.S. person. As the Commission previously stated, ''any security-based swap executed by a U.S. person exists at least in part within the United States.'' [225] This is true even if a transaction is effected through the foreign branch of a U.S. person, because ''a foreign branch has no separate existence from the U.S. person itself.'' [226]

The Commission also has found it consistent with the territorial approach to apply Title VII requirements where one counterparty of an SBS transaction is a non-U.S. person whose performance under an SBS is guaranteed by a U.S. person.[227] As the Commission stated when applying this criterion to Title VII reporting: ''A security-based swap with a U.S.-person indirect counterparty [*i.e.,* guarantor] is economically equivalent to a security-based swap with a U.S.-person direct counterparty, and both kinds of security-based swaps exist, at least in part, within the United States . . . [T]he presence of a U.S. guarantor facilitates the activity of the non-U.S. person who is guaranteed and, as a result, the security-based swap activity of the non-U.S. person cannot reasonably be isolated from the U.S. person's activity in providing the guarantee.'' [228]

Finally, the Commission also has found it consistent with the territorial approach to apply Title VII requirements where one counterparty is a non-U.S.-person who, in connection with its SBS dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute (''ANE'') the transaction. As the Commission previously stated when applying the ANE criterion to Title VII requirements for regulatory reporting and public dissemination: ''when a foreign dealing entity uses U.S. personnel to arrange, negotiate, or execute a transaction in a dealing capacity, that transaction occurs at least in part within the United States and is relevant to the U.S. security-based swap market.'' [229] Declining to apply Title VII requirements to SBS transactions of foreign dealing entities that use U.S. personnel to engage in ANE transactions would allow such entities ''to exit the Title VII regulatory regime without exiting the U.S. market.'' [230]

The Commission recognizes the difficulties that can arise when a binary requirement, such as the trade execution requirement, applies in two separate jurisdictions. In other words, if the counterparties to a cross-border SBS are subject to a trade execution requirement under the rules of each of their jurisdictions, the counterparties could violate the rules of one jurisdiction by executing the SBS in one jurisdiction but not the other, or in a manner that is consistent with the rules of one jurisdiction but potentially not of the other jurisdiction. The following section, regarding proposed Rule 833, will discuss conditions for allowing an SBS to trade on foreign venues not registered with the Commission, notwithstanding the SBS being subject to the SEA's trade execution requirement and proposed Rule 832.

The Commission seeks comment on the following:

168. Of the SBS products that, in your view, are plausible candidates for mandatory clearing and mandatory trade execution under the SEA, how frequently do these products trade on foreign SBS trading venues? Do you believe that the SBS market is sufficiently regionalized such that cross-border application of the trade execution requirement might not be a significant issue?

169. Do you believe that the proposed text of Rule 832 is sufficiently clear? If not, what aspects do you believe require clarification?

B. Rule 833—Cross-Border Exemptions

1. Exemptions for Foreign SBS Trading Venues

As noted above in discussing proposed Rule 832, the swap and SBS markets are global in nature, and counterparties domiciled in different jurisdictions frequently trade with each

[222] Regulation SBSR Adopting Release I, 80 FR at 14652 (discussing cross-border application of Title VII requirements for regulatory reporting and public dissemination of SBS transactions).

[223] *See* SEA Release No. 72472 (June 25, 2014), 79 FR 47278, 47286 (''Cross-Border Adopting Release'') (stating that applying Title VII only to persons incorporated, organized, or established within the United States or only to SBS activity occurring entirely within the United States would inappropriately exclude from regulation a majority of SBS activity that involves U.S. persons or otherwise involves conduct within the United States, even though such activity raises the types of concerns that the Commission believed Congress intended to address through Title VII).

[224] 17 CFR 242.908(a)(1).

[225] Regulation SBSR Adopting Release I, 80 FR at 14652.

[226] *Id. See also* Cross-Border Adopting Release, 79 FR at 47289 (discussing the Commission's rationale for viewing a foreign branch of an SBS dealer as an integral part of the SBS dealer).

[227] *See, e.g.,* Regulation SBSR Adopting Release I, 80 FR at 14653. *See also* Cross-Border Adopting Release, 79 FR at 47290 (''the guarantee provided by a U.S. person poses risk to U.S. persons and potentially to the U.S. financial system, and both the non-U.S. person whose dealing activity is guaranteed and its counterparty rely on the creditworthiness of the U.S. guarantor when entering into a security-based swap transaction and for the duration of the security-based swap. The economic reality of this transaction, even though entered into by a non-U.S. person, is substantially identical, in relevant respects, to a transaction entered into directly by a U.S. person. Accordingly, in our view, it is consistent with both the statutory text and with the purposes of the statute to identify such transactions as occurring within the United States for purposes of Title VII'').

[228] Regulation SBSR Adopting Release I, 80 FR at 14653. In addition, section 30(c) of the SEA, 15 U.S.C. 78dd(c), authorizes the Commission to apply Title VII requirements to persons transacting a business ''without the jurisdiction of the United States'' if they contravene rules that the Commission has prescribed as ''necessary or appropriate to prevent the evasion of any provision'' of Title VII. For the reasons described above, the Commission does not believe that applying the trade execution requirement to non-U.S. persons whose performance under an SBS is guaranteed by a U.S. person would cause the trade execution requirement to apply to persons that are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States.'' The Commission nonetheless preliminarily believes that applying the trade execution requirement to such persons is also necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the SEA that were added by the Dodd-Frank Act, and thus help prevent the relevant purposes of the Dodd-Frank Act from being undermined. *See* Cross-Border Adopting Release, 79 FR at 47291–92 (interpreting the anti-evasion provisions of SEA section 30(c)). Without this rule, U.S. persons could have an incentive to evade the trade execution requirement by engaging in SBS via a guaranteed affiliate, while the economic reality of transactions arising from that activity—including the risks these transactions introduce to the U.S. market—would be no different in most respects than transactions entered into directly by U.S. persons.

[229] Regulation SBSR Adopting Release II, 81 FR at 53591. *See also* SEA Release No. 87780 (December 18, 2019), 85 FR 6270, 6271–76 (February 4, 2020) (discussing other Title VII rules that incorporate ANE criteria and providing guidance on the meaning of the terms ''arranged'' and ''negotiated'' for purposes of these rules).

[230] Regulation SBSR Adopting Release II, 81 FR at 53591. The Commission does not believe that applying the trade execution requirement to persons that satisfy the ANE criterion would cause the trade execution requirement to apply to persons that are ''transact[ing] a business in security-based swaps without the jurisdiction of the United States,'' within the meaning of section 30(c) of the SEA. *See supra* note 228. The Commission also believes that applying the trade execution requirement to such persons is necessary or appropriate as a prophylactic measure to help prevent the evasion of the provisions of the SEA that were added by the Dodd-Frank Act, and thus help prevent the relevant purposes of the Dodd-Frank Act from being undermined. Without this rule, non-U.S. persons could retain the benefits of operating in the United States while avoiding compliance with the trade execution requirement.

other.[231] Proposed Rule 832 is designed to answer the question of when the trade execution requirement would apply to an individual cross-border SBS transaction. There might be instances where covered persons (as defined in proposed Rule 832) wish to be members of a foreign trading venue for SBS (a ''foreign SBS trading venue''). Having members who are covered persons, as defined in Rule 832, with respect to SBS transacted on that venue, whether or not the SBS that they trade are subject to the SEA's trade execution requirement, could require the foreign SBS trading venue to register with the Commission as a national securities exchange or SBSEF.[232] In addition, because a foreign SBS trading venue would be facilitating the execution of SBS between persons, the foreign SBS trading venue also might be required to register with the Commission as a broker.[233]

A foreign SBS trading venue with members who are covered persons, as defined in Rule 832, with respect to SBS transacted on that venue and that wishes to avoid having to register in one or more of these capacities could request that the Commission grant it an exemption under section 36(a)(1) of the SEA [234] by submitting an application pursuant to SEA Rule 0–12.[235] Proposed Rule 833(a) would provide that such an application, relating to the status of the foreign SBS trading venue under the SEA, may state that the application also is submitted pursuant to Rule 833(a).[236] In such case, the Commission would consider the submission as an application to exempt the foreign SBS trading venue, with respect to its providing a market place for SBS, from the definition of ''exchange'' in section 3(a)(1) of the SEA; [237] the definition of ''security-based swap execution facility'' in section 3(a)(77) of the SEA; [238] the definition of ''broker'' in section 3(a)(4) of the SEA; [239] and section 3D(a)(1) of the SEA.[240] Because a foreign SBS trading venue that obtains an order under SEA section 36 and proposed Rule 833(a) [241] would be exempt from these definitions and from section 3D(a)(1) of the SEA, the foreign SBS trading venue would not be required to register with the Commission as a national securities exchange, SBSEF, or broker, or comply with other requirements applicable to such entities under the SEA or Commission rules thereunder.[242]

Under section 5h(g) of the CEA,[243] the CFTC may exempt, conditionally or unconditionally, a SEF from registration if the CFTC finds that the SEF is subject to comparable, comprehensive supervision and regulation on a consolidated basis by the SEC, a prudential regulator, or the appropriate governmental authorities in the home country of the facility. The CFTC has exercised this authority to grant exemptions from SEF registration to swap trading venues in the European Union, Japan, and Singapore.[244]

Proposed Rule 833(a) would set forth how interested parties could make similar requests for exemptive relief with respect to foreign SBS trading venues. For example, Rule 833(a) lists four separate provisions of the SEA that the Commission believes generally would have to be addressed in an exemption request relating to a foreign SBS trading venue's status under the SEA. A foreign SBS trading venue that was exempted solely from section 3D(a)(1) of the SEA, for example, might still be subject to various requirements under the SEA by virtue of falling within one or more of the above-noted definitions.[245] The exemptive framework set out in proposed Rule 833(a) is designed to avoid this result.

As with applications for other exemptive relief under section 36 of the SEA, an applicant requesting a Rule 833(a) exemption would be required to submit a complete application pursuant to SEA Rule 0–12. To issue a Rule 833(a) exemption, like any other exemption issued pursuant to section 36, the Commission would be required to find that the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors.[246] As contemplated by section 36(a)(1), the Commission may subject a Rule 833(a) exemption to any conditions that it deems appropriate.

Proposed Rule 833(a) is designed to address only activities relating to providing a market place for SBS and would not extend to trading in any other type of security or to other activities with respect to SBS.[247] A foreign SBS trading venue covered by an exemption order under Rule 833(a) might offer trading in other types of securities; however, the exemption order would permit covered persons to trade only SBS on that trading venue without causing the trading venue to have to register with the Commission as an exchange or SBSEF. The exemption order would not address any registration obligations that might arise from any other type of exchange activity by the foreign trading venue.[248]

[231] *See supra* section IX(A).

[232] *See* 15 U.S.C. 78c–4(a)(1) (stating that no person may operate a facility for the trading or processing of SBS, unless the facility is registered as an SBSEF or national securities exchange).

[233] A ''broker'' is generally defined as a person engaged in the business of effecting transactions in securities for the account of others. *See* section 3(a)(4) of the SEA, 15 U.S.C. 78c(a)(4). Section 15(a)(1) of the SEA, 15 U.S.C. 78o(a)(1), generally provides that it shall be unlawful for any broker to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security unless such broker is registered in accordance with SEA section 15(b). *See also infra* section XIII (discussing proposed new Rule 15a–12).

[234] 15 U.S.C. 78mm(a)(1).

[235] 17 CFR 240.0–12 (setting forth procedures for filing applications for orders for exemptive relief under section 36 of the SEA).

[236] An application for an exemption under proposed Rule 833(a) could be submitted by a foreign SBS trading venue itself or another interested party. For example, a financial regulatory authority in a foreign jurisdiction could submit an application under proposed Rule 833(a) on behalf of one or more SBS trading venues licensed and regulated in that jurisdiction.

[237] 15 U.S.C. 78c(a)(1).

[238] 15 U.S.C. 78c(a)(77).

[239] 15 U.S.C. 78c(a)(4).

[240] 15 U.S.C. 78c–4(a)(1) (stating that no person may operate a facility for the trading or processing of SBS, unless the facility is registered as an SBSEF or national securities exchange).

[241] For the remainder of this discussion, an exemption under SEA section 36 and Rule 833(a) will be referred to simply as a ''Rule 833(a) exemption.'' In addition, the Commission will use the term ''trading venue covered by an exemption order under Rule 833'' (or a similar formulation) rather than ''exempt exchange,'' ''exempt SBSEF'' or ''exempt broker'' because, pursuant to an exemption granted under proposed Rule 833(a), the covered trading venue would no longer be an exchange, SBSEF, or broker (as defined by the SEA).

[242] However, as discussed further below, the Rule 833(a) exemption is designed to address only activities related to providing a market place for SBS. An entity that engages in other SBS-related activity or any activity involving non-SBS securities would need other authority under the SEA.

[243] 7 U.S.C. 7b–3(g).

[244] *See https://www.cftc.gov/International/ForeignMarketsandProducts/ExemptSEFs* (listing all exemption orders issued by the CFTC under section 5h(g) of the CEA and subsequent amendments to those orders).

[245] Furthermore, section 5 of the SEA generally prohibits any broker, dealer, or exchange from using U.S. jurisdictional means to effect or report a transaction in a security on an exchange, unless the exchange is registered as a national securities exchange or has received a low-volume exemption from registration as a national securities exchange. *See* 15 U.S.C. 78e. Absent an exemption from the definition of ''exchange,'' this provision would apply to a foreign SBS trading venue (and brokers and dealers who are members of that trading venue) to the extent that it uses U.S. jurisdictional means.

[246] *See* 15 U.S.C. 78mm(a)(1). Unlike the CFTC which has exemptive authority under section 5h(g) of the CEA, the Commission would not be required to find that the foreign trading venue is subject to comparable, comprehensive supervision and regulation by a U.S. or foreign regulator.

[247] For example, although a foreign trading venue covered by a Rule 833(a) exemption would be exempt from the definition of ''broker,'' that exemption would extend only to the operation of a market place for SBS and would not permit the foreign trading venue to otherwise act as a securities broker using U.S. jurisdictional means.

[248] The Commission considered the alternative of requiring that a Rule 833(a) exemption could apply to a foreign SBS trading venue *only if* it traded SBS and no other type of security. The Commission

The Commission also emphasizes that a Rule 833(a) exemption would not have any impact on section 6(*l*) of the SEA,[249] which makes it unlawful for any person to effect a transaction in an SBS with or for a person that is not an ECP, unless such transaction is effected on a national securities exchange registered pursuant to section 6(b) of the SEA. Because a foreign SBS trading venue covered by a Rule 833(a) exemption would not be registered as a national securities exchange, the foreign SBS trading venue would not be permitted to effect SBS transactions with or for a covered person that is not an ECP.

2. Exemptions Relating to the Trade Execution Requirement

Proposed Rule 833(b) would address requests for exemptive relief relating to the application of the trade execution requirement under section 3C(h) of the SEA to transactions executed on a foreign SBS trading venue. Pursuant to section 3C(h) of the SEA, an SBS that is subject to the trade execution requirement must be executed on an exchange, on an SBSEF registered under section 3D of the SEA, or on an SBSEF that is exempt from registration under section 3D(e) of the SEA.[250] As a result, a covered person (as defined in proposed Rule 832) would not be permitted to execute an SBS that is subject to the trade execution requirement on a foreign SBS trading venue unless that venue has registered with the Commission as a national securities exchange or an SBSEF, or has received an exemption under section 3D(e) of the SEA.

A covered person seeking to execute such an SBS on a foreign SBS trading venue that does not fall within one of these categories could request that the Commission grant an exemption from this requirement under section 36(a)(1) of the SEA by submitting an application, as with Rule 833(a), pursuant to SEA Rule 0–12. Proposed Rule 833(b)(1) would provide that such an application, relating to the application of the trade execution requirement to SBS executed on a foreign SBS trading venue, may state that the application also is submitted pursuant to proposed Rule 833(b).[251] Proposed Rule 833(b) is intended to clarify how interested parties could make requests for exemptive relief from the trade execution requirement for SBS traded on one or more foreign SBS trading venues.[252]

To issue a Rule 833(b) exemption, like with any other section 36 exemption, the Commission would be required to find that the exemption is necessary or appropriate in the public interest, and consistent with the protection of investors. Furthermore, as contemplated by section 36(a)(1), the Commission may subject a Rule 833(b) exemption to any conditions that it deems appropriate.

Proposed Rule 833(b)(2) would provide that, in considering whether to issue a Rule 833(b) exemption, the Commission may consider: (i) The extent to which the SBS traded in the foreign jurisdiction covered by the request are subject to a trade execution requirement comparable to that in section 3C(h) of the SEA and the Commission's rules thereunder; (ii) the extent to which trading venues in the foreign jurisdiction covered by the request are subject to regulation and supervision comparable to that under the SEA, including section 3D of the SEA, and the Commission's rules thereunder; (iii) whether the foreign trading venue or venues where covered persons intend to trade SBS have received an exemption order contemplated by proposed Rule 833(a); and (iv) any other factor that the Commission believes is relevant for assessing whether the exemption is in the public interest and consistent with the protection of investors.

The first factor listed above is intended to highlight the Commission's preliminary belief that, to grant an exemption from the SEA's trade execution requirement to allow SBS subject to that requirement to trade in a foreign jurisdiction on one or more venues not registered with the Commission, there should be a comparable trade execution requirement in that jurisdiction. As part of any analysis regarding the comparability of the trade execution requirement, the Commission could consider not only whether the relevant SBS must be executed on a trading venue in the foreign jurisdiction, but also the permissible execution means for mandatory trade execution in the foreign jurisdiction. In general, the Commission preliminarily believes that a trade execution requirement in a foreign jurisdiction would not be comparable to the trade execution requirement under the SEA if the foreign jurisdiction's rules did not require SBS products subject to that requirement to be executed through means comparable to Required Transactions as described in proposed Rule 815 (*e.g.,* if the foreign jurisdiction allowed the use of single-dealer platforms to discharge any mandatory trading execution requirement in that jurisdiction).

Under the second factor listed above, the Commission could consider whether the trading venues in the foreign jurisdiction are subject to regulation and supervision comparable to that under the SEA, including section 3D of the SEA and the Commission's rules thereunder. The Commission preliminarily believes that the goals of Title VII regarding trade execution[253] could be subverted if it were to allow covered persons to trade SBS subject to the SEA's trade execution requirement on foreign trading venues that are not subject to rules designed to foster comparable levels of pre- and post-trade transparency, access, and liquidity.

The Commission also believes that it would be important to consider whether the foreign trading venue or venues where covered persons intend to trade SBS have received an exemption order contemplated by proposed Rule 833(a). The fact that covered persons are executing SBS on a foreign trading venue typically would require the venue to register with the Commission as a national securities exchange or SBSEF.[254]

Finally, the fourth factor listed above would emphasize that these

preliminarily believes, however, that this alternative is unnecessary. Other jurisdictions might have market structures where it is common to trade SBS and other types of securities on the same trading venue. The Commission preliminarily believes that it would be inequitable to disqualify such jurisdictions *ex ante* from qualifying for a Rule 833(a) exemption. Nevertheless, a foreign SBS trading venue that benefits from a Rule 833(a) exemption and that offers trading in both SBS and non-SBS securities would have to take appropriate steps to prevent covered persons from trading non-SBS securities on that trading venue, because the Rule 833(a) exemption would not cover the trading activity in non-SBS securities.

[249] 15 U.S.C. 78f(*l*).

[250] Section 3D(e) of the SEA gives the Commission authority to exempt an SBSEF from registration if it is subject to comparable, comprehensive supervision and regulation by the CFTC. *See* 15 U.S.C. 78c–4(e).

[251] For the remainder of this discussion, an exemption under SEA section 36 and Rule 833(b) will be referred to simply as a ''Rule 833(b) exemption.''

[252] An SBS can be subject to the SEA's trade execution requirement only if it first becomes subject to the clearing requirement in section 3C(h) of the SEA, 15 U.S.C. 78c–3(h). A Rule 833(b) exemption would not have any impact on this clearing requirement, unless otherwise explicitly addressed in the exemption order.

[253] *See supra* notes 94–96 and accompanying text.

[254] A request for an exemption under proposed Rule 833(a) could be submitted at the same time—and by the same person(s)—as a request for an exemption under proposed Rule 833(b). For example, a financial regulatory authority in a foreign jurisdiction could combine a request for an exemption under proposed Rule 833(a) on behalf of one or more SBS trading venues licensed and regulated in that jurisdiction with a request for an exemption under proposed Rule 833(b) that would allow covered persons to trade on those venues SBS that would, absent an exemption, be subject to the SEA's trade execution requirement.

considerations are not exhaustive. The Commission may consider any other factor that it believes is relevant for assessing whether the Rule 833(b) exemption is in the public interest and consistent with the protection of investors.

The Commission seeks comment on the following:

170. Do you believe in general that the Commission should establish a rule for granting exemptions regarding a foreign SBS trading venue's status under the SEA and mandatory trade execution of cross-border SBS transactions? Why or why not?

171. Do you disagree with any of the specific language proposed in Rule 833? If so, how would you revise it?

172. Do you expect that there are foreign SBS trading venues that would seek an exemption under proposed Rule 833(a)? If so, how many?

173. Do you agree with the factors that the Commission is proposing to consider for a Rule 833(b) exemption? Are there are any that you would eliminate or revise? If so, which ones and why? Are there any criteria that you believe should be added? If so, what and why?

174. Are there any conditions or limitations that should be included in the rule? If so, what conditions or limitations would you suggest, and why?

X. Rule 834—Implementation of Section 765 of the Dodd-Frank Act and Governance of SBSEFs and SBS Exchanges

Section 765(a) of the Dodd-Frank Act [255] provides in relevant part that, to mitigate conflicts of interest, the Commission ''shall adopt rules which may include numerical limits on the control of, or the voting rights with respect to'' any clearing agency that clears SBS, or on the control of any SBSEF or SBS exchange by certain bank holding companies, certain nonbank financial companies, an affiliate of such a bank holding company or nonbank financial company, an SBS dealer, major SBS participant, or person associated with an SBS dealer or major SBS participant. Section 765(b) states that the purpose of the statutory provision is ''to improve the governance of, or to mitigate systemic risk, promote competition, or mitigate conflicts of interest in connection with'' an SBS dealer or major SBS participant's conduct of business with, a clearing agency, SBSEF, or SBS exchange and in which such SBS dealer or major SBS participant ''has a material debt or equity investment.'' Finally, section 765(c) provides in relevant part that, in adopting rules pursuant to section 765, the Commission shall consider any conflicts of interest arising from the amount of equity owned by a single investor, the ability to vote, cause the vote of, or withhold votes entitled to be cast on any matters by the holders of the ownership interest.

In 2010, the Commission proposed Regulation MC to implement section 765.[256] In view of the significant amount of time that has elapsed and the significant evolution in the swap and SBS markets since the proposal of Regulation MC, the Commission hereby withdraws that proposal. The Commission is now proposing Rule 834 of Regulation SE to implement section 765 of the Dodd-Frank Act with respect to SBSEFs and SBS exchanges.

The Commission, in accordance with section 765 of the Dodd-Frank Act, has reviewed the potential for conflicts of interest arising from an SBS dealer or major SBS participant having voting rights in an SBSEF or SBS exchange in which it is a member. The Commission preliminarily believes that, to satisfy the requirements of section 765, it is appropriate to impose a cap on the size of the voting rights that an individual member of an SBSEF or SBS exchange may own or direct. Accordingly, paragraph (b) of proposed Rule 834 would bar an SBSEF or SBS exchange from permitting any of its members, either alone or together with any officer, principal, or employee of the member, to:

(1) Own, directly or indirectly, 20% or more of any class of voting securities or of other voting interest in the SBSEF or SBS exchange; or

(2) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20% of the voting power of any class of securities or of other ownership interest in the SBSEF or SBS exchange.

The 20% cap in proposed Rule 834(b) attempts to balance competing policy interests. On the one hand, execution venues need capital, expertise, and liquidity to establish and grow. Historically, market participants who become members of an execution venue are a source of all three components, and any person contributing capital to a new venture might reasonably expect to have a voting interest commensurate with the amount of capital contributed. The Commission considered proposing a cap in voting interest below 20%, but preliminarily believes that too low of a cap, even if imposed in the name of eliminating conflicts of interest, could have the unintended effect of retarding the development of execution venues for SBS altogether, if market participants who become members have no (or substantially limited) ability to vote their equity interest.

On the other hand, allowing a member of an SBSEF or SBS exchange too large of a voting interest could undermine the public policy benefits of having transparent, fair, and regulated markets for the trading of SBS. A member of an SBSEF or SBS exchange with a sufficiently large voting interest could exercise undue influence over the rules and policies applicable to members, the venue's access criteria, decisions regarding access, and disciplinary matters, among other things. In particular, members who are SBS dealers and conduct a significant amount of business in the bilateral OTC market have incentives to restrict the scope of SBS that an SBSEF or SBS exchange makes eligible for trading. Trading in a market with robust order competition and pre-trade transparency reduces search costs for end users and liquidity seekers, and reduces the information and bargaining asymmetry of end users and liquidity seekers relative to SBS dealers. An SBS dealer with a large voting interest in an SBSEF or SBS exchange, if it perceived that trading on the regulated venue was diminishing the rents obtained from its bilateral OTC business, might seek to utilize its voting influence in a number of ways to degrade the capability of the regulated venue, thus making the OTC market by comparison a more attractive option.

The Commission preliminarily believes that capping a member's voting interest at 20% strikes a reasonable balance between these competing interests. It would allow a single member to make an investment in an SBSEF or SBS exchange significant enough to give it a 20% voting interest, while reserving at least 80% to unrelated parties. The Commission preliminarily believes that the 20% cap would still afford an SBS dealer or major SBS participant that has made an investment in an SBSEF or SBS exchange a reasonable commercial means of monitoring and protecting that investment. But requiring 80% of the voting power to reside with unrelated parties would reduce the likelihood that the large member could tilt the playing

[255] 15 U.S.C. 8343.

[256] *See* Ownership Limitations and Governance Requirements for Security-Based Swap Clearing Agencies, Security-Based Swap Execution Facilities, and National Securities Exchanges With Respect to Security-Based Swaps Under Regulation MC, SEA Release No. 63107 (October 14, 2010), 75 FR 65882 (October 26, 2010).

field in its favor. In proposing this 20% threshold in Rule 834, the Commission is informed by long experience with handling questions of member influence over national securities exchanges raised in applications to register with the Commission on Form 1 and in governance rule filings made on SEA Form 19b–4.[257]

Proposed Rule 834(b) would cover both direct and indirect voting interests. The 20% cap could be circumvented if, for example, a member placed its voting interest in an SBSEF or SBS exchange of 20% or more in a shell company or other affiliate and directed how the shell company or affiliate casts those votes. Accordingly, proposed Rule 834(b) would look through the non-member entities holding interests in SBSEFs and SBS exchanges to consider whether any member could indirectly control 20% or more of the voting interest through the non-member entity having the direct interest. Furthermore, proposed Rule 834(b) would look through the corporate structure of the SBSEF or SBS exchange to consider whether any member could indirectly have 20% or more of the voting interest in the underlying trading venue. For example, an SBSEF or SBS exchange could be wholly owned by a holding company. In such a case, the voting restriction in proposed Rule 834(b) would apply to the voting interest in the parent holding company held by a member of the child SBSEF or SBS exchange, since a direct voting interest of 20% or more in the parent would equate to an indirect voting interest of 20% or more in child trading venue.

Similar to its approach to indirect voting interest, proposed Rule 834(b) would aggregate the voting interest of the member itself with the voting interest held by any officer, principal, or employee of the member for purposes of determining compliance with the 20% cap. Without this provision, the member—or an officer, principal, or employee of the member—could split the voting interest held in the SBSEF or SBS exchange across multiple persons who would likely be voting that interest in concert.

Paragraph (c) of proposed Rule 834 would include requirements designed to reinforce the 20% cap in paragraph (b). Paragraph (c) would require the rules of each SBSEF and SBS exchange to be reasonably designed, and have an effective mechanism, to:

(1) Deny effect to the portion of any voting interest held by a member in excess of the 20% limitation;

(2) Compel a member who possesses a voting interest in excess of the 20% limitation to divest enough of that voting interest to come within that limit; and

(3) Obtain information relating to its ownership and voting interests owned or controlled, directly or indirectly, by its members.

Under paragraph (c)(1) of proposed Rule 834, if a member of an SBSEF or SBS exchange managed to evade the 20% voting restriction (*e.g.,* by disguising its voting interest through one or more shell companies), the SBSEF or SBS exchange would be required to deny the effect of any part of the vote in excess of the 20% restriction when the evasion is discovered. This could, in close cases, cause the SBSEF or SBS exchange to have to reverse the outcome of a vote because of the invalidation of the part of the vote in excess of the 20% threshold. In addition, the Commission preliminarily believes—as reflected in paragraph (c)(2) of proposed Rule 834—that an SBSEF or SBS exchange should, if it discovers that a member has managed to evade the 20% voting restriction, compel the member to divest enough of that voting interest to come within the 20% limit. Finally, the Commission preliminarily believes—as reflected in paragraph (c)(3) of proposed Rule 834—that an SBSEF or SBS exchange must have an effective means of obtaining information about the ownership and voting interests owned or controlled, directly or indirectly, by its members. Proposed Rule 834(c)(3) is designed to promote compliance with proposed Rule 834(b) by requiring an SBSEF or SBS exchange to actively obtain information about the ownership and voting interests owned or controlled, directly or indirectly, by its members. The Commission preliminarily believes that ignorance of a member holding a voting interest in excess of the proposed 20% limitation should not excuse a violation of Rule 834(b). Furthermore, the information obtained by an SBSEF or SBS exchange under proposed Rule 834(c)(3) should assist with any remedial actions necessary under proposed Rules 834(c)(1) and (c)(2).

Paragraph (d) of proposed Rule 834 is designed to mitigate conflicts of interest in the disciplinary process of an SBSEF or SBS exchange and would provide as follows: ''Each security-based swap execution facility and SBS exchange shall ensure that its disciplinary processes preclude any member, or group or class of its members, from dominating or exercising disproportionate influence on the disciplinary process. Each major disciplinary committee or hearing panel thereof shall include sufficient different groups or classes of its members so as to ensure fairness and to prevent special treatment or preference for any person or member in the conduct of the responsibilities of the committee or panel.'' Proposed Rule 834(d) recognizes that one way that a conflict of interest could manifest itself is in the disciplinary process. Therefore, the Commission is proposing, as the first sentence of proposed Rule 834(d), that each SBSEF and SBS exchange should ''preclude any member, or group or class of its members, from dominating or exercising disproportionate influence on the disciplinary process.''

The second sentence of proposed Rule 834(d) is adapted from § 1.64 of the CFTC's rules, which addresses the composition of various SRO governing boards and major disciplinary committees.[258] Section 1.64(c)(4) requires an SRO (which term, under the CEA, includes a SEF) to maintain in effect rules that ''each major disciplinary committee or hearing panel [of the SRO] include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference for any person in the conduct of a committee's or the panel's

[257] *See* SEA Release No. 49718 (May 17, 2004), 69 FR 29611, 29624 (May 24, 2004) (approving PCX limitation of trading permit holder ownership to 20% and stating that ''a member who trades securities through the facilities of an exchange can have an ownership interest in the exchange. However, a member's interest could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member. A member that also directly or indirectly controls an exchange might be tempted to exercise that controlling influence by directing the exchange to refrain from diligently surveilling the member's conduct or from punishing any conduct that violates the rules of the exchange or the Federal securities laws. An exchange also might be reluctant to surveil and enforce its rules zealously against a member that the exchange relies on as its largest source of capital''). *See also, e.g.,* SEA Release No. 85828 (May 10, 2019), 84 FR 21841 (May 15, 2019) (approving Long Term Stock Exchange's registration as a national securities exchange with a 20% limit on LTSE ownership by members); SEA Release No. 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (approving BATS–Y Exchange's registration as a national securities exchange with a 20% limit on exchange ownership by members); SEA Release No. 49067 (January 13, 2004), 69 FR 2761 (January 20, 2004) (approving a voting collar on members that hold interests in BOX in excess of 20%); SEA Release No. 54399 (September 1, 2006), 71 FR 53728 (September 12, 2006) (approving ISE's limitation of a member's ownership interest to 20%).

[258] Proposed Rule 834(a) would define ''major disciplinary committee'' as a committee of persons who are authorized by an SBSEF to conduct disciplinary hearings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the SBSEF except those which are related to decorum or attire, financial requirements, or reporting or recordkeeping and do not involved fraud, deceit, or conversion.

responsibilities.'' Proposed Rule 834(d) reflects the Commission's preliminary belief that an SBSEF or SBS exchange should be mindful of its different membership interests, and how they are represented on disciplinary committees and hearing panels in particular matters, to avoid potential conflicts of interest.

To further implement section 765 and promote good governance generally for SBSEFs and SBS exchanges, the Commission is proposing additional requirements in Rule 834 that are closely modelled on §§ 1.64 and 1.69 of the CFTC's rules.

Section 1.64(b) requires an SRO to maintain in effect standards and procedures that ensure that 20% or more of the regular voting members of the SRO's governing board are persons who are knowledgeable of futures trading or financial regulation or are otherwise capable of contributing to governing board deliberations. Section 1.64(b) also requires an SRO to maintain in effect standards and procedures that ensure that 20% or more of the regular voting members of the governing board are not: Members of the SRO; currently salaried employees of the SRO; primarily performing services for the SRO in a capacity other than as a member of the SRO's governing board; or officers, principals, or employees of a firm which holds a membership at the SRO either in its own name or through an employee on behalf of the firm.

Paragraph (e) of proposed Rule 834 is closely modelled on § 1.64(b). Paragraph (e)(1)(i) would require each SBSEF and SBS exchange to ensure that 20% or more of the persons who are eligible to vote routinely on matters being considered by the governing board (excluding those members who are eligible to vote only in the case of a tie vote by the governing board) are persons who are knowledgeable of SBS trading or financial regulation, or otherwise capable of contributing to governing board deliberations. Paragraphs (e)(1)(ii) through (v) of proposed Rule 834 are based on four of the prongs in § 1.64(b)(1)(ii) which provide that 20% or more of the persons who are eligible to vote routinely on matters being considered by the governing board (excluding those members who are eligible to vote only in the case of a tie vote by the governing board) must not be: Members of the SBSEF or SBS exchange; [259] salaried employees of the SBSEF or SBS exchange; primarily performing services for the SBSEF or SBS exchange in a capacity other than as a member of the governing board; or officers, principals, or employees of a firm which holds a membership at the SBSEF or SBS exchange, either in its own name or through an employee on behalf of the firm.

Paragraph (e)(2) of proposed Rule 834, modelled on § 1.64(b)(3), would require each SBSEF and SBS exchange to ensure that membership of its governing board includes a diversity of groups or classes of its members.[260]

The Commission is not adapting the detailed provisions of § 1.64(c) into proposed Rule 834. However, the key principle of § 1.64(c)—that each major disciplinary committee or hearing panel should include sufficient different membership interests so as to ensure fairness and to prevent special treatment or preference in the conduct of the committee's or panel's responsibilities, which is located in paragraph § 1.64(c)—is being adapted into proposed Rule 834(d), as discussed above.

Paragraph (f) of proposed Rule 834 is based closely on § 1.64(d) and would require each SBSEF and SBS exchange to submit to the Commission, within 30 days after each governing board election, a list of the governing board's members, the groups or classes of members that they represent, and how the composition of the governing board otherwise meets the requirements of Rule 834. This provision would provide the Commission information to help it assess an SBSEF's compliance with Rule 834.

Paragraph (g) of proposed Rule 834 is modelled on § 1.69, which requires an SRO to further address the avoidance of conflicts of interest in the execution of its self-regulatory functions. Section 1.69(b)(1)(i) requires an SRO to maintain in effect rules that require a member of its governing board, disciplinary committee, or oversight panel to abstain from such body's deliberations and voting on any matter involving a named party in interest, where such member: Is a named party in interest; is an employer, employee, or fellow employee of a named party in interest; is associated with a named party in interest through a ''broker association''; has any other significant, ongoing business relationship with a named party in interest; or has a family relationship [261] with a named party in interest.

Section 1.69(b)(1)(ii) requires an SRO to maintain in effect rules that require each member of its governing board, disciplinary committee, or oversight panel to disclose to the appropriate SRO staff, before consideration of any matter involving a named party in interest, whether the member has one of the relationships listed in § 1.69(b)(1)(i) with a named party in interest. Section 1.69(b)(1)(iii) requires the SRO to establish procedures for determining whether a member of its governing board, disciplinary committees, or oversight committees is subject to a conflicts restriction in any matter involving a named party in interest.[262]

Section 1.69(b)(2)(i) requires a member of the SRO's governing board, disciplinary committee, or oversight committee to abstain from such body's deliberations and voting on any significant action, if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that could reasonably be expected to be affected by the action. Section 1.69(b)(2)(ii) requires a member of the SRO's governing board, disciplinary committee, or oversight committee, before consideration of any significant action, to disclose to the appropriate SRO staff that position information, although this requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action. Section 1.69(b)(2)(iii) requires an SRO to establish procedures for determining whether any member of its governing

[259] Proposed Rule 834(e)(1)(ii), read together with proposed Rule 834(b), would have the effect of allowing four members of an SBSEF or SBS exchange to control up to 80% of the voting interest (assuming that each of the four holds 20%). Under proposed Rule 834(e)(1)(ii), at least 20% of the voting interest would have to be held by non-members.

[260] Section 1.64(b)(3) provides in relevant part that the governing board of an SRO must include ''a diversity of membership interests.'' Section 1.64(a)(4) provides a definition of ''membership interest'' that lists six classes of members, each of which is considered a different membership interest. Many of these specifically enumerated classes—*e.g.,* ''floor traders,'' ''floor brokers,'' ''futures commission merchants,'' ''producers, consumers, processors, distributors, and merchandisers of commodities traded on the particular contract market''—might not be relevant to SBSEFs and SBS exchanges. Rather than crafting its own definition of ''membership interest,'' the Commission is opting for a principles-based approach to incorporating § 1.64(b)(3) into Rule 834, by proposing that an SBSEF or SBS exchange must be able to demonstrate that the board membership fairly represents the diversity of interests at such SBSEF or SBS exchange. *See* proposed Rule 834(e)(2).

[261] *See* proposed Rule 834(a) (defining ''family relationship'' of a person to be person's spouse, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, or in-law). The Commission's proposed definition is adapted from the CFTC's definition of ''family relationship'' in § 1.69(a)(2).

[262] Proposed Rule 834(a) would define ''named party in interest'' as a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

board, disciplinary committees, or oversight committees is subject to a conflicts restriction under § 1.69 in any significant action. Such determination is required to include a review of various types of positions enumerated in the rule, including: ''Any other types of positions, whether maintained at that self-regulatory organization or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the self-regulatory organization reasonably expects could be affected by the significant action.'' Section 1.69(b)(2)(iv) sets out the sources that the SRO should review in determining a member's positions, including a catch-all provision in paragraph (b)(2)(iv)(C) for ''[a]ny other source of information that is held by and reasonably available to the self-regulatory organization.''

Section 1.69(b)(3)(i) provides that an SRO governing board, disciplinary committee, or oversight panel may permit a member to participate in deliberations prior to a vote on a significant action for which that member otherwise would be required to abstain, if such participation would be consistent with the public interest and the member recuses from voting on such action. Section 1.69(b)(3)(ii) requires the deliberating body, when determining whether to permit the exception contemplated in paragraph (b)(3)(i), to consider whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and whether the member has unique or special expertise, knowledge, or experience in the matter under consideration. Section 1.69(b)(3)(iii) requires the deliberating body also to consider, when determining whether to permit an exception to ''fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action.''

Section 1.69(b)(4) requires an SRO's governing board, disciplinary committees, and oversight panels to reflect in their minutes or otherwise document that the conflicts determination procedures required under § 1.69 have been followed. Such records also must include: The names of all members who attended the meeting in person or who otherwise were present by electronic means; the name of any member who voluntarily recused himself or herself or was required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and information on the position information that was reviewed for each member.

Proposed Rule 834(g) closely follows the paragraph structure and language of § 1.69, with a few minor exceptions (beyond modifying the rule's application to SBSEFs and SBS exchanges, rather than, in the CFTC original, all SROs). First, paragraph (g)(1)(i)(A) of proposed Rule 834 is based closely on § 1.69(b)(1)(i) and would set out the types of relationships with the named party of interest that would create a conflict of interest for a member of the governing board, disciplinary committee, or oversight panel. Paragraph (g)(1)(i)(A), however, would incorporate only four of the five prongs in § 1.69(b)(1)(i).[263] Second, § 1.69(b)(2)(iii) sets out five types of financial positions that could be held by a member of the governing board, disciplinary committee, or oversight panel that an SRO must review to ascertain if there is a conflicts restriction in a significant action. Proposed Rule 834(g)(1)(ii)(C) is a simplified version of § 1.69(b)(2)(iii); it would not include the five prongs set forth in § 1.69(b)(2)(iii), but rather would incorporate only the final, catch-all prong (''Such determination must include a review of any positions, whether maintained at that security-based swap execution facility, SBS exchange, or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm [264] that the security-based swap execution facility or SBS exchange reasonably expects could be affected by the significant action'').[265] Third, proposed Rule 834(g)(1)(ii)(C) would omit a requirement in § 1.69(b)(2)(iv) that an SRO, when making a determination of whether a conflict of interest exists, must take into consideration ''[t]he most recent large trader reports and clearing records available to the self-regulatory organization.'' These types of reports may not be as prevalent in the securities and SBS markets as the swaps markets. The Commission believes that the final, catch-all prong in § 1.69(b)(2)(iv)—''Any other source of information that is held by and reasonably available to the self-regulatory organization''—would suffice, and is proposing it as Rule 834(g)(1)(ii)(C)(*2*).

Proposed Rule 834(h) would require each SBSEF and SBS exchange to maintain in effect various rules that would be required under proposed Rule 834. An SBSEF would be required to file such rules under proposed Rule 806 or 807 of Regulation SE; an SBS exchange would be required to file such rules under existing SEA Rule 19b–4.[266] Proposed Rule 834(h) is loosely modelled on various provisions in §§ 1.64 and 1.69 providing that the SRO rules required under those CFTC rules must be filed with the CFTC pursuant to relevant provisions of the CEA and the CFTC's rules thereunder.

The Commission preliminarily believes that §§ 1.64 and 1.69 are reasonably designed to promote good governance of trading venues and is therefore proposing to adapt them into Rule 834. These CFTC rules identify various instances of potential conflicts of interest that might involve a member of the governing board or an important committee of a SEF, and require proactive measures to address those conflicts. The Commission preliminarily believes that SBSEFs and SBS exchanges should have the same types of rules because the same types of conflicts that arise with SEFs could arise with SBS trading venues. Furthermore, various provisions of §§ 1.64 and 1.69 would further the policy goals of section 765 of the Dodd-Frank Act. For example, proposed Rule 834(e)(1)(ii), modelled on § 1.64(b)(1)(ii)(A), would require that at least 20% of the regular voting members of the governing board of an SBSEF or SBS exchange not be members, and proposed Rule 834(e)(1)(v), which is modelled on § 1.64(b)(1)(ii)(D), would require that at least 20% of the regular voting members of the governing board not be persons affiliated with members. These requirements, by reserving at least 20% of the governing board's seats for persons not associated with any member of an SBSEF or SBS exchange, would reduce the possibility that a combination of members who are SBS dealers or major SBS participants could create a conflict of interest for the SBSEF or SBS exchange.

In addition, proposed Rule 834(d), which incorporates language from § 1.64(c), would require each major disciplinary committee or hearing panel thereof to include sufficient different groups or classes of its members so as to ensure fairness and to prevent special treatment or preference for any person or member. The Commission

[263] The Commission is not proposing to include a prong about being associated with a named party of interest through a ''broker association,'' as defined in § 156.1 of the CFTC's rules, as that concept does not exist under the SEA.

[264] Proposed Rule 834(a) would define a ''member's affiliated firm'' as a firm in which the member is a principal or an employee.

[265] Proposed Rule 834(a) would define ''significant action'' to include several types of actions or rule changes by an SBSEF or SBS exchange that could be implemented without the Commission's prior approval related to addressing an emergency and certain changes in margin levels.

[266] 17 CFR 240.19b–4.

preliminarily believes that it is appropriate to impose such a requirement on SBSEFs and SBS exchanges to further lessen the potential for members of an SBSEF or SBS exchange who are SBS dealers or major SBS participants from benefitting from a conflict of interest. Furthermore, proposed Rule 834(e), which is modelled on § 1.64(d), would require an SBSEF or SBS exchange to submit to the Commission, within 30 days after each governing board election, a list of the governing board's members, the groups or classes of members that they represent, and how the composition of the governing board otherwise meets the requirements of Rule 834. Proposed Rule 834(e) is designed to reinforce the other requirements of the rule by causing each SBSEF and SBS exchange to actively consider how the composition of its governing board comports with Rule 834, and to make an accurate representation to the Commission regarding such compliance.

The Commission preliminarily believes that § 1.69 also includes provisions that would further the policy goals of section 765 and is, therefore, proposing to adapt them into Rule 834. Under proposed Rule 834(b), an SBSEF or SBS exchange generally may not permit any member to hold 20% or more of the voting interest in that trading venue. Nothing in proposed Rule 834, however, would prohibit a member—including an SBS dealer or major SBS participant (or a person associated with such a member, such as a firm principal)—from serving on a governing board, disciplinary committee, or oversight panel of an SBSEF or SBS exchange. Section 1.69 is designed to address various types of conflicts of interest that might involve members of a governing board, disciplinary committee, or oversight panel. For example, § 1.69 specifies when a member must abstain from the body's deliberations and voting because the member has a relationship to the named party in interest or because the member has ''a direct and substantial financial interest in the result of the vote.'' Furthermore, § 1.69 requires a member to disclose its relationships to a named party in interest and provide position information to the SRO so that the SRO can assess whether the member has a conflict, and also requires the SRO to follow its own procedures for determining whether a conflict exists. Because these provisions further the goals of section 765—to mitigate conflicts of interest created by an SBS dealer or major SBS participant that holds an interest in an SBSEF or SBS exchange—and because they are reasonably designed to promote good governance more generally, the Commission is proposing to incorporate them into Rule 834.

The Commission recognizes that promulgating rules under section 765 alone will not result in a highly competitive market for SBS. There could be other ways for anticompetitive forces to impede the growth of SBS trading on transparent, regulated platforms other than by misuse of a large voting interest in the trading venue. For example, a large SBS dealer or coalition of SBS dealers, even absent any voting interest in any SBSEF or SBS exchange, could threaten to move their business elsewhere unless given an unfair advantage by the trading venue. A large SBS dealer or coalition of SBS dealers also could conspire to shut out end users who sought to trade more actively on these transparent, regulated venues rather than continuing to trade in the bilateral OTC markets. The Commission will be alert to any such anticompetitive practices and consider appropriate prophylactic measures. At present, the Commission believes that adopting rules under section 765 is a necessary and appropriate first step to guard against conflicts of interest arising on SBSEFs and SBS exchanges.

The Commission seeks comment on the following:

175. In general, do you agree with how the Commission is proposing to implement section 765 of the Dodd-Frank Act? Why or why not?

176. In particular, do you believe that the 20% ownership cap in proposed Rule 834(b) is appropriate? Why or why not? Do you believe that a different numerical threshold would be appropriate? If so, what numerical threshold and why?

177. Do you believe that there are other means (such as ownership of non-voting equity, holding a sizeable amount of the debt issuance, *etc.*) by which an SBS dealer or major SBS participant could exercise an undue influence over an SBSEF or SBS exchange of which it is a member? If so, please discuss whether and how these other means should be incorporated into Rule 834.

178. Do you believe that proposed Rule 834(b) is sufficiently clear about when a member would be deemed to have an indirect 20% voting interest in an SBSEF or SBS exchange? If not, please provide other scenarios where you believe the Commission should offer clarification.

179. Do you agree in general with the Commission's proposal to adapt the major provisions of § 1.64 into Rule 834? Why or why not?

180. Are there provisions of § 1.64 that the Commission has incorporated into proposed Rule 834 that you think inappropriate? If so, what provisions and why?

181. Conversely, are there provisions of § 1.64 that the Commission has *not* incorporated into proposed Rule 834 that you think should be incorporated? If so, what provisions and why? Specifically, do you believe that the Commission should incorporate a definition of ''membership interest''—as the CFTC does in § 1.64(a)(4)—to more precisely delineate the different interests that an SBSEF or SBS exchange should take into account?

182. Do you agree in general with the Commission's proposal to incorporate the major provisions of § 1.69 into Rule 834? Why or why not?

183. Are there provisions of § 1.69 that the Commission has incorporated into proposed Rule 834 that you think inappropriate? If so, what provisions and why?

184. Do you believe generally that the same rules for mitigating conflicts of interest should apply to both SBSEFs and SBS exchanges, or should different restrictions apply to each type of trading venue? If you believe different restrictions should apply, please explain why and what different restrictions you believe should be incorporated into Rule 834?

185. Are there any proposed requirements in Rule 834 that existing national securities exchanges, which could in the future elect to list SBS and thereby become SBS exchanges, would find difficult to comply with? Would any of the requirements proposed in Rule 834 conflict with their existing rules? If so, please describe.

186. Are there other types of conflict of interest that SBS dealers and major SBS participants might enjoy as members of an SBSEF or SBS exchange? If so, discuss how any such conflict could be addressed via Commission rulemaking.

187. Do you believe that SBS dealers and major SBS participants can exercise anticompetitive influence over one or more SBSEFs or SBS exchanges even if not members of those trading venues? If so, what additional measures would you recommend to combat that anticompetitive influence?

XI. Rule 835—Notice to Commission by SBSEF of Final Disciplinary Action, Denial or Conditioning of Membership, or Denial or Limitation of Access

The Commission is also proposing new Rule 835 to require an SBSEF to provide the Commission notice of a final disciplinary action, a final action

with respect to a denial or conditioning of membership, or a final action with respect to a denial or limitation of access. Such notice is designed to ensure that the Commission is kept aware of significant disciplinary actions, denials or conditionings of membership, or denials or limitations on access by SBSEFs that could be the subject of an aggrieved person's request for review by the Commission. The requirement to provide notice to the Commission also would obligate an SBSEF to be cognizant of, and make records for, each such instance, and such records would become a necessary part of the record should the aggrieved person seek Commission review of the SBSEF's action.

Specifically, paragraph (a) of proposed Rule 835 would provide that, if an SBSEF issues a final disciplinary action against a member, or takes a final action with respect to a denial or conditioning of membership, or a final action with respect to a denial or limitation of access of a person to any services offered by the SBSEF, the SBSEF shall file a notice of such action with the Commission within 30 days and serve a copy on the affected person. Proposed Rule 835(a) uses the phrase ''final disciplinary action against a *member*'' (emphasis added) because an SBSEF may utilize its disciplinary authority under Core Principle 2 (Compliance with Rules) in section 3D of the SEA [267] only with respect to its members; but uses the phrase ''denies or limits access of a *person*'' (emphasis added) because the person whose access is denied or limited might not be a member. For example, a person that is denied membership by an SBSEF would fall under this category.

Paragraph (b)(1) of proposed Rule 835 would provide that, for purposes of paragraph (a), a disciplinary action would not be considered final unless: (1) The affected person has sought an adjudication or hearing with respect to the matter, or otherwise exhausted their administrative remedies at the SBSEF; and (2) the disciplinary action is not a summary action permitted under proposed Rule 819(g)(13)(ii).[268] In addition, paragraph (b)(2) of proposed Rule 835 would provide that, for purposes of paragraph (a), a disposition of a matter with respect to a denial or conditioning of membership, or a denial or limitation of access, would not be considered final unless such person has sought an adjudication or hearing, or otherwise exhausted their administrative remedies at the SBSEF with respect to such matter. The Commission preliminarily believes that it is appropriate to exclude disciplinary actions that are summary actions under an SBSEF's summary fine schedule [269] because the Commission expects such summary actions, if applicable, to comprise lesser disciplinary actions that do not warrant appeal. The CFTC has parallel procedures relating to review of SEF disciplinary actions also excludes summary actions under an SEF's summary fine schedule.[270]

Paragraph (c) of proposed Rule 835 would provide that the notice required under Rule 835(a) must include the name of the member or the associated person and last known address, as reflected in the SBSEF's records, of the member or associated person, as well as the name of the person, committee, or other organizational unit of the SBSEF that initiated the disciplinary action or access restriction. In the case of a final disciplinary action, the notice would be required to include a description of the acts or practices, or omissions to act, upon which the sanction is based, including, as appropriate, the specific rules that the SBSEF has found to have been violated; a statement describing the respondent's answer to the charges; and a statement of the sanction imposed and the reasons for such sanction. In the case of a denial or conditioning of membership or a denial or limitation of access, the notice would be required to include: The financial or operating difficulty of the prospective member or member (as the case may be) upon which the SBSEF determined that the prospective member or member could not be permitted to do, or continue to do, business with safety to investors, creditors, other members, or the SBSEF; the pertinent failure to meet qualification requirements or other prerequisites for membership or access and the basis upon which the SBSEF determined that the person concerned could not be permitted to have membership or access with safety to investors, creditors, other members, or the SBSEF; or the default of any delivery of funds or securities to a clearing agency by the member. Finally, the notice must include the effective date of such final disciplinary action, denials or conditioning of membership, or denial or limitation of access, as well as any other information that the SBSEF may deem relevant.

The Commission seeks comment on the following:

188. Do you agree with the proposed definition of ''final disciplinary action'' in proposed Rule 835? Why or why not? If not, how would you revise the definition? Do you think it would be appropriate to exclude disciplinary actions that are summary actions under an SBSEF's summary fine schedule from such definition? Why or why not?

189. Do you agree with how the proposed rules and rule amendments address when an aggrieved party may seek Commission review of a denial or conditioning of membership, or a denial or limitation of access? Why or why not? If not, how would you revise those provisions?

190. In particular, do the proposed rules contain sufficient detail to address all types of denials or conditionings of membership or denials or limitations on access? Are there particular scenarios that commenters believe the Commission should address in Rule 835? If so, please describe in detail.

191. Are the contents of the required notice to the Commission in proposed Rule 835 appropriate? Do you believe these would provide the Commission with enough detail regarding final disciplinary actions, denials or conditionings of membership, and denials or limitations on access? If not, what other information should be required in the notice?

XII. Amendments to Existing Rule 3a1–1 Under the SEA—Exemptions From the Definition of ''Exchange''

An entity that meets the definition of ''security-based swap execution facility'' also would likely meet the definition of ''exchange'' set forth in section 3(a)(1) of the SEA [271] and the interpretation of that definition set forth in Rule 3b–16 thereunder.[272] Thus, absent an exemption, an entity needing to register with the Commission as an SBSEF also would likely need to register with the

[267] 15 U.S.C. 78c–4(d)(2).

[268] As discussed above, *see supra* section VIII(B)(1), proposed Rule 819(g)(13)(ii) would permit an SBSEF to adopt a summary fine schedule for violations of rules relating to the failure to timely submit accurate records required for clearing or verifying each day's transactions, which may be summarily imposed against persons within the SBSEF's jurisdiction for violating such rules. Furthermore, an SBSEF's summary fine schedule could allow for warning letters to be issued for first-time violations or violators. If adopted, a summary fine schedule would be required by proposed Rule 819(g)(13)(ii) to provide for progressively larger fines for recurring violations.

[269] A summary fine schedule, if an SBSEF elects to adopt one, would have to be part of the SBSEF's rules, and thus would need to be submitted to the Commission. *See* proposed Rule 819(g)(13)(ii).

[270] *See* 17 CFR 9.1(b)(2).

[271] 15 U.S.C. 78c(a)(1).

[272] 17 CFR 240.3b–16 (providing that an entity generally is considered to meet the definition of ''exchange'' if it brings together the orders for securities of multiple buyers and sellers and uses established, non-discretionary methods—whether by providing a trading facility or by setting rules—under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade).

Commission as a national securities exchange.[273] The Commission previously has stated that it ''believes that Congress specifically provided a comprehensive regulatory framework for SBSEFs in the [SEA], as amended by the Dodd Frank Act, and therefore that such entities that are registered as SBSEFs should not also be required to register and be regulated as national securities exchanges.'' [274]

Therefore, the Commission is proposing to exercise its authority under section 36(a)(1) of the SEA [275] to exempt an SBSEF from the definition of ''exchange''—and thus the obligation to register as a national securities exchange—if it provides a market place solely for the trading of SBS (and no other securities) and has registered with the Commission as an SBSEF. To effect this exemption, the Commission is proposing to amend Rule 3a1–1 under the SEA [276] by adding new paragraph (a)(4).[277]

The proposed amendment provides that an entity that has registered with the Commission as an SBSEF pursuant to proposed Rule 803 and provides a market place for no securities other than SBS would not fall within the definition of ''exchange,'' and thus would not be subject to the requirement in section 5 of the SEA to register as a national securities exchange or obtain a low-volume exemption. Section 5 also provides that a broker or dealer may not ''us[e] any facility of an exchange within or subject to the jurisdiction of the United States to effect any transaction in a security, or to report any such transaction, unless such exchange (1) is registered as a national securities exchange . . . or (2) is exempted from such registration . . . by reason of the limited volume of transactions effected on such exchange.'' Brokers and dealers who are members of a registered SBSEF would not be in violation of section 5 by effecting or reporting any SBS transactions on that SBSEF, because an SBSEF that qualifies for the exemption under proposed Rule 3a1–1(a)(4) would not be an exchange within the meaning of section 5.

In addition, the Commission is proposing a new paragraph (a)(5) to existing Rule 3a1–1 under the SEA which would provide that an organization, association, or group of persons shall be exempt from the definition of the term ''exchange'' if such organization, association, or group of persons has registered with the Commission as a clearing agency pursuant to section 17A of the SEA and limits its exchange functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations. As noted above, this provision would codify a series of exemptions that the Commission has granted over several years to SBS clearing agencies that operate ''forced trading'' sessions.[278] As part of the clearing and risk management processes, an SBS clearing agency must establish an end-of-day valuation for any SBS in which any of its members has a cleared position. Certain SBS clearing agencies utilize a valuation mechanism whereby they require clearing members to submit indicative quotes for those SBS products, and can require them to trade as a way to promote accurate submissions. The precise means by which the clearing agency matches quotes from different clearing members could cause the clearing agency to fall within the definition of ''exchange'' in section 3(a)(1) of the SEA. The Commission previously has found that it was necessary or appropriate in the public interest and consistent with the protection of investors to exempt clearing agencies that engage in this activity from the definition of ''exchange.'' [279] The Commission is now proposing to codify this exemption. This exemption would cover only the forced-trading session of an SBS clearing agency; any other exchange activity that a clearing agency might engage in could remain subject to the SEA provisions and the Commission's rules thereunder applying to exchanges.

Finally, the Commission is proposing to amend the introductory language of existing paragraph (b) of Rule 3a1–1, which states: ''Notwithstanding paragraph (a) of this rule, an organization, association, or group of persons shall not be exempt under this rule from the definition of 'exchange' if . . .'' Paragraph (b) then sets out procedural and substantive criteria for the Commission to retract an exemption under paragraph (a) of Rule 3a1–1 if an exchange's share of the market in any one of the specified classes of securities exceeds a defined threshold. The Commission is proposing to amend the introductory language of paragraph (b) of Rule 3a1–1 to cover only paragraphs (a)(1) through (3), not paragraph (a) as a whole.

The changed language is designed to clarify that the retraction provisions would not apply to organizations, associations, or groups of persons who fall within proposed Rule 3a1–1(a)(4) or (a)(5). Thus, even if a registered SBSEF were to grow very large, Rule 3a1–1(b), as proposed to be amended, would not afford a basis for the Commission to retract an SBSEF's exemption from the definition of ''exchange'' under proposed Rule 3a1–1(a)(4), which would force the SBSEF to register as a national securities exchange (to avoid being a registered exchange). The Commission preliminarily believes that, in adopting section 3D of the SEA, Congress gave the Commission a mechanism to regulate SBSEFs of any size. Nothing in section 3D suggests that, if an SBSEF were to grow above a certain size, the Commission should be able to withdraw that entity's ability to operate as an SBSEF and instead compel it to register as a national securities exchange.

Finally, the Commission preliminarily believes that it is not necessary to apply the retraction provisions in Rule 3a1–1(b) to registered clearing agencies that engage in forced trading sessions and are covered by proposed Rule 3a1–1(a)(5). SBS transactions effected using this functionality are designed to facilitate the clearance and settlement process by rendering more accurate the daily valuation that is used to calculate margin requirements. The entities that utilize this functionality are already registered with the Commission—as clearing agencies—and carry out these operations under rules that have been approved by the Commission. This trading functionality is not effected for the purpose of conducting open-market transactions between parties who are seeking to increase or decrease their positions for investment or hedging purposes. Therefore, the Commission preliminarily believes that it would not be appropriate to apply the retraction provisions of Rule 3a1–1(b) to clearing agencies that would be covered by proposed Rule 3a1–1(a)(5), as this would force these clearing agencies also to register as national securities exchanges.

The Commission seeks comment on the following:

192. Do you agree in general with the Commission's proposal to exempt from

[273] *See* section 3D(a)(1) of the SEA, 15 U.S.C. 78c–4(a)(1) (''No person may operate a facility for the trading or processing of security-based swaps, unless the facility is registered as a security-based swap execution facility or as a national securities exchange under this section'').

[274] 2011 SBSEF Proposal, 76 FR at 10958.

[275] 15 U.S.C. 78mm(a)(1).

[276] 17 CFR 240.3a1–1.

[277] The amended rule would provide that an organization, association, or group of persons shall be exempt from the definition of the term ''exchange'' if such organization, association, or group of persons has registered with the Commission as an SBSEF pursuant to Rule 803 and provides a market place for no securities other than SBS.

[278] *See supra* note 37.

[279] *See id.*

the statutory definition of ''exchange'' any registered SBSEF that provides a market place for no securities other than SBS and any SBS clearing agency that engages in forced trading sessions? Why or why not?

193. Do you agree with the particular language of proposed paragraphs (a)(4) and (a)(5) of Rule 3a1–1? If not, how would you amend the language?

194. Do you agree with the Commission's preliminary view, reflected in the proposed new introductory language to paragraph (b) of Rule 3a1–1, that entities qualifying for an exemption from the definition of ''exchange'' under proposed paragraphs (a)(4) and (a)(5) of Rule 3a1–1 should not be subject to the retraction provisions of Rule 3a1–1(b)? Why or why not?

XIII. Rule 15a–12—SBSEFs as Registered Brokers; Relief From Certain Broker Requirements

An SBSEF, by facilitating the execution of SBS between persons, also is engaged in the business of effecting transactions in securities for the account of others and therefore meets the SEA definition of ''broker.'' [280] Absent an exception or exemption, an SBSEF—in addition to being subject to the registration and regulatory requirements for SBSEFs—also would be required to register with the Commission as a broker pursuant to sections 15(a) and 15(b) of the SEA [281] and would be subject to all regulatory requirements applicable to brokers.[282] For example, brokers and dealers must comply with a number of rules that govern their conduct, including those relating to customer confirmations and disclosure of credit terms in margin transactions.[283]

The Commission is proposing a new Rule 15a–12 under the SEA that would deem registration with the Commission as an SBSEF also to constitute registration as a broker, and would exempt a registered SBSEF from many broker requirements in light of the SBSEF regulatory regime to which it would also be subject.

One statutory provision from which a registered SBSEF would be exempted is section 17(a) of the SEA,[284] which requires a registered broker (among other types of registered entity) to make and keep records as prescribed by Commission rule. Because SBSEFs are required to make and keep records as prescribed by Commission rule under section 3D(d)(9) of the SEA, imposing section 17(a) on SBSEFs would be redundant. By contrast, one statutory provision that would continue to apply to registered SBSEFs in their dual capacity as registered brokers would be section 17(b) of the SEA.[285]

In addition, under section 15(b)(8) of the SEA, it is unlawful for any registered broker or dealer to effect transactions in securities unless it is a member of an SRO.[286] Brokers and dealers also must comply with a number of financial responsibility regulations, such as the net capital and customer protection rules.[287] A registered broker or dealer also must make and keep current books and records relating to its business and detailing, among other things, securities transactions, money balances, and securities positions; keep records for required periods and furnish copies of those records to the Commission on request; and file certain financial reports with the Commission.[288]

The Commission preliminarily believes that Congress did not intend to subject SBSEFs that act only as SBSEFs to a dual regulatory regime.[289] Therefore, using its authority under section 36(a)(1) of the SEA and its authority to establish procedures regarding the registration of brokers, the Commission is proposing new Rule 15a–12 under the SEA that would allow an SBSEF that is a broker, solely due to its activity with respect to SBS executed on or through the SBSEF, to satisfy the requirement to register as a broker by registering as an SBSEF.[290] Proposed Rule 15a–12(b) would provide that such an entity, if it registered as an SBSEF pursuant proposed Rule 803, would be deemed also to have registered with the Commission pursuant to sections 15(a) and (b) of the SEA. The Commission is *not* proposing to exempt SBSEFs from registration as brokers; rather, given the registration and regulatory requirements being proposed for SBSEFs through Regulation SE, it is proposing to eliminate a separate registration process for broker/SBSEFs and much of the additive layer of regulation for brokers that the Commission preliminarily believes is not necessary in light of the regulatory regime for SBSEFs.

Proposed Rule 15a–12 could not be utilized by an SBSEF that engaged in other types of brokerage activity. Paragraph (a) of proposed Rule 15a–12 would define the term ''SBSEF–B'' to mean an SBSEF that does not engage in any securities activity other than facilitating the trading of SBS on or through the SBSEF. Thus, an SBSEF that acts as agent to SBS counterparties or that acts in a discretionary manner with respect to the execution of SBS transactions, could not avail itself of proposed Rule 15a–12. Also, if an inter-dealer broker elects not to separate its inter-dealer broker functions from its SBSEF (by, for example, housing them in separate legal entities), and instead chooses to operate the SBSEF in the same legal entity as the inter-dealer broker, the entity could not avail itself of proposed Rule 15a–12 because it would not be an SBSEF–B under the rule.

Paragraphs (c) to (e) of proposed Rule 15a–12 would set out the scope of broker requirements from which an SBSEF–B would be exempted and which broker requirements would continue to apply. Paragraph (c) would provide that an SBSEF–B would be exempt from any provision of the SEA or the Commission's rules thereunder applicable to brokers that by its terms requires, prohibits, restricts, limits, conditions, or affects the activities of a broker, unless such provision specifies that it applies to an SBSEF. Paragraph (d) of proposed Rule 15a–12 would provide that, notwithstanding paragraph (c), an SBSEF–B would still be subject to sections 15(b)(4),[291] 15(b)(6),[292] and 17(b) of the SEA.[293]

Sections 15(b)(4) and 15(b)(6) of the SEA serve as the basis for enforcing the

[280] *See* section 3(a)(4) of the SEA, 15 U.S.C. 78c(a)(4).

[281] 15 U.S.C. 78o(a) and 78o(b). Section 15(a)(1) generally provides that, absent an exception or exemption, a broker or dealer that uses the mails or any means of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, any security must register with the Commission. Section 15(b) generally provides the manner of registration of brokers and dealers and other requirements applicable to registered brokers and dealers.

[282] As discussed in note 43 *supra,* a person that is acting as a broker solely because it is acting as an SBSEF is currently exempt from the requirement to register with the Commission as a broker and the Commission's rules under the SEA that apply to brokers. This exemption will expire upon the compliance date for the Commission's final SBSEF rules.

[283] *See* 17 CFR 240.10b–10 and 240.10b–16.

[284] 15 U.S.C. 78q(a).

[285] 15 U.S.C. 78q(b) (providing that the records of registered brokers, among other types of registered entity, are subject to examination by representatives of the Commission).

[286] *See* 15 U.S.C. 78o(b)(8) and 240.15b9–1.

[287] *See* 17 CFR 240.15c3–1 and 240.15c3–3.

[288] *See* 17 CFR 240.17a–3, 240.17a–4, and 240.17a–5.

[289] *See* 2011 SBSEF Proposal, 76 FR at 10959 (noting that this framework indicates that Congress did not intend for entities that meet the definition of SBSEF also to be subject to all of the requirements set forth in the SEA and the rules and regulations thereunder applicable to brokers).

[290] A foreign SBS trading venue covered by an exemption under proposed Rule 833(a) would be exempt from the SEA's definition of ''broker'' and, as a result, would not need rely on proposed Rule 15a–12.

[291] 15 U.S.C. 78o(b)(4).

[292] 15 U.S.C. 78o(b)(6).

[293] 15 U.S.C. 78q(b).

Federal securities laws against registered brokers. Section 15(b)(4) provides that the Commission, upon the making of specified findings, shall censure; place limitations on the activities, functions, or operations of; suspend for a period not exceeding 12 months; or revoke the registration of any broker or dealer. Similarly, section 15(b)(6) of the SEA requires the Commission, upon the making of specified findings, to censure, place limitations on, suspend, or bar such person an associated person. Section 17(b) of the SEA is the legal basis under which the Commission may examine registered brokers for compliance with the Federal securities laws. Section 17(b) authorizes the Commission to conduct reasonable periodic, special, or other examinations of all records maintained by entities described in section 17(a), including registered brokers. These examinations may be conducted at any time, or from time to time, as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the SEA.[294] Proposed Rule 15a–12 would specify that these examination and statutory disqualification provisions pertaining to registered brokers continue to apply, despite Rule 15a–12 exempting an SBSEF–B from other broker requirements under the SEA.

Finally, paragraph (e) of proposed Rule 15a–12 would exempt an SBSEF–B from the Securities Investor Protection Act (''SIPA''). SIPA established the Securities Investor Protection Corporation (''SIPC''), which oversees the liquidation of member firms that close when a member firm is bankrupt or in financial trouble, and customer assets are missing.[295] SIPC protection is funded by assessments made on member firms.[296]

Section 2 of SIPA [297] states that, unless otherwise provided, the SEA shall apply as if SIPA constituted an amendment to, and was included as a section of, the SEA. An SBSEF–B, by definition, would operate only as an SBSEF. The Commission preliminarily believes that it would not be equitable to require an SBSEF–B to become a member of SIPC and pay SIPC assessments, since the SBSEF–B would not have brokerage customers and would not hold any customer funds or securities. Accordingly, under section 36(a)(1) of the SEA,[298] the Commission preliminarily believes that it is necessary or appropriate in the public interest, and is consistent with the protection of investors, to exempt SBSEF–Bs from any requirement under SIPA, including the requirement to pay assessments to the SIPC insurance fund. The Commission is proposing to codify this exemption as Rule 15a–12(e).

The Commission seeks comment on the following:

195. Do you agree in principle with proposed Rule 15a–12? Why or why not?

196. Do you agree with the specific language of proposed Rule 15a–12? If not, how would you revise the rule language, and why?

197. Are there any provisions listed in paragraph (d) of proposed Rule 15a–12 to which an SBSEF–B should not be subject? If so, what provisions and why? Are there any other provisions or broker requirements to which an SBSEF–B *should* be subject (and thus added to paragraph (d) of proposed Rule 15a–12)? If so, what provisions or requirements and why?

198. Do you believe that it is appropriate to exempt SBSEF–Bs from SIPA, as reflected in proposed Rule 15a–12(e)? Why or why not?

XIV. Proposed Sunsetting of Temporary Exemption From SEA Definition of ''Clearing Agency'' for Unregistered SBSEFs

In 2020, the Commission adopted Rule 17Ad–24 under the SEA [299] to exempt from the definition of ''clearing agency'' in section 3(a)(23) of the SEA [300] certain entities, including a registered SBSEF, that would be deemed to be a clearing agency solely by reason of (a) functions performed by such institution as part of customary dealing activities or providing facilities for comparison of data respecting the terms of settlement of securities transactions effected on such registered SBSEF, respectively; or (b) acting on behalf of a clearing agency or participant therein in connection with the furnishing by the clearing agency of services to its participants or the use of services of the clearing agency by its participants.[301] In adopting the rule, the Commission explained that an entity performing such functions that triggers the requirement to register as a clearing agency—but that is not yet registered with the Commission as an SBSEF—could rely on a temporary exemption from the requirement to register as a clearing agency that the Commission issued in 2011.[302] The Commission preliminarily believes that, if it adopts a framework for the registration of SBSEFs, the 2011 Temporary Exemption would no longer be necessary because entities carrying out the functions of SBSEFs would be able to register with the Commission as such, thereby falling within the exemption from the definition of ''clearing agency'' in existing Rule 17Ad–24.

The Commission seeks comment on the following:

199. Should the Commission sunset the 2011 Temporary Exemption to coincide with the compliance date for Regulation SE, if adopted? If not, what timeline for sunsetting the 2011 Temporary Exemption would be appropriate?

XV. Electronic Filings Under Regulation SE

Various provisions of proposed Regulation SE would require registered SBSEFs (or SBSEF applicants) to file specified information electronically with the Commission using the Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system in Inline XBRL, a structured, machine-readable data language. Such provisions include:

- Proposed Rule 803(b)(1)(i) and (b)(3), regarding filings of, and amendments to, a Form SBSEF application.
- Proposed Rules 803(e) and 803(f), regarding requests to withdraw or vacate an application for registration.
- Proposed Rule 804(a)(1), regarding filings for listing products for trading by certification.
- Proposed Rule 805(a)(1), regarding filings for voluntary submission of new products for Commission review and approval.
- Proposed Rule 806(a)(1), regarding filings for voluntary submission of rules for Commission review and approval.
- Proposed Rule 807(a)(1), regarding filings for self-certification of rules.
- Proposed Rule 807(d), regarding filings of weekly notifications to the

[294] *Id.*

[295] *See https://www.sipc.org/about-sipc/sipc-mission* (''In a liquidation under the Securities Investor Protection Act, SIPC and the court-appointed Trustee work to return customers' securities and cash as quickly as possible. Within limits, SIPC expedites the return of missing customer property by protecting each customer up to $500,000 for securities and cash (including a $250,000 limit for cash only)'').

[296] *See* 15 U.S.C. 78ddd(d).

[297] 15 U.S.C. 78bbb.

[298] 15 U.S.C. 78mm(a)(1) (giving the Commission broad exemptive authority, including the ability to exempt any person or classes of persons from any provision of the SEA or any rules thereunder, to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors).

[299] 17 CFR 240.17Ad–24.

[300] 15 U.S.C. 78c(a)(23).

[301] *See* SEA Release No. 90667 (December 16, 2020), 86 FR 7637 (February 1, 2021).

[302] *See id.,* 86 FR at 7650; SEA Release No. 64796 (July 1, 2011), 76 FR 39963, 39964 (July 7, 2011) (''2011 Temporary Exemption'').

Commission of rules and rule amendments that were not required to be certified.

- Proposed Rule 829(g)(6), regarding submission to the Commission of reports related to financial resources and related documentation.
- Proposed Rule 831(j)(2), regarding submission to the Commission of the annual compliance report of SBSEF's CCO.

Requiring SBSEFs to file this information in EDGAR would provide the Commission and the public with a centralized, publicly accessible electronic database for the information, thereby facilitating its use. EDGAR would also enable technical validation of the disclosures, thus potentially reducing the incidence of non-discretionary errors (*e.g.,* including text for a disclosure that should contain only numbers). Moreover, requiring Inline XBRL tagging of the reported disclosures, which would specifically comprise Inline XBRL block text tags for any narrative disclosures, as well as detail tags for individual data points, would make the disclosures more easily available and accessible to, and reusable by, market participants and the Commission for retrieval, aggregation, and comparison across different SBSEFs and time periods, as compared to an unstructured PDF, HTML, or ASCII format requirement for the reports.[303]

The Commission seeks comment on the following:

200. Would EDGAR be an appropriate system for these filings? Or should the Commission use its Electronic Form Filing System/SRO Rule Tracking System (''EFFS/SRTS'') or another file transfer system instead? [304] Would requiring these materials to be filed in EDGAR, EFFS/SRTS, or another file transfer system be more beneficial for SBSEFs and other market participants? If so, why? How would the use of these different systems impact the usability and accessibility of the materials for data users? Is there another method of electronic submission that is preferable? If so, please identify that method, why you believe it should be used, and the estimated costs of such system for filers.

201. Should all filings be made through the same electronic system, or would different filing systems be appropriate for different types of filings? If the latter, please discuss.

202. Would Inline XBRL be an appropriate data language for these filings? Or should the Commission use a different structured data language? If so, which data language should be required, and why? Would requiring a different structured data language be more beneficial for SBSEFs and other market participants? How would the use of a different data language impact the usability and accessibility of the materials for data users? What time or expense is associated with your recommended structured data language? Would a particular structured data language require any filers or users to license commercial software they otherwise would not, and, if so, at what expense?

XVI. Amendments to Commission's Rules of Practice for Appeals of SBSEF Actions

As noted above,[305] SEA Core Principle 2 directs an SBSEF to exercise regulatory powers over its market.[306] Under proposed Rule 819 of Regulation SE, an SBSEF could take a variety of disciplinary actions against a member that is found to violate the SBSEF's rules, including fining the member, limiting the member's access, or barring the member entirely.[307] SEA Core Principle 2 also requires an SBSEF to establish rules governing access to its market.[308] An SBSEF could apply those rules in such a way as to limit a person's access to the SBSEF or to deny access entirely. The Commission preliminarily believes that general principles of due process necessitate an appeals procedure for final disciplinary actions taken by an SBSEF, for denials or conditionings of membership, and for limitations or denials of access. Accordingly, the Commission is proposing a number of amendments to its Rules of Practice to allow for such appeals, and notes that the CFTC has similar procedures with respect to SEFs.[309]

A. Amendment to Rule 101

Existing Rule 101 of the Commission's Rules of Practice [310] sets out definitions for several terms used in the Rules of Practice. In particular, existing Rule 101(a)(9) defines ''proceeding'' with respect to applications of review of actions by a variety of entities that are subject to the Commission's jurisdiction. The Commission is proposing a new paragraph (a)(9)(ix) of Rule 101 that would provide that an application for a review of a determination (such as a final disciplinary action or a limitation or denial of access to any service) by an SBSEF would be a ''proceeding'' and thereby trigger applicability of the Rules of Practice.

B. Amendment to Rule 202

Existing Rule 202 of the Commission's Rules of Practice [311] permits a party in certain proceedings before the Commission to make a motion to specify certain procedures with respect to such proceeding. Rule 202(a) excludes certain types of proceedings, including enforcement or disciplinary proceedings, proceedings to review a determination by an SRO, and proceedings to review a determination of the PCAOB. Because the Commission is proposing new Rules 442 and 443, which set out specific procedures with respect to proceedings to review a determination of an SBSEF,[312] the Commission is proposing to revise Rule 202(a) to add such SBSEF-related proceedings to the list of exclusions.

C. Amendment to Rule 210

Existing Rule 210 of the Commission's Rules of Practice [313] sets out Commission rules with respect to parties, limited participants, and *amici curiae* in various proceedings before the Commission. Paragraph (a)(1) of Rule 210 states that persons shall not be granted leave to become a party or non-party participant on a limited basis in an enforcement or disciplinary proceeding, a proceeding to review a determination by an SRO, or a proceeding to review a determination by

[303] *See* Release No. 33–10514 (June 28, 2018), 83 FR 40846, 40847 (August 16, 2018). Inline XBRL allows filers to embed XBRL data directly into an HTML document, eliminating the need to tag a copy of the information in a separate XBRL exhibit. *See id.,* 83 FR at 40851.

[304] The Commission's EFFS/SRTS system was not designed to support filings using an open structured data language such as Inline XBRL. As a result, requiring registrants to submit filings via the EFFS/SRTS system may not be compatible with a requirement to use Inline XBRL or any other open structured data language for the filings.

[305] *See supra* section VIII(B).

[306] *See, e.g.,* 15 U.S.C. 78c–4(d)(2)(A) (directing an SBSEF to ''establish and *enforce* compliance'' with its rules) (emphasis added); 15 U.S.C. 78c–4(d)(2)(C) (directing an SBSEF to ''establish and *enforce* trading, trade processing, and participation rules that will *deter abuses and have the capacity to detect, investigate, and enforce those rules*'') (emphasis added).

[307] *See supra* section VIII(B). *See also* proposed Rule 819(c)(3) (relating to limitations on access, including suspensions and permanent bars); proposed Rule 819(g) (relating to disciplinary procedures and sanctions).

[308] *See* 15 U.S.C. 78c–4(d)(2)(A)(ii) (directing an SBSEF to establish and enforce compliance with any rule that imposes any limitation on access to the facility); 15 U.S.C. 78c–4(d)(2)(B)(i) (requiring an SBSEF to provide market participants with impartial access to the market).

[309] *See* part 9 of the CFTC's rules (Rules Relating to Review of Exchange Disciplinary, Access Denial or Other Adverse Actions). For purposes of part 9, the term ''exchange'' includes a SEF.

[310] 17 CFR 201.101.

[311] 17 CFR 201.202.

[312] *See infra* sections XVI(E) and (F).

[313] 17 CFR 201.210.

the PCAOB, except as authorized by paragraph (c) of Rule 210 (which permits limited instances in which persons may participate for Commission disciplinary and enforcement proceedings). Because the Commission is proposing new Rules 442 and 443, which set out specific procedures with respect to proceedings to review a determination of an SBSEF,[314] the Commission is proposing to revise Rule 210 to exclude proceedings to review a determination by an SBSEF among those types of proceedings from which persons may be granted leave to become a party or a non-party participant on a limited basis.

D. Amendment to Rule 401

The Commission is proposing to amend existing Rule 401 of its Rules of Practice by adding a new paragraph (f). New paragraph (f)(1) of existing Rule 401 would permit any person aggrieved by a stay of action by an SBSEF entered in accordance with proposed Rule 442(c) to make a motion to lift the stay. The Commission could also, at any time, on its own motion determine whether to lift the automatic stay. New paragraph (f)(2) would provide that the Commission may lift a stay summarily, without notice and opportunity for hearing. Finally, new paragraph (f)(3) would provide that the Commission may expedite consideration of a motion to lift a stay of action by an SBSEF, consistent with the Commission's other responsibilities. Where consideration is expedited, persons opposing the lifting of the stay could file a statement in opposition within two days of service of the motion requesting lifting of the stay unless the Commission, by written order, specifies a different period.

The Commission preliminarily believes that it is appropriate to allow persons affected by certain stays of action by an SBSEF the opportunity to make a motion to request the lifting of the stay. As discussed below, pursuant to proposed Rule 442, an aggrieved person could file an application for review with the Commission with respect to a final disciplinary action, a final action with respect to a denial or conditioning of membership, or a final action with respect to a denial or limitation of access. The filing of such application would operate as a stay of the SBSEF's determination. The Commission preliminarily believes that, because of this automatic stay procedure, an aggrieved person or the SBSEF itself should be afforded a mechanism by which it could request the Commission to lift the stay, in addition to the Commission's ability under proposed Rule 401(f)(2) to lift a stay summarily, without notice and opportunity of hearing.

E. Rule 442—Right To Appeal

Proposed new Rule 442[315] would establish the right to an appeal to the Commission of certain determinations made by an SBSEF, and set out certain procedural matters relating to any such appeal. Paragraph (a) of proposed Rule 442 would provide that an application for review by the Commission may be filed by any person who is aggrieved by a determination of an SBSEF with respect to any: (1) Final disciplinary action, as defined in proposed Rule 835(b)(1); (2) final action with respect to a denial or conditioning of membership, as defined in proposed Rule 835(b)(2); or (3) final action with respect to a denial or limitation of access to any service offered by the SBSEF, as defined in proposed Rule 835(b)(2). Paragraph (b) of proposed Rule 442 would set forth the procedure in such cases. Specifically, an aggrieved person could file an application for review with the Commission (pursuant to existing Rule 151) within 30 days after the notice filed by the SBSEF with the Commission pursuant to proposed Rule 835 is received by the aggrieved person, and must serve the application on the SBSEF at the same time.[316] Paragraph (c) of proposed Rule 442 would provide that filing an application for review with the Commission pursuant to proposed Rule 835(b) would operate as a stay of the SBSEF's determination, unless the Commission otherwise orders either pursuant to a motion filed in accordance with proposed Rule 401(f) or upon its own motion.[317] The Commission preliminarily believes that it is appropriate for the filing of an application for review to operate as an automatic stay of the SBSEF's determination, because such determination could have the effect of significantly or even permanently damaging an aggrieved person's business while the Commission was conducting a review, which could take substantial time. In addition, the Commission is proposing in Rule 401(f) a procedure whereby a person aggrieved by such stay, including the SBSEF, could request that the Commission lift the stay. The proposed rules also contain certain requirements relating to certification of the record and service of the index.[318] Specifically, within 14 days after receipt of an application for review, an SBSEF would be required to certify and file with the Commission one unredacted copy of the record upon which it took the complained-of action. The SBSEF would be required to file electronically with the Commission one copy of an index of such record, and serve one copy of the index on each party, subject to the requirements in proposed Rule 442(d)(2) relating to sensitive personal information; if applicable, such filings would have to be certified that they have complied with such requirements relating to sensitive personal information. The Commission believes these requirements are appropriate to ensure that sensitive personal information is not improperly or inadvertently disseminated by an SBSEF as part of its filing of the record relating to the appeal review.

F. Rule 443—Sua Sponte Review by Commission

New proposed Rule 443[319] would provide that the Commission, on its own initiative, could order review of any determination by an SBSEF (which would include a final disciplinary action, a final action with respect to a denial or conditioning of membership, or a final action with respect to a denial or limitation of access to any services) that could be subject to an application for review pursuant to proposed Rule 442(a) within 40 days after the SBSEF filed notice thereof.

Proposed Rule 443 would further provide that the Commission could at any time before issuing its decision raise or consider any matter that it deems material, whether or not raised by the parties. If the Commission did so, under proposed Rule 443 the Commission would give notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties, where the Commission believes that such briefing could significantly aid the decisional process. The Commission preliminarily believes that it is appropriate that it have the ability to review any determination filed by an SBSEF that could be subject to an application for review under proposed

[314] *See infra* sections XVI(E) and (F).

[315] 17 CFR 201.442.

[316] Such application would be required to identify the SBSEF's determination complained of, set forth in summary form a statement of alleged errors in the action and supporting reasons therefor, and state an address where the applicant can be served. The application would be expected not to exceed two pages in length, and the notice of appearance required by § 201.102(d) would have to accompany the application if the applicant is to be represented by a representative. Any exception to an action not supported in an opening brief that complies with § 201.450(b) could, at the discretion of the Commission, be deemed to have been waived by the applicant.

[317] 17 CFR 201.442(c).

[318] 17 CFR 201.442(d)–(e).

[319] 17 CFR 201.443.

Rule 442(a), even without an appeal of such determination by an aggrieved party, should it believe that further consideration is warranted. Therefore, the proposed rule would provide the Commission authority to obtain additional information through supplemental briefings, as needed.

G. Amendment to Rule 450

Existing Rule 450 of the Commission's Rules of Practice [320] sets out requirements for briefs filed with the Commission. Rule 450(a) sets out a briefing schedule, and paragraph (a)(2) provides that the briefing schedule order shall be issued within 21 days, or such longer time as provided by the Commission, of receipt by the Commission of various types of appeals. The Commission is proposing to amend Rule 450(a)(2) by adding a new paragraph (iv) providing that the 21 days would be triggered by ''[r]eceipt by the Commission of an index to the record of a determination by a security-based swap execution facility filed pursuant to § 201.442(d).''

H. Amendment to Rule 460

Existing Rule 460 of the Commission's Rules of Practice [321] states that the Commission shall determine each matter on the basis of the record. Rule 460(a) defines the contents of the record with respect to various types of action. The Commission is proposing a new paragraph (a)(4) of Rule 460 that would state that, in a proceeding for a final decision before the Commission reviewing a determination of an SBSEF, the record shall consist of: (i) The record certified by the SBSEF pursuant to § 201.442(d); (ii) any application for review; and (iii) any submissions, moving papers, and briefs filed on appeal or review.

I. Request for Comment

The Commission requests comment on all aspects of its proposed rules and rule amendments to provide for applications for review by the Commission of an SBSEF's final disciplinary action or denial or limitation of access. In particular:

203. Do you agree in general that final disciplinary action and denials or limitations of access by an SBSEF be afforded a review process under the Commission's Rules of Practice? Why or why not?

204. Should aggrieved parties be permitted to submit a motion for a stay of an action by an SBSEF under proposed Rule 401(f)? Do you believe that there may be instances in which a motion for a stay may be necessary? Why or why not? Are there any particular provisions that should be added or should not be included in such a process? If so, please describe.

205. Are the provisions relating to SBSEFs under proposed Rule 442 appropriate? Are there additional requirements that should be included or items that should be omitted? Are the provisions relating to sensitive personal information and exceptions under proposed paragraph (d)(2) appropriate? Why or why not?

206. Is it appropriate for the Commission to be able to review determinations of an SBSEF *sua sponte* under proposed Rule 443? Why or why not?

XVII. Conclusion

The Commission requests comment on all aspects of proposed Regulation SE, including any provision of a proposed rule about which the Commission did not ask a specific question above. In addition, the Commission seeks commenters' views on whether Regulation SE should address any other aspects of SBSEFs or SBS execution generally where the Commission has not proposed a specific rule. In particular:

207. Are there any other CFTC rules, or provisions of the CEA itself, relating to SEFs that you believe should be adapted by the Commission to apply to SBSEFs? If so, which rules or provisions and why?

208. Are there any other requirements that the Commission should apply to SBSEF members, or which the Commission should require SBSEFs to apply to their members? If so, what requirements and why? What would be the legal basis for those additional requirements?

XVIII. Compliance Schedule

To facilitate the efficient registration of SBSEFs and compliance with Regulation SE, the Commission intends to include a compliance schedule along with any final rules, if adopted. To assist it in developing an appropriate compliance schedule, the Commission seeks comment on the following matters:

209. If the Commission were to substantially harmonize its SBSEF rules and registration procedures with those of the CFTC, as proposed, how long would respondents need to submit a Form SBSEF to the Commission after Regulation SE and Form SBSEF are adopted (assuming that the applicant is not registered as a SEF with the CFTC)?

210. Please provide your view of the optimal compliance schedule(s) and explain your rationale.

211. Should the compliance date for foreign SBS trading venues that seek an exemption order under Rule 833(a) coincide with the date by which SBSEF applicants would have to be registered by the Commission? If you believe that such foreign SBS trading venues should have a different compliance date, what date should that be and why?

XIX. Economic Analysis

A. Introduction

To increase the transparency and oversight of the OTC derivatives market,[322] Title VII of the Dodd-Frank Act requires the Commission to undertake a number of rulemakings to implement the regulatory framework for SBS that is set forth in the legislation, including among other things, (1) the registration and regulation [323] of SBSEFs; and (2) mitigating conflicts of interest with respect to SBSEFs, SBS exchanges, and SBS clearing agencies. To satisfy these statutory mandates, the Commission is proposing Regulation SE and associated forms that would create a regime for the registration and regulation of SBSEFs and address other issues relating to SBS execution generally.[324] One of the rules being proposed as part of Regulation SE, Rule 834, would implement section 765 of the Dodd-Frank Act, which is intended to mitigate conflicts of interest at SBSEFs and SBS exchanges. Other rules being proposed as part of Regulation SE would address the cross-border application of the SEA's trading venue registration requirements and the trade execution requirement for SBS.

In addition, the Commission is proposing to amend existing Rule 3a1–1 under the SEA to exempt, from the SEA definition of ''exchange,'' registered SBSEFs that provide a market place for no securities other than SBS and certain registered clearing agencies. The Commission also is proposing new Rule 15a–12 under the SEA that, while affirming that an SBSEF also would be a broker under the SEA, would exempt a registered SBSEF from certain broker requirements. The Commission also is proposing certain new rules and amendments to its Rules of Practice to

[320] 17 CFR 201.450.

[321] 17 CFR 201.460.

[322] *See* Public Law 111–203 Preamble.

[323] The regulation of SBSEFs includes, among other things, requiring SBSEFs to comply with the Core Principles set forth in section 3D(d) of the SEA. *See supra* section VIII.

[324] Among other things, the Commission is proposing Form SBSEF for persons seeking to register with the Commission as an SBSEF and a submission cover sheet and instructions to be used in rule and product filings made by SBSEFs.

allow persons who are aggrieved by certain determinations by an SBSEF to apply for review by the Commission. The Commission also is withdrawing all previously proposed rules regarding these subjects.

Currently, SBS trade in the OTC market, rather than on regulated markets. The existing market for SBS is opaque, with little, if any, pre-trade transparency. With limited transparency, the information asymmetry between liquidity providers (*i.e.,* SBS dealers) and end users could be significant. Specifically, liquidity providers may observe information about the trading process (*e.g.,* trading interest, quotes, order flows, and trades) that end users typically cannot observe. The SBS market also is decentralized such that market participants incur search costs to locate other market participants in order to trade.

While the SBS market is decentralized, it also is interconnected and global in scope.[325] SBS dealers can have hundreds of counterparties, consisting of end users and other SBS dealers. Trading venues may serve hundreds of participants, consisting of SBS dealers and end users. SBS transactions arranged, negotiated, or executed by personnel located in the U.S. may involve wholly foreign counterparties. Furthermore, U.S. persons may choose to trade SBSs on foreign venues, which are subject to OTC derivatives regulations imposed by local regulatory authorities.

The Commission is mindful of the economic effects, including the costs and benefits, of the proposal. Section 3(f) of the SEA, 15 U.S.C. 78c(f), directs the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the SEA 15 U.S.C. 78w(a)(2), requires the Commission, when making rules under the SEA, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the SEA.

The analysis below addresses the likely economic effects of the proposal, including its anticipated and estimated benefits and costs and its likely effects on efficiency, competition, and capital formation. The Commission also discusses the potential economic effects of certain alternatives to the approaches taken in this release.

B. Economic Baseline

To assess the economic effects of the proposed rules and amendments, the Commission is using as the baseline the SBS market as it currently exists, including applicable rules the Commission has already adopted, but excluding rules the Commission has proposed but not yet finalized. The analysis includes provisions of the SEA, as amended by the Dodd-Frank Act, that currently govern the SBS market, and rules adopted by the Commission thereunder, including in the Intermediary Definitions Adopting Release,[326] the Cross-Border Adopting Release,[327] the SDR Rules and Core Principles Adopting Release,[328] the Regulation SBSR Adopting Release I,[329] the Registration Adopting Release,[330] the ANE Adopting Release,[331] the Business Conduct Adopting Release,[332] the Trade Acknowledgement and Verification Adopting Release,[333] the Regulation SBSR Adopting Release II,[334] the Rule of Practice 194 Adopting Release,[335] the Capital, Margin, and Segregation Adopting Release,[336] the Recordkeeping and Reporting Adopting Release,[337] the Risk Mitigation Adopting Release,[338] the Cross-Border Amendments Adopting Release,[339] and the Clearing Exemption Adopting Release.[340] The baseline also includes the Temporary SBSEF Exemptions [341] and the CFTC rules that apply to CFTC-registered SEFs. The following sections discuss available data from the SBS market; SBS activity and market participants; distribution of transaction size; other markets and existing regulatory frameworks; number of entities that likely will register as SBSEFs; SBS trading on platforms; global regulatory efforts; and trading models.

1. Available Data From the SBS Market

The Commission's understanding of the market is informed, in part, by available data on SBS transactions, though the Commission acknowledges that limitations in the data limit the extent to which it is possible to quantitatively characterize the market.[342] Since these data do not cover the entire market, the Commission has analyzed market activity using a sample of transaction data that includes only certain segments of the market. The

[325] *See* also section IX(A) *supra* and XIX(B)(2)(c) *infra* (discussing the global nature of the SBS market).

[326] *See Further Definition of* ''*Swap Dealer,*'' ''*Security-Based Swap Dealer,*'' ''*Major Swap Participant,*'' ''*Major Security-Based Swap Participant*'' *and* ''*Eligible Contract Participant,*'' SEA Release No. 66868 (April 27, 2012), 77 FR 30596 (May 23, 2012) (''Intermediary Definitions Adopting Release'').

[327] *See Application of* ''*Security-Based Swap Dealer*'' *and* ''*Major Security-Based Swap Participant*'' *Definitions to Cross-Border Security-Based Swap Activities,* SEA Release No. 72472 (June 25, 2014), 79 FR 47278 (August 12, 2014) (''Cross-Border Adopting Release'').

[328] *See Security-Based Swap Data Repository Registration, Duties, and Core Principles,* SEA Release No. 74246 (February 11, 2015), 80 FR 14438 (March 19, 2015) (''SDR Rules and Core Principles Adopting Release'').

[329] *See supra* note 84.

[330] *See Registration Process for Security-Based Swap Dealers and Major Security-Based Swap Participants,* SEA Release No. 75611 (August 5, 2015), 80 FR 48964 (August 14, 2015) (''Registration Adopting Release'').

[331] *See Security-Based Swap Transactions Connected with a Non-U.S. Person's Dealing Activity That Are Arranged, Negotiated, or Executed By Personnel Located in a U.S. Branch or Office or in a U.S. Branch or Office of an Agent; Security-Based Swap Dealer* De Minimis *Exception,* SEA Release No. 77104 (February 10, 2016), 81 FR 8598 (February 19, 2016) (''ANE Adopting Release'').

[332] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* SEA Release No. 77617 (April 14, 2016), 81 FR 29960 (May 13, 2016) (''Business Conduct Adopting Release'').

[333] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions, SEA Release* No. 78011 (June 8, 2016), 81 FR 39808 (June 17, 2016) (''Trade Acknowledgment and Verification Adopting Release'').

[334] *See supra* note 229.

[335] *See Applications by Security-Based Swap Dealers or Major Security-Based Swap Participants for Statutorily Disqualified Associated Persons To Effect or Be Involved in Effecting Security-Based Swaps,* SEA Release No. 84858 (December 19, 2018), 84 FR 4906–47 (February 19, 2019) (''Rule of Practice 194 Adopting Release'').

[336] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital and Segregation Requirements for Broker-Dealers,* SEA Release No. 86175 (June 21, 2019), 84 FR 43872 (August 22, 2019) (''Capital, Margin, and Segregation Adopting Release'').

[337] *See Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers,* SEA Release No. 87005 (September 19, 2019), 84 FR 68550 (December 16, 2019) (''Recordkeeping and Reporting Adopting Release'').

[338] *See Risk Mitigation Techniques for Uncleared Security-Based Swaps,* SEA Release No. 87782 (December 18, 2019), 85 FR 6359 (February 4, 2020) (''Risk Mitigation Adopting Release'').

[339] *See Cross-Border Application of Certain Security-Based Swap Requirements,* SEA Release No. 87780 (December 18, 2019), 85 FR 6270 (February 4, 2020) (''Cross-Border Amendments Adopting Release'').

[340] *See Exemption from the Definition of* ''*Clearing Agency*'' *for Certain Activities of Security-Based Swap Dealers and Security-Based Swap Execution Facilities,* SEA Release No. 90667 (December 16, 2020), 86 FR 7637 (February 1, 2021) (''Clearing Exemption Adopting Release'').

[341] *See supra* section V and note 42.

[342] The Commission also relies on qualitative information regarding market structure and evolving market practices provided by commenters and knowledge and expertise of Commission staff.

Commission believes, however, that the data underlying this analysis provides reasonably comprehensive information regarding single-name CDS transactions and the composition of the participants in the single-name CDS market.

Specifically, the analysis of the current state of the SBS market is based on data obtained from the DTCC Derivatives Repository Limited Trade Information Warehouse (''TIW''), especially data regarding the activity of market participants in the single-name CDS market during the period from 2008 to 2020. Although SBS are not limited to single-name CDS,[343] single-name CDS contracts make up a majority of SBS, and we believe that the single-name CDS data are sufficiently representative of the market to inform our analysis of the current SBS market. According to data published by the Bank for International Settlements (''BIS''), as of December 2020, the global notional amount outstanding in single-name CDS was approximately $3.5 trillion,[344] in multi-name index CDS was approximately $4.5 trillion, and in multi-name, non-index CDS was approximately $347 billion.[345] The total gross market value outstanding in single-name CDS was approximately $77 billion, and in multi-name CDS instruments was approximately $125 billion.[346] The global notional amount outstanding in equity forwards and swaps as of December 2020 was $3.6 trillion, with total gross market value of $321 billion.[347]

The data available from TIW does not encompass those CDS transactions that both: (i) Do not involve U.S. counterparties; [348] and (ii) are based on non-U.S. reference entities. Notwithstanding this limitation, the TIW single-name CDS data should provide sufficient information to permit the Commission to identify the types of market participants active in the SBS market and the general pattern of dealing within that market.[349]

In addition to the TIW single-name CDS data, the Commission uses data on SBS transactions reported to registered security-based swap data repositories (SDRs) to describe the baseline. Beginning on November 8, 2021, market participants are required to report SBS transactions to registered SDRs pursuant to Regulation SBSR. The Commission uses data on SBS transactions in the credit, equity, and interest rate asset classes that were executed between November 8, 2021 and February 28, 2022 to quantify the extent of SBS trading on platforms.

2. SBS Market Activity and Participants

a. SBS Entities

Final SBS Entity registration rules have been adopted and compliance was required as of November 1, 2021.[350] As of January 3, 2022, 44 entities had registered with the Commission as SBS dealers and no entity had registered as a major SBS participant.[351]

Firms that act as SBS dealers play a central role in the SBS market. Based on an analysis of 2020 single-name CDS data in TIW, accounts of registered SBS dealer firms intermediated transactions with a gross notional amount of approximately $1.99 trillion, with approximately 55% of the gross notional intermediated by the top five SBS dealer accounts.[352]

These SBS dealers transact with hundreds or thousands of counterparties. Approximately 8% of accounts of SBS dealer firms observable in TIW have entered into SBS with over 1,000 unique counterparty accounts as of year-end 2020.[353] Another 23% of these accounts transacted with 500 to 1,000 unique counterparty accounts; 38% transacted with 100 to 500 unique accounts; and 31% of these accounts intermediated SBS with fewer than 100 unique counterparties in 2020. The median SBS dealer account transacted with 276 unique accounts (with an average of approximately 416 unique accounts). Non-SBS dealer counterparties transacted almost exclusively with these SBS dealers. In 2020, the median non-SBS dealer counterparty transacted with 1.3 SBS dealer accounts (with an average of approximately 2.5 SBS dealer accounts).

b. Other SBS Market Participants

In addition to SBS dealers, thousands of other participants appear as counterparties to SBS transactions in our sample, including but not limited to: Investment companies, pension funds, private funds, sovereign entities, and industrial companies. The Commission observes that most non-SBS dealer users of SBS do not engage in trading directly, but trade through banks, investment advisers, or other

[343] The Commission explains below that data related to single-name CDS provide reasonably comprehensive information for the purpose of this analysis.

[344] The global notional amount outstanding represents the total face amount used to calculate payments under outstanding contracts. The gross market value is the cost of replacing all open contracts at current market prices.

[345] *See Global OTC Derivatives Market: Table D5.2 Commodity Contracts, Credit Default Swap,* BIS (updated January 13, 2022), available at *https://stats.bis.org/statx/srs/table/d5.2.*

[346] *See id.*

[347] These totals include swaps and SBS, as well as products that are excluded from the definition of ''swap,'' such as certain equity forwards. *See Global OTC Derivatives Market: Table D5.1 Foreign Exchange, Interest Rate, Equity Linked Contracts,* BIS (updated January 13, 2022), *available at https://stats.bis.org/statx/srs/table/d5.1.* For the purposes of this analysis, the Commission assumes that multi-name index CDS are not narrow-based index CDS and therefore do not fall within the definition of ''security-based swap.'' *See* 15 U.S.C. 78c(a)(68)(A). *See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48208. The Commission also assumes that all instruments reported as equity forwards and swaps are SBS, potentially resulting in underestimation of the proportion of the SBS market represented by single-name CDS. Therefore, when measured on the basis of gross notional outstanding, single-name CDS appear to constitute roughly 49% of the SBS market. Although the BIS data reflect the global OTC derivatives market and not just the U.S. market, the Commission has no reason to believe that this ratio differs significantly in the U.S. market.

[348] Following publication of the Warehouse Trust Guidance on CDS data access, TIW surveyed market participants, asking for the physical address associated with each of their accounts (*i.e.,* where the account is organized as a legal entity). This physical address is designated the registered office location by TIW. When an account reports a registered office location, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account. When an account does not report a registered office location, the Commission has assumed that the settlement country reported by the investment adviser or parent entity to the fund or account is the place of domicile. Thus, for purposes of this analysis, the Commission has classified accounts as ''U.S. counterparties'' when they have reported a registered office location in the United States. The Commission notes, however, that this classification is not necessarily identical in all cases to the definition of ''U.S. person'' under SEA Rule 3a71–3(a)(4).

[349] The challenges the Commission faces in estimating measures of current market activity stem, in part, from the absence of comprehensive reporting requirements for SBS market participants. The Commission has adopted rules regarding regulatory reporting and public dissemination of SBS transactions that are designed, when fully implemented, to provide the Commission with additional measures of market activity that will allow the Commission to better understand and monitor activity in the SBS market. *See* Regulation SBSR Adopting Release II, 81 FR at 53545.

[350] *See Key Dates for Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* available at: *https://www.sec.gov/page/key-dates-registration-security-based-swap-dealers-and-major-security-based-swap-participants.*

[351] *See List of Registered Security-Based Swap Dealers and Major Security-Based Swap Participants,* available at: *https://www.sec.gov/files/list_of_sbsds_msbsps-_01-03-2022locked-final.xlsx* (providing the list of registered SBS dealers and major SBS participants that was updated as of January 3, 2022).

[352] The Commission staff analysis of TIW transaction records indicates that approximately 99% of single-name CDS price-forming transactions in 2020 involved an ISDA-recognized dealer.

[353] Many dealer entities and financial groups transact through numerous accounts. Given that individual accounts may transact with hundreds of counterparties, the Commission may infer that entities and financial groups may transact with at least as many counterparties as the largest of their accounts.

types of firms acting as SBS dealers or agents. Based on an analysis of the counterparties to trades reported to the TIW, there are 2,321 entities that engaged directly in trading between November 2006 and December 2020.[354]

As shown in Table 1 below, close to three-quarters of these entities (DTCC-defined ''firms'' shown in TIW, which we refer to here as ''transacting agents'') were identified as investment advisers, of which approximately 40% (about 32% of all transacting agents) were registered as investment advisers under the Investment Advisers Act.[355] Although investment advisers are the vast majority of transacting agents, the transactions they executed account for only 14.2% of all single-name CDS trading activity reported to the TIW, measured by number of transaction-sides (each transaction has two transaction sides, *i.e.,* two transaction counterparties). The vast majority of transactions (82.1%) measured by number of transaction-sides were executed by ISDA-recognized SBS dealers.

TABLE 1—THE NUMBER OF TRANSACTING AGENTS BY COUNTERPARTY TYPE AND THE FRACTION OF TOTAL TRADING ACTIVITY, FROM NOVEMBER 2006 THROUGH DECEMBER 2020, REPRESENTED BY EACH COUNTERPARTY TYPE

Transacting agents	Number	Percent	Transaction share %
Investment Advisers	1,823	78.5	14.2
—SEC registered	*734*	*31.6*	*9.5*
Banks	274	11.8	3.3
Pension Funds	30	1.3	0.1
Insurance Companies	48	2.1	0.2
ISDA-Recognized SBS Dealers[356]	17	0.7	82.1
Other[357]	129	5.6	0.2
Total	2,321	100.0	100

Principal holders of CDS risk exposure are represented by ''accounts'' in the TIW.[358] The staff's analysis of these accounts in TIW shows that the 2,321 transacting agents classified in Table 1 represent 15,187 principal risk holders. Table 2 below classifies these principal risk holders by their counterparty type and whether they are represented by a registered or unregistered investment adviser.[359] For instance, banks in Table 1 allocated transactions across 370 accounts, of which 35 were represented by investment advisers. In the remaining instances, banks traded for their own accounts. Meanwhile, ISDA-recognized SBS dealers in Table 1 allocated transactions across 104 accounts. Private funds are the largest type of account holders that the Commission was able to classify, and although not verified through a recognized database, most of the funds we were not able to classify appear to be private funds.[360]

[354] These 2,321 entities, which are presented in more detail in Table 1, include all DTCC-defined ''firms'' shown in TIW as transaction counterparties that report at least one transaction to TIW as of December 2020. The staff in the Division of Economic and Risk Analysis classified these firms, which are shown as transaction counterparties, by machine matching names to known third-party databases and by manual classification. *See, e.g.,* ANE Adopting Release, 81 FR at 8602, at n. 43. Manual classification was based in part on searches of the EDGAR and Bloomberg databases, the SEC's Investment Adviser Public Disclosure database, and a firm's public website or the public website of the account represented by a firm. The staff also referred to ISDA protocol adherence letters available on the ISDA website.

[355] *See* 15 U.S.C. 80b1–80b21. Transacting agents participate directly in the SBS market, without relying on an intermediary, on behalf of principals. For example, a university endowment might hold a position in SBS that is established by an investment adviser that transacts on the endowment's behalf. In this case, the university endowment is a principal that uses the investment adviser as its transacting agent.

[356] For the purpose of this analysis, the ISDA-recognized SBS dealers are those identified by ISDA as belonging to the G14 or G16 dealer group during the period: J.P. Morgan Chase NA (and Bear Stearns), Morgan Stanley, Bank of America NA (and Merrill Lynch), Goldman Sachs, Deutsche Bank AG, Barclays Capital, Citigroup, UBS, Credit Suisse AG, RBS Group, BNP Paribas, HSBC Bank, Lehman Brothers, Société Générale, Crédit Agricole, Wells Fargo, and Nomura. *See, e.g.,* ISDA, *2010 ISDA Operations Benchmarking Survey* (2010), available at *https://www.isda.org/a/5eiDE/isda-operations-survey-2010.pdf.*

[357] This category excludes clearing counterparties (CCPs). Same-day cleared trades are recorded in the DTCC dataset as two clearing legs, each between a CCP (ICE Clear Credit, ICE Clear Europe, and LCH.Clearnet) and the original counterparty in the underlying trade. As these are not price-forming trades, the counts in the last column in Table 1 are adjusted to reflect the original counterparties, excluding a CCP. Though original counterparties cannot be paired up to same-day cleared trades, to adjust for same-day clearing each leg against the CCP is counted as one half of a transaction and the notional amount of the trade is halved as well.

[358] ''Accounts'' as defined in the TIW context are not equivalent to ''accounts'' in the definition of ''U.S. person'' in SEA Rule 3a71–3(a)(4)(i)(C). They also do not necessarily represent separate legal persons. One entity or legal person might have multiple accounts. For example, a bank may have one DTCC account for its U.S. headquarters and one DTCC account for one of its foreign branches.

[359] Unregistered investment advisers include all investment advisers not registered under the Investment Advisers Act and might include investment advisers registered with a State or a foreign authority, as well as investment advisers that are exempt reporting advisers under section 203(*l*) or 203(m) of the Investment Advisers Act.

[360] For the purposes of this discussion, ''private fund'' encompasses various unregistered investment vehicles, including hedge funds, private equity funds, and venture capital funds. There remain over 5,800 DTCC accounts unclassified by type. Although unclassified, each account was manually reviewed to verify that it was not likely to be a special entity within the meaning of the Dodd-Frank Act and instead was likely to be an entity such as a corporation, an insurance company, or a bank.

TABLE 2—THE NUMBER AND PERCENTAGE OF ACCOUNT HOLDERS—BY TYPE—WHO PARTICIPATE IN THE SBS MARKET THROUGH A REGISTERED INVESTMENT ADVISER, AN UNREGISTERED INVESTMENT ADVISER, OR DIRECTLY AS A TRANSACTING AGENT, FROM NOVEMBER 2006 THROUGH DECEMBER 2020

Account holders by type	Number	Represented by a registered investment adviser		Represented by an unregistered investment adviser		Participant is transacting agent [361]	
Private Funds	4,447	2,283	51%	2,089	47%	75	2%
DFA Special Entities	1,542	1,476	96%	43	3%	23	1%
Registered Investment Companies	1,382	1,295	94%	82	6%	5	0%
Banks (non-ISDA-recognized SBS dealers)	370	26	7%	9	2%	335	91%
Insurance Companies	341	210	62%	46	13%	85	25%
ISDA-Recognized SBS Dealers	104	0	0%	0	0%	104	100%
Foreign Sovereigns	93	67	72%	6	6%	20	22%
Non-Financial Corporations	125	93	74%	10	8%	22	18%
Finance Companies	59	43	73%	0	0%	16	27%
Other/Unclassified	6,724	4,081	61%	2,348	35%	295	4%
All	15,187	9,574	63%	4,633	31%	980	6%

c. SBS Market Participant Domiciles

As depicted in Figure 1 below, domiciles of new accounts participating in the SBS market have shifted over time. It is unclear whether these shifts represent changes in the types of participants active in this market, changes in reporting, or changes in transaction volumes in particular underliers. For example, the percentage of new entrants that are foreign accounts increased from 24.4% in the first quarter of 2008 to approximately 50% in the last quarter of 2020, which might reflect an increase in participation by foreign account holders in the SBS market, though the total number of new entrants that are foreign accounts decreased from 112 in the first quarter of 2008 to 38 in the last quarter of 2020.[362] Additionally, the percentage of the subset of new entrants that are foreign accounts managed by U.S. persons increased from 4.6% in the first quarter of 2008 to 11.8% in the last quarter of 2020, and the absolute number changed from 21 to 9, which also might reflect more specifically the flexibility with which market participants can restructure their market participation in response to regulatory intervention, competitive pressures, and other incentives.[363] At the same time, apparent changes in the percentage of new accounts with foreign domiciles might also reflect improvements in reporting by market participants to TIW, an increase in the percentage of transactions between U.S. and non-U.S. counterparties, and/or increased transactions in single-name CDS on U.S. reference entities by foreign persons.[364]

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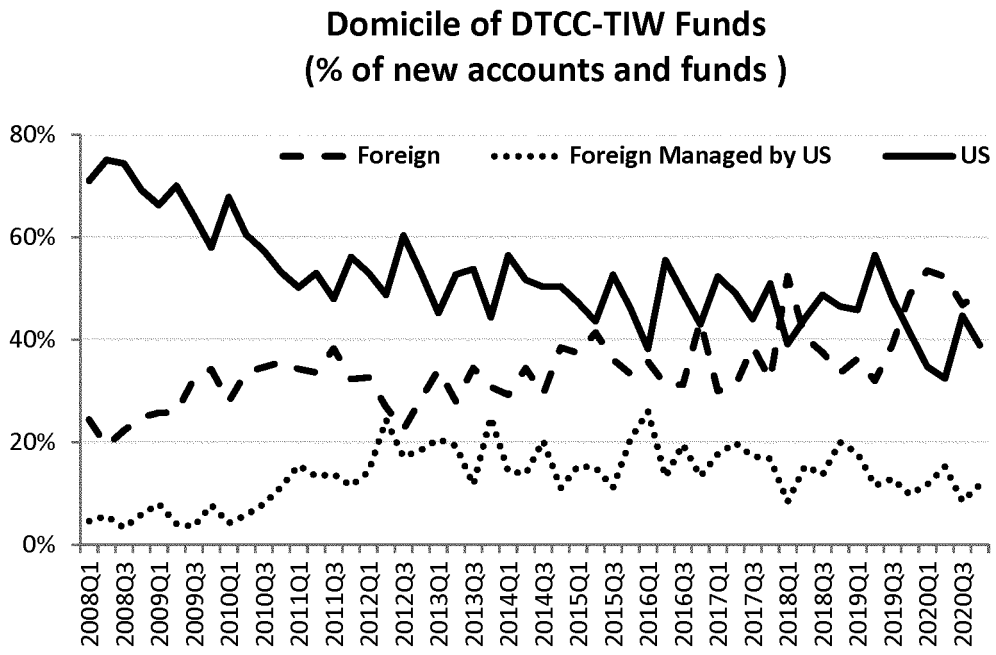
[361] This column reflects the number of participants who are also trading for their own accounts.

[362] These estimates were calculated by Commission staff using TIW data.

[363] *See* Charles Levinson, *U.S. banks moved billions in trades beyond the CFTC's reach,* Reuters (August 21, 2015) (retrieved from Factiva database). The estimates of 21 and 25 were calculated by Commission staff using TIW data.

[364] The available data do not include all SBS transactions but only transactions in single-name CDS that involve either (1) at least one account domiciled in the United States (regardless of the reference entity); or (2) single-name CDS on a U.S. reference entity (regardless of the U.S.-person status of the counterparties).

Figure 1



SOURCE: DTCC CDS – TIW. "US" refers to the percentage of new accounts with a domicile in the United States. "Foreign" refers to the percentage of new accounts with a domicile outside the United States and not managed or affiliated with a U.S. entity. "Foreign Managed by US" refers collectively to the percentage of new accounts outside the United States that are managed by a U.S. person, new accounts outside the United States for a foreign branch of a U.S. person, and new accounts outside the United States for a foreign subsidiary of a U.S. person. Unique new accounts are aggregated each quarter and percentages are computed on a quarterly basis from January 2008 through December 2020.

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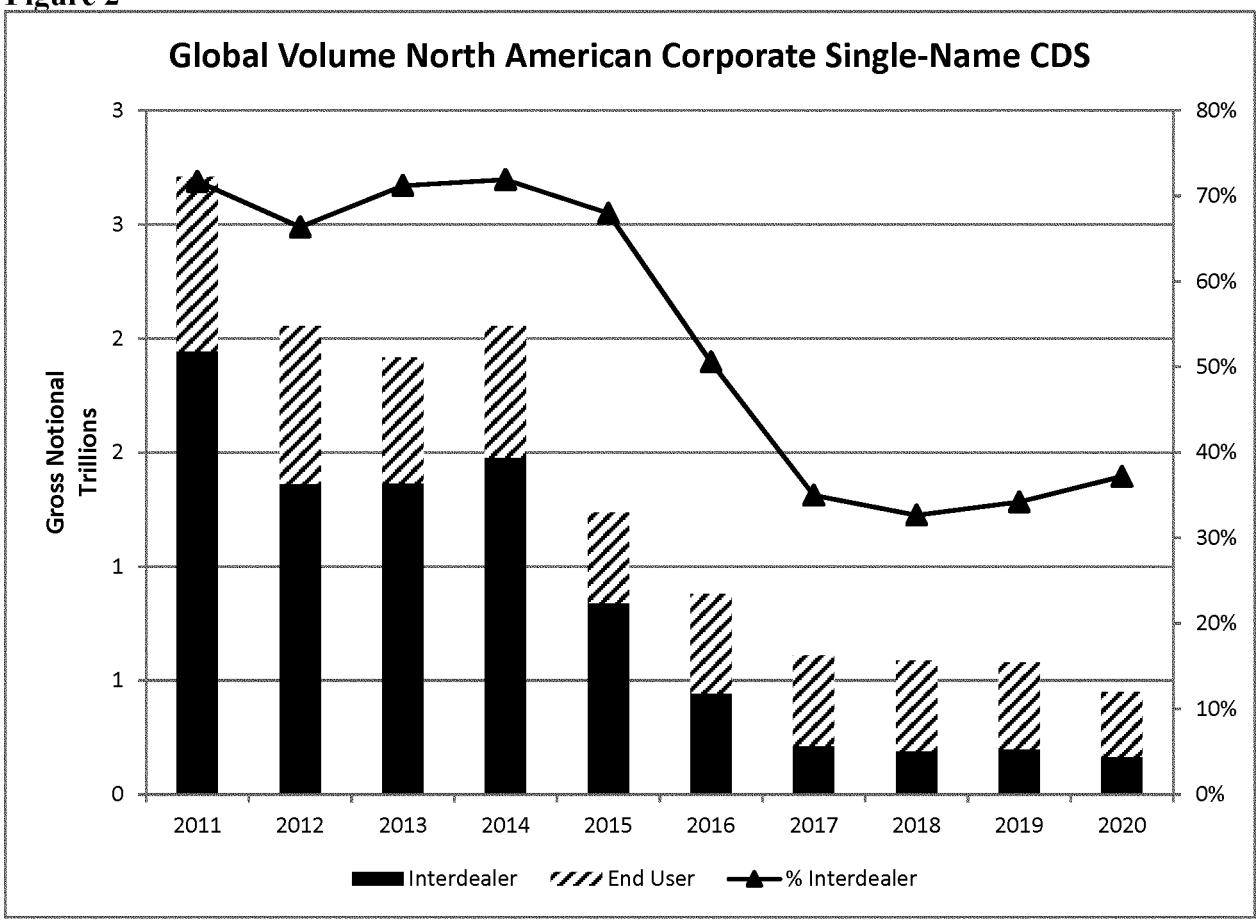
Figure 2 below describes the percentage of global, notional transaction volume in North American corporate single-name CDS reported to TIW between January 2011 and December 2020, separated by whether transactions are between two ISDA-recognized SBS dealers (''interdealer transactions'') or whether a transaction has at least one non-SBS dealer counterparty. Figure 2 also shows that the portion of the notional volume of North American corporate single-name CDS represented by interdealer transactions has remained fairly constant through 2015, before falling from approximately 68% in 2015 to under 40% in 2020. This fall corresponds to the availability of clearing to non-SBS dealers. Interdealer transactions continue to represent a significant fraction of trading activity, even as notional volume has declined over the past ten years,[365] from just under $2 trillion in 2011 to less than $500 billion in 2020.[366]

[365] The start of this decline predates the enactment of the Dodd-Frank Act and the proposal of rules thereunder, which is important to note for the purpose of understanding the economic baseline for this rulemaking.

[366] This estimate is lower than the gross notional amount of $3.5 trillion noted in section XIX(B)(1), *supra,* as it includes only the subset of single-name CDS referencing North American corporate documentation.

Figure 2



SOURCE: DTCC CDS – TIW. Global, notional trading volume in North American corporate single-name CDS by calendar year and the fraction of volume that is interdealer. Same-day cleared trades are assumed to be either interdealer or between an SBS dealer and an end user (transactions between two end users are rare in both cleared and uncleared trading).

The high level of interdealer trading activity reflects the central position of a small number of SBS dealers, each of which intermediates trades with many hundreds of counterparties. While the Commission is unable to quantify the current level of trading costs for single-name CDS, these SBS dealers appear to enjoy market power as a result of their small number and the large proportion of order flow that they privately observe.

Against this backdrop of declining North American corporate single-name CDS activity, about half of the trading activity in North American corporate single-name CDS reflected in the set of data that the Commission analyzed was between counterparties domiciled in the United States and counterparties domiciled abroad, as shown in Figure 3 below. Using the self-reported registered office location of the TIW accounts as a proxy for domicile, the Commission estimates that only 13% of the global transaction volume by notional volume between 2008 and 2020 was between two U.S.-domiciled counterparties, compared to 49% entered into between one U.S.-domiciled counterparty and a foreign-domiciled counterparty, and 38% entered into between two foreign-domiciled counterparties.[367]

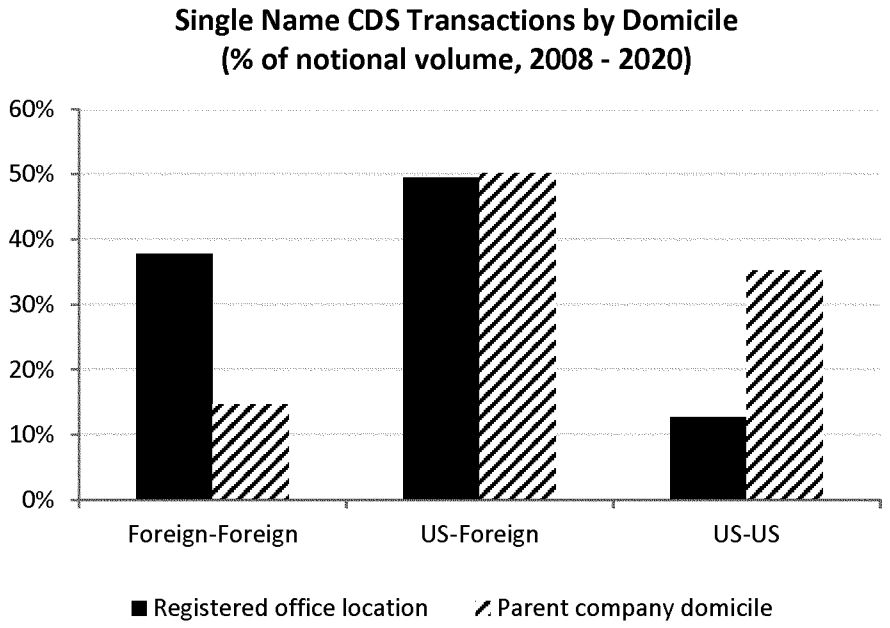
If the Commission instead considers the number of cross-border transactions from the perspective of the domicile of the corporate group (*e.g.,* by classifying a foreign bank branch or foreign subsidiary of a U.S. entity as domiciled in the United States), the percentages shift significantly. Under this approach, the fraction of transactions entered into between two U.S.-domiciled counterparties increases to 35%, and to 50% for transactions entered into between a U.S.-domiciled counterparty and a foreign-domiciled counterparty. By contrast, the proportion of activity between two foreign-domiciled counterparties drops from 38% to 15%. This change in respective shares based on different classifications suggests that the activity of foreign subsidiaries of U.S. firms and foreign branches of U.S. banks accounts for a higher percentage of SBS activity than U.S. subsidiaries of foreign firms and U.S. branches of foreign banks. It also demonstrates that financial groups based in the United States are involved in an overwhelming majority (approximately 85%) of all reported transactions in North American corporate single-name CDS.

Financial groups based in the United States are also involved in a majority of interdealer transactions in North

[367] For purposes of this discussion, the Commission has assumed that the registered office location reflects the place of domicile for the fund or account, but the Commission notes that this domicile does not necessarily correspond to the location of an entity's sales or trading desk. *See* ANE Adopting Release, 81 FR at 8607, n. 83.

American corporate single-name CDS. Of the 2020 transactions on North American corporate single-name CDS between two ISDA-recognized SBS dealers and their branches or affiliates, 81% of transaction notional volume involved at least one account of an entity with a U.S. parent.[368] The Commission notes, in addition, that a majority of North American corporate single-name CDS transactions occur in the interdealer market or between SBS dealers and foreign non-SBS dealers, with the remaining portion of the market consisting of transactions between SBS dealers and U.S.-person non-SBS dealers. Specifically, 81% of North American corporate single-name CDS transactions involved either two ISDA-recognized SBS dealers or an ISDA-recognized SBS dealer and a foreign non-SBS dealer. Approximately 19% of such transactions involved an ISDA-recognized SBS dealer and a U.S.-person non-SBS dealer.

Figure 3



SOURCE: DTCC CDS – TIW. The fraction of notional volume in North American corporate single-name CDS between (1) two U.S.-domiciled accounts, (2) one U.S.-domiciled account and one non-U.S.-domiciled account, and (3) two non-U.S.-domiciled accounts, computed from January 2008 through December 2020.

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3. Distribution of Transaction Size

In proposing the definition of a block trade, the Commission has considered the distribution of transaction size in the single-name CDS market, which the Commission believes is representative of the market for SBS based on a single credit instrument (or issuer of credit instruments) or a narrow-based index of credit instruments (or issuers of credit instruments).[369] Table 3 reports the total number of newly initiated price-forming CDS transactions referencing North American corporate single-name reference entities. The table also reports the number and percentage of such transactions with a size (notional amount) of at least $5 million. These statistics are reported for each year between 2011 and 2020 and for the entire ten-year period.

Overall, the number of newly initiated price-forming transactions exhibited a declining trend between 2011 and 2020. The number of such transactions decreased from around 180,000 in 2011 to around 90,000 in 2019, with an uptick to around 127,000 transactions in 2020. The number of newly initiated price-forming transactions with a notional size of at least $5 million also exhibits a declining trend between 2011 and 2020, but without an uptick in 2020. As a percentage of all newly initiated price-forming transactions, those with a notional size of at least $5 million fell from 88% to 23% between 2011 and 2020.

[368] Since the Commission is unable to pair up the same-day cleared trades, this 81% estimate is based on bilateral trades that were not same-day cleared.

[369] *See* proposed Rule 802. In considering a block trade definition, the Commission also took into consideration that FINRA applies a $5 million cap when disseminating transaction reports of economically similar cash debt securities. *See supra* section VII(E).

TABLE 3—THE DISTRIBUTION OF NORTH AMERICAN CORPORATE SINGLE-NAME CDS TRADE SIZES

	Number of transactions	Number of transactions with size of at least $5 million	Percentage of transactions with size of at least $5 million
2011	180,700	159,061	88
2012	165,479	121,151	73
2013	130,570	87,515	67
2014	127,410	80,122	63
2015	107,698	53,991	50
2016	97,459	37,273	38
2017	80,513	33,695	42
2018	88,787	34,840	39
2019	89,823	34,811	39
2020	127,379	29,354	23
2011–2020	1,195,816	671,810	56

4. Other Markets and Regulatory Frameworks

The numerous financial markets are integrated, often attracting the same market participants that trade across corporate bond, swap, and SBS markets, among others.[370] This is notwithstanding the fact that the SBS market is a small fraction of the swap market and the single-name CDS market, which falls under SEC jurisdiction, is smaller than the index CDS market, which falls under CFTC jurisdiction.[371] For example, persons who register as SBS dealers and major SBS participants are likely also to be engaged in swap activity. In part, this overlap reflects the relationship between single-name CDS contracts, which are SBS, and index CDS contracts, which may be swaps or SBS. A single-name CDS contract covers default events for a single reference entity or reference security. Index CDS contracts and related products make payouts contingent on the default of index components and allow participants in these instruments to gain exposure to the credit risk of the basket of reference entities that comprise the index, which is a function of the credit risk of the index components. A default event for a reference entity that is an index component will result in payoffs on both single-name CDS written on the reference entity and index CDS written on indices that contain the reference entity. Because of this relationship between the payoffs of single-name CDS and index CDS products, the prices of these products depend upon one another,[372] creating hedging opportunities across these markets.

These hedging opportunities mean that participants that are active in one market are likely to be active in the other. Commission staff analysis of approximately 4149 TIW accounts that participated in the market for single-name CDS in 2020 revealed that approximately 3096 of those accounts, or 75%, also participated in the market for index CDS. Of the accounts that participated in both markets, data regarding transactions in 2020 suggest that, conditional on an account transacting in notional volume of index CDS in the top third of accounts, the probability of the same account landing in the top third of accounts in terms of single-name CDS notional volume is approximately 61%; by contrast, the probability of the same account landing in the bottom third of accounts in terms of single-name CDS notional volume is only 11%. As a result of cross-market participation, informational efficiency, pricing and liquidity may spill over across markets.[373]

Of the 44 registered SBS dealers, 41 are dually registered with the CFTC as swap dealers and are therefore subject to CFTC requirements for entities registered with the CFTC as swap dealers. Further, of the 44 registered SBS dealers, 27 have a prudential regulator.

5. Number of Entities That Likely Will Register as SBSEFs

Entities that will seek to register with the Commission as SBSEFs are likely to be SEFs that are active in the index CDS market. Currently, 20 SEFs have permanent or temporary registration with the CFTC.[374] Of these SEFs, eight list index CDS for trading.[375] If these

[370] *See* Rule 194 Proposing Release, 80 FR at 51711.

[371] According to data published by BIS, as of December 2020, the global swap market (comprising, for purposes of this discussion, IRS, foreign exchange swaps, multi-name index CDS, and commodity swaps) had a global notional amount outstanding of approximately $571 trillion, while the global SBS market (comprising, for purposes of this discussion, single-name equity swaps and forwards and single-name CDS) had a global notional amount outstanding of approximately $7.1 trillion. The global notional amount outstanding in single-name CDS was approximately $3.5 trillion and in multi-name index CDS was approximately $4.5 trillion. The Commission preliminarily believes that the relative magnitudes presented by these statistics for the global OTC derivatives market are also representative of the U.S. OTC derivatives markets. *See Table D5.2,* BIS, *supra* note 345; *Table D5.1,* BIS, *supra* note 347. *See also supra* section XIX(B)(1).

[372] ''Correlation'' typically refers to linear relationships between variables; ''dependence'' captures a broader set of relationships that may be more appropriate for certain swaps and SBS. *See, e.g.,* George Casella & Roger L. Berger, Statistical Inference 171 (2nd ed. 2002).

[373] *See* Business Conduct Adopting Release, 81 FR at 30108; Christopher L. Culp, Andria van der Merwe, & Bettina J. Starkle, *Single-name Credit Default Swaps: A Review of the Empirical Academic Literature* 71–85 (ISDA Study, September 2016), available at *https://www.isda.org/a/KSiDE/single-name-cdsliterature-review-culp-van-der-merwe-staerkleisda.pdf;* Patrick Augustin, Marti G. Subrahmanyam, Dragon Y. Tang, & Sarah Q. Wang, Credit Default Swaps: Past, Present, and Future, 8 Ann. Rev. Fin. Econ. 175 (2016).

[374] *See supra* note 17.

[375] For purposes of this discussion, options on index CDS and index CDS tranches are included as part of index CDS. For SEFs that list index CDS for trading, *see* BGC SEF Contract Specifications (January 21, 2022), available at *http://www.bgcsef.com/wp-content/uploads/2022/01/BGC-SEF-Contract-Specifications_01-21-22.pdf; Bloomberg SEF LLC Rulebook* (February 24, 2022), *available at https://assets.bbhub.io/professional/sites/10/BSEF-Rulebook.pdf; GFI Swaps Exchange: Products & Contract Specifications,* GFI Group, available at *http://www.gfigroup.com/markets/gfi-sef/products/;* ICE Swap Trade, LLC, *Swap Execution Facility Rulebook Version: 2.38* (effective December 15, 2021), available at *https://www.theice.com/publicdocs/swap_trade/Rulebook.pdf;* Letter from Ron Steinfeld, CCO, MarketAxess SEF Corp., to CFTC regarding Listing Products for Trading by Certification Pursuant to CFTC Rule 40.2 (January 13, 2015), available at *https://content.marketaxess.com/sites/default/files/marketaxess-sef-product-listing-filing-and-appendices-january-13-2015.pdf;* TW SEF LLC, *Swap Execution Facility Rules* (effective October 1, 2021), available at *https://www.tradeweb.com/4a7851/globalassets/our-businesses/market-regulation/sef-rulebook-oct-1-2021/tw-sef-rulebook_9.17.21.pdf; Category: Rulebook,* Tradition SEF, *available at https://www.traditionsef.com/*

Continued

SEFs were to list single-name CDS or other SBS for trading, they would be required to register as SBSEFs with the Commission. In 2021, index CDS volume on U.S. SEFs was distributed as follows: One SEF had the largest share of index CDS volume (in notional amount) at $8 trillion (69%); one SEF had the second largest share at $2.1 trillion (18%); and the remaining 13% of volume was shared among the other five SEFs.[376] The Commission preliminarily believes that the number of SBSEF registrants most likely falls between two and eight, but acknowledges uncertainty around the upper end of this estimate. The Commission preliminarily believes that the likely number of SBSEF registrants would be five. The Commission invites commenters to provide feedback on the number of entities that will register as SBSEFs.

6. SBS Trading on Platforms

By analyzing SBS transactions reported to registered SDRs,[377] the Commission has obtained a preliminarily estimate of the extent of SBS trading on platforms. Of the new transactions in credit SBS executed between November 8, 2021 and February 28, 2022, 6,131 were executed on platforms (2% of all new transactions in credit SBS transactions). During the same period, 44 new transactions in equity SBS were executed on platforms (less than 0.01% of all new transactions in equity SBS transactions), while no new transactions in interest rate SBS were executed on platforms. These observations suggest that the vast majority of SBS trading continues to be conducted bilaterally in the OTC market. The Commission invites commenters to provide feedback on the extent of SBS trading on platforms.

The Commission preliminarily identifies 11 platforms on which new SBS transactions were executed between November 8, 2021 and February 28, 2022. Of these 11 platforms, ten are foreign SBS trading venues and one is a U.S. SBS trading venue that is affiliated with a CFTC-registered SEF. Of the new transactions in credit SBS executed between November 8, 2021 and February 28, 2022, 2,126 were executed on non-U.S. platforms and involved at least one counterparty that is a U.S. person or a non-U.S. person whose performance under the SBS is guaranteed by a U.S. person (0.7% of all new transactions in credit SBS transactions). During the same period, 30 new transactions in equity SBS were executed on a non-U.S. platform and involved at least one counterparty that is a U.S. person or a non-U.S. person whose performance under the SBS is guaranteed by a U.S. person (less than 0.01% of all new transactions in equity SBS transactions).

7. Global Regulatory Efforts

In 2009, the G20 leaders—whose membership includes the United States, 18 other countries, and the European Union—addressed global improvements in the OTC derivatives market. They expressed their view on a variety of issues relating to OTC derivatives contracts.[378] In subsequent summits, the G20 leaders have returned to OTC derivatives regulatory reform and encouraged international consultation in developing standards for these markets.[379]

Foreign legislative and regulatory efforts have generally focused on five areas: (1) Moving standardized OTC derivatives onto organized trading platforms; (2) requiring central clearing of OTC derivatives; [380] (3) requiring post-trade reporting of transaction data to trade repositories; (4) establishing or enhancing capital requirements for non-centrally cleared OTC derivatives transactions; and (5) establishing or enhancing margin and other risk mitigation requirements for non-centrally-cleared OTC derivatives transactions. The rules being proposed in this release concern the registration and regulation of SBSEFs, a type of organized trading platform.

As of the end of 2021, platform trading requirements were in force in 12 foreign jurisdictions while seven jurisdictions were in the process of proposing legislation or rules to implement platform trading requirements.[381] Seven foreign jurisdictions have made determinations with respect to the specific OTC derivatives that are required to be traded on platforms.[382]

8. Trading Models

Unlike the markets for cash equity securities and listed options, the market for SBS currently is characterized by bilateral negotiation in the OTC swap market; is largely decentralized; has many non-standardized instruments; and has many SBS that are not centrally cleared. The lack of uniform rules concerning the trading of SBS and the one-to-one nature of trade negotiation in SBS has resulted in different models for the trading of these securities, ranging from bilateral negotiations carried out over the telephone, to RFQ systems (*e.g.,* single-dealer and multi-dealer RFQ platforms) and central limit order books outside the United States, as more fully described below. The use of electronic media to execute transactions in SBS varies greatly across trading models, with some models being highly electronic whereas others rely almost exclusively on non-electronic means such as the telephone. The reasons for use of, or lack of use of, electronic media vary from such factors as user preference to limitations in the existing infrastructure of certain trading platforms. The description below of the ways in which SBS may be traded is based in part on discussions with market participants. The Commission solicits comments on the accuracy of this description.

The Commission uses the term ''bilateral negotiation'' to refer to the model whereby one party uses the telephone, email, or other communications to contact directly a

regulatory/filter/rulebook/all/all; tpSEF Inc. rulebook, tpSEF Inc., *tpSEF Inc. Rulebook Appendix B: tpSEF Inc. Swap Specifications* (effective July 2, 2021), available at *https://www.tullettprebon.com/swap_execution_facility/documents/tpSEF%20-%20Rulebook%20-%20Appendix%20B%20-%20Swap%20Specifications.pdf?20211031.*

[376] Index CDS volume traded on SEFs is from Futures Industry Association's SEF Tracker. *See SEF Tracker Historical Volume,* FIA, available at *https://www.fia.org/monthly-volume.*

[377] Beginning on November 8, 2021, market participants were required to report SBS transactions to registered SDRs pursuant to Regulation SBSR.

[378] *See* G20, *Leaders' Statement: The Pittsburgh Summit* (September 24–25, 2009) at paragraph 13.

[379] *See, e.g.,* G20, *Toronto Summit Declaration* (June 27, 2010) at Annex II paragraph 25; *Cannes Summit Final Declaration—Building Our Common Future: Renewed Collective Action for the Benefit of All* (November 4, 2011) at paragraph 24.

[380] *See supra* note 94.

[381] Apart from the 12 foreign jurisdictions, the United States is considered to have platform trading requirements in place based on the CFTC's implementation of platform trading requirements. *See* FSB, *OTC Derivatives Market Reforms: Implementation Progress in 2021* Tables 1 & K (December 3, 2021), available at *https://www.fsb.org/2021/12/otc-derivatives-market-reforms-implementation-progress-in-2021/* (describing progress made towards implementing platform trading requirements in 2021); FSB, *OTC Derivatives Market Reforms: 2019 Progress Report on Implementation* Table A (October 15, 2019), available at *https://www.fsb.org/2019/10/otc-derivatives-market-reforms-2019-progress-report-on-implementation/* (discussing the CFTC's implementation of platform trading requirements).

[382] These jurisdictions are China (bond forwards; certain currency forwards, options, and swaps); the European Union (certain index CDS; certain IRS denominated in Euro, U.S. dollar, and British pound); India (certain overnight index swaps); Indonesia (equity and commodity derivative products); Japan (selected Yen-denominated IRS); Mexico (certain Peso-denominated IRS); and Singapore (certain IRS denominated in Euro, US dollar, and British pound). *See* FSB, *2019 Progress Report, supra* note 381, Table R. In its 2021 report, *see supra* note 381, the FSB noted no change in status in the implementation of platform trading requirements, including platform trading determinations, since its 2019 report.

potential counterparty to negotiate an SBS transaction. Once the terms are agreed, the SBS transaction is executed and the terms are memorialized.[383] In a bilateral negotiation, there might be no pre-trade or post-trade transparency available to the market place because only the two parties to the transaction are aware of the terms of the negotiation and the final terms of the agreement. Further, no terms of the proposed transaction are firm until the transaction is executed. However, reputational costs generally serve as a deterrent to either party's failing to honor any quoted terms. Dealer-to-customer bilateral negotiation currently is used for all SBS asset classes, and particularly for trading in less liquid SBS, in situations where the parties prefer a privately negotiated transaction, such as for a large notional transaction, or in other circumstances in which it is not cost-effective for a party to the trade to use one of the execution methods described below.

Another model for the trading of SBS is the RFQ system. An RFQ system typically allows market participants to obtain quotes for a particular SBS by simultaneously sending messages to one or more potential respondents (SBS dealers).[384] The initiating participant is typically required to provide information related to the request in a message, which may include the name of the initiating participant, SBS identifier, side, and size. SBS dealers that observe the initiating participant's request have the option to respond to the request with a price quote.[385] These respondents are often, though not always, pre-selected. The initiating participant can then select among the respondents by either accepting one of multiple responses or rejecting all responses, usually within a ''good for'' time period. After the initiating participant and a respondent agree on the terms of the trade, the trade will then proceed to post-trade processing.

RFQ systems provide a certain degree of pre-trade transparency in that the initiating participant can observe the quotes it receives (if any) in response to its RFQ. The number of quotes received depends, in part, on the number of respondents that are invited to participate in the RFQ. As the Commission discussed elsewhere, several factors may influence the number of respondents that are invited to participate in an RFQ.[386] First, the RFQ system itself may limit the total number of respondents that can be selected for a single RFQ, typically to five counterparties. This limitation may encourage SBS dealers to respond to RFQs, since it reduces the number of other SBS dealers they would compete with in any give request session. Second, the initiating participant may have an incentive to limit the degree of information leakage. If the trade the initiating participant is seeking to complete with the help of the RFQ is not completely filled in that one session, and other participants know this, quotes the initiating participant receives elsewhere may be affected, including in subsequent RFQ sessions. Third, respondents and initiators both have an incentive to limit price impact because of the expense it will add to the offsetting trade that must follow. Specifically, an SBS dealer who takes a position to fill a customer order through an RFQ will often subsequently offset that position in the interdealer market. If a large number of SBS dealers are invited to participate in an RFQ, this would lead to widespread knowledge that the SBS dealer with the winning bid will now try to offset that position, which could impact the prices available to that dealer in the interdealer market.

A third model for the trading of SBS is a limit order book system or similar system, which the Commission understands is not yet in operation for the trading of SBS in the United States but exists for the trading of SBS in Europe. Today, securities and futures exchanges in the United States display a limit order book in which firm bids and offers are posted for all participants to see, with the identity of the parties withheld until a transaction occurs.[387] Bids and offers are then matched based on price-time priority or other established parameters and trades are executed accordingly. The quotes on a limit order book system are firm. In general, a limit order book system also provides greater pre- trade transparency than the two models described above, because participants can view bids and offers before placing their bids and offers. However, broadly communicating trading interest, particularly about a large trade, might increase hedging costs, and thus costs to investors, as reflected in the prices from the SBS dealers. The system can also provide post-trade transparency, to the extent that participants can see the terms of executed transactions.

The three models described above represent broadly the types of trading of SBS in the OTC market today. These examples may not represent every method in existence today, but the discussion above is intended to give an overview of the models without providing the nuances of each particular type.

C. Benefits, Costs, and Reasonable Alternatives

This section discusses the benefits and costs of the proposal. The section also discusses a number of alternatives that the Commission considered when formulating the proposed rules and amendments.

The Commission's consideration of the benefits and costs of the proposal takes into account the connection between the trade execution requirement and the mandatory clearing requirement mandated by Congress. The Dodd-Frank Act amends the SEA to require, among other things, the following with respect to SBS transactions: (1) Transactions in SBS must be cleared through a clearing agency if they are required to be cleared;[388] and (2) if the SBS is subject to the clearing requirement, the transaction must be executed on an exchange or on an SBSEF registered under section 3D of the SEA or an SBSEF exempt from registration under section 3D(e) of the SEA, unless no SBSEF or exchange makes such SBS available for trading or the SBS is subject to the clearing exception in section 3C(g) of the SEA.[389] The benefits and costs associated with the trade execution requirement would not materialize unless and until the Commission makes mandatory clearing determinations, *i.e.,* determining what

[383] *See, e.g.,* Trade Acknowledgement and Verification Adopting Release, 81 FR at 39809.

[384] *See* Lynn Riggs, Esen Onur, David Reiffen, and Haoxiang Zhu, *Swap Trading After Dodd-Frank: Evidence from Index CDS,* 137 J. Financial Economics 857 (2020) (finding that, in the index CDS market, an initiating participant is more likely to send RFQs to its relationship dealers, *i.e.,* its clearing members or dealers with whom it has traded more actively in the recent past).

[385] *See id.* (finding that, in the index CDS market, a dealer's response rate to an RFQ declines with the number of dealers included in the RFQ).

[386] *See Amendments to Exchange Act Rule 3b–16 Regarding the Definition of ''Exchange''; Regulation ATS for ATSs That Trade U.S. Government Securities, NMS Stocks, and Other Securities; Regulation SCI for ATSs That Trade U.S. Treasury Securities and Agency Securities* SEA Release No. 94062 (January 26, 2022), 87 FR 15496 (March 18, 2022) (''ATS–G Proposal''), section VIII(B)(1)(a) therein.

[387] Under CFTC rules applicable to the swap market, § 37.9(f) prohibits the practice of post-trade name give-up for swaps that are executed, pre-arranged, or pre-negotiated anonymously on or pursuant to the rules of a SEF and intended to be cleared, subject to an exception related to certain package transactions. *See supra* section VII(E) (discussing proposed Rule 815).

[388] *See* Public Law 111–203, section 763(a) (adding section 3C(a)(1) of the SEA).

[389] *See* Public Law 111–203, section 763(a) (adding section 3C(h) of the SEA). *See also* Public Law 111–203, section 761(a) (adding section 3(a)(77) of the SEA to define the term ''security-based swap execution facility'').

SBS transactions must be cleared by a clearing agency.

The Commission preliminarily believes that the general approach to proposing requirements relating to SBS execution could mitigate costs associated with the proposal. As discussed in section III, the Commission's approach is to harmonize as closely as practicable with analogous CFTC rules for SEFs, unless a reason exists to do otherwise in a particular area. Based on the Commission's preliminarily belief that SBSEF registrants likely would be registered SEFs that have established systems and policies and procedures to comply with CFTC rules, the Commission's general approach likely would result in compliance costs for registered SBSEFs that are lower than compliance costs that would have resulted had the Commission chosen not to follow the CFTC's approach.[390]

In assessing the economic impact of the proposed rules, the Commission considers the broader costs and benefits associated with the application of the proposed rules, including the costs and benefits of applying the substantive Title VII requirements to the trading of SBS.[391] The Commission's analysis also considers ''assessment'' costs—*i.e.,* those that arise from current and future market participants expending resources to assess how they will be affected by Regulation SE, and could incur expenses in making this assessment even if they ultimately are not subject to rules for which they made an assessment.

Many of the benefits and costs discussed below are difficult to quantify. These benefits and costs would depend on how potential SBSEFs and their prospective members respond to the proposed rules, if adopted by the Commission. If potential SBSEFs perceive the costs associated with operating registered SBSEFs to be high, such that few or no entities come forward to register as SBSEFs, there could be no triggering of the trade execution requirement, which depends on MAT determinations made by registered SBSEFs (or exchanges). Under this scenario, the future state of the SBS market likely would not differ from the current baseline and the potential costs and benefits discussed below would not materialize. An alternative scenario is that prospective SBSEFs perceive the costs associated with operating registered SBSEFs to be high but nevertheless register as SBSEFs because they expect to be able to pass on such costs to their members to help maintain the commercial viability of operating a registered SBSEF. MAT determinations by registered SBSEFs would move trading of the products covered by the determinations onto SBSEFs, which could generate benefits and costs associated with increased pre-trade transparency, in addition to benefits and costs associated with the operation of regulated markets. A third possibility is that entities come forward to register as SBSEFs because they perceive the associated costs of operating SBSEFs to be low in light of the close harmonization of the proposed rules with analogous CFTC SEF rules. If these registered SBSEFs do not make MAT determinations and thus do not trigger the trade execution requirement, the benefits and costs associated with increased pre-trade transparency likely would not arise. If SBSEF trading is limited because of an absence of MAT determinations, the benefits and costs associated with the operation of regulated markets potentially would be limited as well. A fourth possibility is that entities do come forward to register as SBSEFs because they perceive the associated costs of operating SBSEFs to be low and these registered SBSEFs make MAT determinations and trigger the trade execution requirement. Under this scenario, the benefits and costs associated with increased pre-trade transparency and regulated markets likely would arise. The Commission does not have the data to determine which of the above possibilities will prevail should the proposed rules be adopted.

The Commission has attempted to quantify economic effects where possible, but much of the discussion of economic effects is necessarily qualitative. The Commission requests comment and, with regard to any comments, such comments are of greatest assistance if they are accompanied by supporting data and analysis of the issues addressed.

1. Overarching Benefits of the Proposal

Broadly, the Commission anticipates that proposed Regulation SE may bring several overarching benefits to the SBS market.

Improved Transparency. The proposal would enable the Commission to obtain information about SBSEFs, thereby facilitating the Commission's oversight of these entities.[392]

In addition, the proposed requirements relating to pre-trade transparency would increase pre-trade transparency in the market for SBS.[393] Increased pre-trade price transparency should allow an increased number of market participants to better see the trading interest of other market participants prior to trading, which should lead to increased price competition among market participants.[394] The Commission preliminarily believes that the proposed requirements with respect to pre-trade price transparency should lead to more efficient pricing in the SBS market.[395]

Evidence from the swap market suggests that an increase in pre-trade transparency is associated with improved liquidity and reduced transaction costs.[396] The Commission is not aware of any difference between the

[390] In section XX *infra,* for purposes of the PRA, the Commission preliminarily estimates burdens applicable to a stand-alone SBSEF. However, the Commission preliminarily believes that most if not all SBSEFs will be dually registered with the CFTC as SEFs, and thus will already be complying with relevant CFTC rules that have analogs to rules contained within proposed Regulation SE. Therefore, the Commission's burden estimates may be larger for stand-alone SBSEF than may exist in practice, considering the effect of overlapping CFTC rules.

[391] In certain prior Title VII releases, the Commission had referred to such costs and benefits as programmatic costs and benefits. *See, e.g.,* Regulation SBSR Adopting Release I.

[392] For example, proposed Rule 826 would, among other things, require an SBSEF to maintain records of its business activities (including a complete audit trail) for a period of five years and report to the Commission such information as the Commission determines to be necessary or appropriate for performing the duties of the Commission under the SEA. *See* also the discussion below on how the proposal would provide the means for the Commission to gain better insight into and oversight of SBSEFs and the SBS market.

[393] Proposed Rules 803(a)(2) and (3) would require an SBSEF to offer, at a minimum, an order book for SBS trading, subject to certain exceptions related to package transactions. Proposed Rule 815 would require SBS transactions subject to the trade execution requirement to be executed using either an order book or via an RFQ-to-3 system. Proposed Rule 816 would set forth the process by which an SBSEF would subject an SBS to the trade execution requirement. Proposed Rule 832 would describe those cross-border SBS transactions that would be subject to the trade execution requirement.

[394] *See, e.g.,* Ananth Madhavan, *Market Microstructure: A Practitioner's Guide,* Fin. Analysts J., Vol. 58, at 38 (2002) (nondisclosure of pre-trade price information benefits dealers by reducing price competition).

[395] *See, e.g.,* Ekkehart Boehmer, *et al., Lifting the Veil: An Analysis of Pre-trade Transparency at the NYSE,* J. Fin., Vol. LX (2005) (greater pre-trade price transparency leads to more efficient pricing).

[396] *See* Evangelos Benos, Richard Payne, and Michalis Vasios, *Centralized Trading, Transparency, and Interest Rate Swap Market Liquidity: Evidence from the Implementation of the Dodd-Frank Act,* 55 J. Fin. and Quantitative Analysis 159 (2020) (finding, among other things, that imposition of the CFTC's trade execution requirement improved the liquidity of IRS that were subject to the requirement, and that the liquidity improvement was associated with more intense competition between swap dealers); Y.C. Loon and Zhaodong (Ken) Zhong, *Does Dodd-Frank Affect OTC Transaction Costs and Liquidity? Evidence from Real-Time CDS Trade Reports,* 119 J. Fin. Econ. 645 (2016) (finding that index CDS transactions executed on SEFs have lower transaction costs and improved liquidity than index CDS transactions executed bilaterally).

swap market and the SBS market that would cause the empirical findings regarding the impact of pre-trade price transparency on liquidity and transaction costs not to carry over into the SBS market, when implemented. The Commission is mindful that, under certain circumstances, pre-trade price transparency could also discourage the provision of liquidity by some market participants.[397] However, the Commission preliminarily believes that by proposing two execution methods for Required Transactions (limit order book and RFQ-to-3), market participants have flexibility in the degree of pre-trade transparency they wish to employ, which should attenuate potential concerns associated with the exposure of pre-trade trading interest.

Improved oversight of trading. Regulation SE would require, among other things, that SBSEFs maintain an audit trail and automated trade surveillance system; conduct real-time market monitoring; establish and enforce rules for information collection; and comply with reporting and recordkeeping requirements.[398] These requirements are designed to provide an SBSEF with sufficient information to oversee trading on its market, including detecting and deterring abusive trading practices.

This framework could enhance investor protection and increase confidence in a well-regulated market among SBS market participants, which could in turn make them more willing to increase their participation or entice new participants. An increase in participation in the SBS market would, all else being equal, benefit the SBS market as a whole. Further, to the extent that market participants utilize SBS to better manage their risk with respect to a position in underlying securities or assets, their participation in the SBS market could impact their willingness to participate in the underlying asset markets. Thus, the Commission preliminarily believes that the proposal could benefit the securities markets overall by encouraging a more efficient, and potentially higher, level of capital investment.

Improved access and competition. Currently, the SBS market is dominated by a small group of SBS dealers.[399] A mandatory clearing determination by the Commission, followed by a MAT determination by one or more SBSEFs or exchanges, should help foster greater competition in the trading of SBS by promoting greater order interaction and increasing access to and participation on SBSEFs. The proposed rules would provide a framework for allowing a number of trading venues to register as SBSEFs and thus more effectively compete for business in SBS. Furthermore, proposed Rule 827 is designed to promote competition generally by prohibiting an SBSEF from adopting any rules or taking any actions that unreasonably restrain trade, or imposing any material anticompetitive burden on trading or clearing. In addition, proposed Rule 819(c) would, among other things, require an SBSEF to provide any ECP with impartial access to its market(s) and market services.

The proposed new rules and amendments to the Commission's Rules of Practice would allow persons who are aggrieved by a final disciplinary action, a final action with respect to a denial or conditioning of membership, or a final action with respect to a denial or limitation of access by an SBSEF to seek an application for review by the Commission.[400] These proposed rules and amendments are designed to improve access to SBSEFs by creating a procedure for making appeals to the Commission, thereby limiting the ability of an SBSEF to make a disciplinary action, denial or conditioning of membership, or denial or limitation of access without any recourse by the affected party. Taken together, these proposed rules and amendments should foster greater access to SBSEFs by SBS market participants, which in turn could promote greater participation by liquidity providers on SBSEFs. Increased participation could increase competition in liquidity provision and lower trading costs, which may lead to increased participation in the SBS market.

Improved Commission oversight. One of the goals of the Dodd-Frank Act is to increase regulatory oversight of SBS trading relative to the existing OTC SBS market.[401] The proposal would provide the means for the Commission to gain better insight into and oversight of SBSEFs and the SBS market by, among other things, allowing the Commission to review new rules, rule amendments, and product listings by SBSEFs[402] and to obtain other relevant information from SBSEFs.[403]

Additionally, proposed Rule 826(b) would require every SBSEF to keep full, complete, and systematic records of all activities relating to its business with respect to SBS. In addition, proposed Rule 819(f) would require an SBSEF to capture and retain a full audit trail of activity on its facility. The records required to be kept by an SBSEF would help the Commission to determine whether an SBSEF is operating in compliance with the SEA and the Commission's rules thereunder. The audit trail data required to be captured and retained would facilitate the ability of the SBSEF and the Commission to carry out their respective obligations under the SEA, by facilitating the detection of abusive or manipulative trading activity, allowing reconstructions of activity on the SBSEF, and generally understanding the causes of both specific trading events and general market activity.

Furthermore, proposed Rule 835 would require an SBSEF to provide the Commission notice of a final disciplinary action, a final action with respect to a denial or conditioning of membership, or a final action with respect to a denial or limitation of access, which would allow the Commission to review the SBSEF's disciplinary process and exercise of its regulatory powers, providing the Commission an additional tool to carry out its oversight responsibilities. The proposed registration requirements and related proposed Form SBSEF, and the CCO's annual compliance report, which are further discussed below, would also help the Commission with its oversight responsibilities.

Improved automation. To comply with the requirements of proposed Regulation SE relating to recordkeeping and surveillance, an SBSEF potentially would need to invest in and develop automated technology systems to store, monitor, and communicate a variety of trading data, including orders, RFQs, RFQ responses, and quotations.[404] The proposed rules should promote increased automation in the SBS market, although CFTC-registered SEFs that plan to register as SBSEFs are already deploying automated systems that could be supplemented to support an SBS business. In addition, the automation and systems development associated with the regulation of SBSEFs could provide SBS market participants with new platforms and tools to execute and process

[397] *See, e.g.,* Ananth Madhavan, *et al., Should Securities Markets Be Transparent?,* J. of Fin. Markets, Vol. 8 (2005) (finding that an increase in pre-trade price transparency leads to lower liquidity and higher execution costs, because limit-order traders are reluctant to submit orders given that their orders essentially represent free options to other traders).

[398] *See* proposed Rules 819, 821, 822, and 826.

[399] *See supra* section XIX(B)(2).

[400] *See* proposed Rules 442 and 443; proposed amendments to Rules 101, 202, 210, 401, 450, and 460.

[401] *See* Public Law 111–203, Preamble.

[402] *See* proposed Rules 804, 805, 806, and 807.

[403] *See* proposed Rule 811.

[404] *See* proposed Rules 819(d)(4) and 826.

transactions in SBS at a lower expense per transaction. Such increased efficiency could enable members of the SBSEF to handle increased volumes of SBS with greater efficiency.

2. Benefits Associated With Specific Proposed Rules

In addition to the broad benefits that the Commission anticipates as a result of proposed Regulation SE, individual rules could bring particular benefits to the SBS market. These include the following:

Registration requirements and Form SBSEF. SBSEF registration is required under the Dodd-Frank Act.[405] Proposed Rule 818(a) incorporates the requirement under the Dodd-Frank Act that an SBSEF, in order to be registered and maintain registration, must comply with the Core Principles in section 3D(d) of the SEA and the Commission's rules thereunder. The registration process described in proposed Rule 803 would implement this statutory requirement and assist the Commission in overseeing and regulating the SBS market. The information to be provided on proposed Form SBSEF is designed to enable the Commission to assess whether an applicant has the capacity and the means to perform the duties of an SBSEF and to comply with the Core Principles and other requirements imposed on SBSEFs. Proposed Rule 803 is closely modelled on analogous CFTC registration requirements for SEFs. The choice to align the Commission's registration requirements for SBSEFs with the CFTC's requirements for SEFs is designed to achieve the abovementioned benefits while imposing only marginal costs on SBSEF registrants, who likely are SEFs.

Proposed exemptions (proposed Rule 833, proposed Rule 816(e), proposed amendments to Rule 3a1–1, and proposed Rule 15a–12). Proposed Rule 833 is designed to preserve access to foreign markets by ''covered persons'' (as defined in proposed Rule 832). As discussed in section XIX(B)(6), an analysis of SBS transaction data indicates that certain trades executed on foreign SBS trading venues involve at least one counterparty that is a covered person. Absent the proposed rule, these trading venues might elect to avoid having members that are covered persons if those venues do not wish to register with the Commission in some capacity (such as an exchange or SBSEF). In addition, covered persons would not be permitted to execute SBS that are subject to the trade execution requirement on these venues if the venues do not register with the Commission in some capacity (such as an exchange or SBSEF) or obtain an appropriate exemption. This would limit access to foreign SBS trading venues by covered persons, potentially making it harder for them to locate counterparties and obtain liquidity for SBS that trade on those venues. This in turn could increase their trading costs, because they might spend more time and effort to locate counterparties or because they have less bargaining power relative to the remaining pool of potential counterparties with which they could trade. To the extent that a foreign SBS trading venue can obtain a Rule 833(a) exemption, it could continue to provide members that are covered persons with access to and liquidity on its market. Furthermore, a Rule 833(b) exemption would allow covered persons to continue accessing foreign SBS trading venues to execute SBS that are subject to the SEA's trade execution requirement.

Currently, all trading venues that trade SBS—whether domestic or foreign—are exempt from having to register as a national securities exchange or SBSEF on account of the SBS trading business. This exemption expires when the Commission's rules for registering and regulating SBSEFs come into force.[406] Thus, removal of the existing exemption would merely restore the *status quo ante,* where the SEA itself, as amended by the Dodd-Frank Act, requires entities meeting the definition of ''security-based swap execution facility'' or ''exchange'' and falling within the territorial jurisdiction of the SEA to register with the Commission. By offering foreign SBS trading venues the possibility of an exemption from the definitions of ''security-based swap execution facility'' and ''exchange'' as well as from section 3D(a)(1) of the SEA, proposed Rule 833(a) would allow foreign SBS trading venues to operate in conditions similar to the current baseline (if the Commission ultimately grants an exemption under Rule 833(a)).

Currently, market participants that trade SBS that would be covered by proposed Rule 816(e)[407] do not trade these products on registered exchanges or registered SBSEFs. Proposed Rule 816(e), by providing exemptions from the trade execution requirement for these SBS, would preserve the *status quo* for these SBS.

Proposed paragraph (a)(4) of Rule 3a1–1 would provide that an entity that has registered with the Commission as an SBSEF and provides a market place for no securities other than SBS would not fall within the definition of ''exchange'' and thus would not be subject to the requirement in section 5 of the SEA to register as a national securities exchange (or obtain a low-volume exemption). The Commission preliminarily believes that the benefit of the proposed amendment would be to clarify to prospective SBSEF applicants that, if they register with the Commission as SBSEFs, they would not face duplicative registration and regulatory requirements as exchanges. In addition, proposed paragraph (a)(5) of Rule 3a1–1 would codify a series of exemptions that the Commission has granted over several years to SBS clearing agencies that operate ''forced trading'' sessions. Because the proposed amendment is intended to codify existing exemptions, the Commission preliminarily believes that any associated economic effects would be minimal.

Proposed new Rule 15a–12 is designed to minimize overlapping compliance burdens for SBSEFs, which are also brokers under the SEA, that restrict their activity to engaging in the business of operating an SBSEF (and no other broker activities). Absent the proposed rule, such SBSEFs (defined as ''SBSEF–Bs'' for purposes of Rule 15a–12) would need to register as SBSEFs and be subject to the SBSEF regulatory regime, in addition to registering as brokers and being subject to the broker regulatory regime. Proposed Rule 15a–12 would allow an SBSEF–B to satisfy the requirement to register as a broker by registering as an SBSEF under proposed Rule 803, and would exempt an SBSEF–B from SIPA and other broker requirements, except for sections 15(b)(4), 15(b)(6), and 17(b) of the SEA. As a result of the proposed rule, SBSEF–Bs could avoid incurring what the Commission preliminarily believes to be duplicative and unnecessary compliance burdens. Each SBSEF–B could save an estimated $324,849 in initial broker registration costs[408] and

[405] *See* section 3D(a)(1) of the SEA, 15 U.S.C. 78c–4(a)(1).

[406] *See supra* section V, note 43.

[407] Proposed paragraphs (e)(1), (2), and (3) of Rule 816 would exempt from the trade execution requirement, respectively: An SBS transaction that is executed as a component of a package transaction that also includes a component transaction that is the issuance of a bond in a primary market; an SBS that qualifies for an exception under section 3C(g) of the SEA or any exemption from the clearing requirement that is granted by the Commission, for which the associated requirements are met; and an SBS transaction that is executed between counterparties that qualify as ''eligible affiliate counterparties.''

[408] The Commission previously estimated that an entity would incur costs of $301,400 to register as a broker-dealer and become a member of a national

$59,063 in annual ongoing costs of meeting broker registration requirements.[409] In deriving these estimates, the Commission assumes that the activities an SBSEF–B performs to register and maintain registration as a broker do not overlap with those that it performs to register and maintain registration as an SBSEF–B. If there is an overlap in such activities, the estimated cost savings could be smaller. Each SBSEF–B could save an estimated $823 in ongoing costs associated with satisfying broker minimum capital requirements.[410] The estimated aggregate initial and annual ongoing savings are $1,624,245 and $299,430, respectively.[411]

Rule and product filings. Proposed Rules 806 and 807 would set forth alternative filing processes for a new rule or rule amendment of a registered SBSEF, and proposed Rules 804 and 805 would set forth alternative filing processes for an SBSEF to file an SBS product that it wishes to list. Proposed Rule 810 would address new product filings by an entity that has applied for SBSEF registration but has not yet been registered, or by a dormant SBSEF seeking reinstatement of its registration. The self-certification processes of Rules 804 and 807 would require SBSEFs to include a certification that the product, rule, or rule amendment, as the case may be, complies with the SEA and Commission rules thereunder.[412] The information to be provided by the SBSEF under proposed Rules 804, 805, and 810 would further the ability of the Commission to obtain information regarding SBS that an SBSEF intends to list on its market. The proposed rules would assist the Commission in overseeing and regulating the trading of SBS and to help ensure that SBSEFs operate in compliance with the SEA.

In addition, proposed Rule 806(a)(5), which would require an SBSEF to explain the anticipated benefits and potential anticompetitive effects on market participants of a proposed new rule or rule amendment potentially could help foster a competitive SBS market because it could prompt SBSEFs to consider the positive as well as negative aspects of their proposed rules or rule amendments. Proposed Rule 808 is designed to facilitate the public's ability to obtain information from SBSEF applications as well as rule and product filings. Proposed Rule 808(a) would specify the parts of an SBSEF application that shall be made publicly available unless confidential treatment is obtained pursuant to SEA Rule 24b–2. Proposed Rule 808(b) would provide that an SBSEF's rule and product filings shall be made publicly available unless confidential treatment is obtained pursuant to SEA Rule 24b–2. Proposed Rule 808(c) would provide that the terms and conditions of a product submitted to the Commission pursuant to any of proposed Rules 804 through 807 shall be made publicly available at the time of submission unless confidential treatment is obtained pursuant to SEA Rule 24b–2.

Proposed Rule 809 would provide a mechanism for the staying or tolling of a filing by an SBSEF relating to a product while the appropriate jurisdictional classification of that product is determined. The proposed rule is designed to provide regulatory certainty for SBSEFs and market participants who may be interested in trading products whose classification as an SBS subject to SEC jurisdiction or a swap subject to CFTC jurisdiction is unclear. In particular, proposed Rule 809 would help ensure that determinations regarding whether the SEC or CFTC appropriately has jurisdiction over a product are made before the product is traded.

The Commission's election to model proposed Rules 804 through 810 closely on analogous rules in part 40 of the CFTC's rules that apply to SEFs (and other registered entities) is designed to promote efficiency. Utilizing the same processes for rule and product filings, with which dually registered SEF/SBSEFs are familiar, would impose only minimal burdens on such entities while obtaining the similar regulatory benefits as the CFTC rules. In some cases, where a new rule or rule amendment affects both the swap and SBS business of a dually registered entity, the same or a very similar filing could be made to each of the CFTC and SEC, in lieu of having to make different filings to support the same rule change.

Chief Compliance Officer. Proposed Rule 831 would, among other things, require the CCO of an SBSEF to submit an annual compliance report and annual financial report to the Commission. These reports would assist the Commission in carrying out its oversight of the SBSEFs and the SBS market by providing the Commission with information about the compliance activities and financial state of SBSEFs. Furthermore, by requiring an SBSEF to designate an individual as the CCO and making the CCO responsible for ensuring compliance with the SEA and the Commission's rules thereunder, proposed Rule 831 would promote regulatory compliance on SBSEFs and the SBS market generally. This in turn would further the goal of moving SBS trading away from opaque and unregulated OTC markets and onto transparent and regulated markets by promoting effective regulation of the latter.

Conflicts of Interest. Proposed Rule 831 would, among other things, require the CCO to resolve material conflicts of interest that may arise in consultation with the governing board or the senior officers of the SBSEF.[413] Proposed Rule 828(a) would require an SBSEF to establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving the conflicts of interest. Proposed Rule 828(b) would require an SBSEF to comply with the requirements of proposed Rule 834 which is designed to implement section 765 of the Dodd-Frank Act with respect to SBSEFs and SBS exchanges. Proposed Rule 834 would, among other things, impose a 20% cap on the voting interest held by an individual member of an SBSEF or SBS exchange, mitigate conflicts of interest in the disciplinary process of an SBSEF or SBS exchange, set forth certain minimum requirements for the composition of the governing board of an SBSEF or SBS exchange, set forth

securities association. *See* Cross-Border Amendments Adopting Release, 85 FR at 6312. Adjusted for inflation through December 2021, these costs are $324,849.

[409] The Commission previously estimated that an entity would incur ongoing annual costs of $54,800 to maintain broker-dealer registration and membership of a national securities association. *See* Cross-Border Amendments Adopting Release, 85 FR at 6312. Adjusted for inflation through December 2021, these costs are $59,063. The estimation of ongoing annual costs is based on the assumption that the entity would use existing staff to perform the functions of the registered broker-dealer and would not incur incremental costs to hire new staff. To the extent that the entity chooses to hire new staff, the ongoing annual costs would likely be higher.

[410] The Commission preliminarily believes that, absent the proposed rule, an SBSEF–B would comply with the minimum net capital requirement of $5,000 for a registered broker-dealer because it would not receive, owe, or hold customer funds or securities; carry customer accounts; and engage in certain other activities. *See* Rule 15c3–1(a)(2)(vi) under the SEA, 17 CFR 240.15c3–1(a)(2)(vi). The Commission preliminarily estimates the cost of capital using the annual stock returns on a value-weighted portfolio of financial stocks from 1986 to 2021 (*see* website of Professor Ken French, available at *http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/ftp/48_Industry_Portfolios_CSV.zip* (accessed on March 14, 2022). These returns were averaged to arrive at an estimate of 16.45%. The cost of capital = 16.45% × $5,000 = $823.

[411] The Commission preliminarily estimates the number of SBSEF-Bs as the number of entities that likely will register as SBSEFs. *See supra* section XIX(B)(5). Aggregate initial savings = $324,849 × 5 (number of SBSEF–Bs) = $1,624,245. Aggregate annual ongoing savings = ($59,063 + $823) × 5 (number of SBSEFs) = $299,430.

[412] *See* proposed Rules 804(a)(3)(iv) and 807(a)(6)(iv) .

[413] *See* proposed Rules 831(a)(2)(iii) and (h)(2).

reporting requirements related to governing board elections, and address the avoidance of conflicts of interest in the execution of regulatory functions by an SBSEF or SBS exchange.[414]

The Commission preliminarily believes that the proposed rules would mitigate conflicts of interest between an SBSEF or SBS exchange and its members as discussed in section X. Relative to the bilateral OTC SBS market, SBSEFs and SBS exchanges promote competition between liquidity providers, potentially forcing them to lower their prices for supplying liquidity (*e.g.,* narrowing bid-ask spread) and reducing their profits from liquidity provision. However, if SBS dealers or major SBS participants were able to restrict access to such venues by, for example, exercising their voting interest in an SBSEF or SBS exchange, they could stifle competition in SBSEFs and SBS exchanges and preserve their profits from liquidity provision. The proposal, by mitigating such conflicts of interest[415] could help ensure access to SBSEFs and SBS exchanges and in turn increase competition in liquidity provision and lower transaction costs. The Commission preliminarily believes that proposed Rules 834(e), (f), and (g) also may promote good governance at SBSEFs and SBS exchanges. To the extent that improved governance result in more effective oversight by SBSEFs and SBS exchanges of their markets, market participants may benefit. These benefits could be limited to the extent that prospective SBSEFs and SBS exchanges already have rules in place that comply with the proposed rules.

Structured Data Requirement. Proposed Rule 825(c)(3) would require an SBSEF to publish a Daily Market Data Report on its website without charge or usage restrictions and in a downloadable and machine-readable format using the most recent version of the associated XML schema and PDF renderer as published on the Commission's website.[416] The Commission preliminarily believes that requiring the Daily Market Data Report to be provided in a structured, machine-readable format (using a Commission-created XML schema) would facilitate the use of the price, trading volume, and other trading data on the report by end users such as SBS market participants and market observers. By including a structured data requirement, the information in the report would be made available in a consistent and openly accessible manner that would allow for automatic processing by software applications, thus enabling search capabilities and statistical and comparative analyses across SBSEFs and date ranges.[417] Absent a structured data requirement, any SBS market participants and market observers seeking to use the data would have to spend time manually collecting and entering the data into a format that allows for analysis, thus increasing the time needed to analyze the data and potentially leading to data errors. Alternatively, data users could choose to subscribe to a service provider specializing in such a data aggregation and comparison process. Under that scenario, data users would be unable to access the posted data on as timely a basis as they would if the disclosures were machine-readable upon posting, and users would also incur monetary costs in paying for the aggregated data.

Proposed Regulation SE would require SBSEFs to file documents required under various provisions in the EDGAR system using Inline XBRL, a structured (machine-readable) data language.[418] Requiring a centralized filing location and a machine-readable data language for the filings would facilitate access, retrieval, analysis, and comparison of the disclosed information across different SBSEFs and time periods by the Commission and the public, thus potentially augmenting the informational benefits of the various disclosure requirements discussed herein. Also, because EDGAR provides basic technical validation capabilities, the use of EDGAR could reduce the incidence of technical errors (*e.g.,* letters instead of numbers in a field requiring only numbers) and thereby improve the quality of the disclosures.

Unlike the XML schema that would be used for Daily Market Data Reports, Inline XBRL would provide the ability to tag detailed facts within narrative text blocks, and is thus likely more well-suited to accommodate the other filings required under proposed Regulation SE, many of which require narrative discussions (*e.g.,* the explanation and analysis of the product and its compliance with applicable provisions of the SEA for a product filing required under Rule 804).[419] In addition, certain proposed SBSEF disclosures consist of financial information (*e.g.,* the financial statements of the SBSEF required under Exhibit I to Form SBSEF), and Inline XBRL is designed specifically for the accurate capture and communication of financial information, among other uses.[420]

3. Costs

Although the Commission preliminarily believes that proposed Regulation SE would benefit the SBS market, the Commission recognizes that the proposed Regulation SE also would entail certain costs. Some costs are difficult to precisely quantify and are discussed below. The Commission is mindful that any rules it may adopt with respect to SBSEFs under the Dodd-Frank Act may impact the incentives of market participants with respect to where and how they trade SBS. If the rules proposed by the Commission are, or are perceived to be, too costly for trading venues to comply with, fewer entities than expected may seek to register as SBSEFs, which would not further the goal of moving a greater percentage of SBS trading from opaque and unregulated OTC markets to transparent and regulated trading venues. In addition, if the proposed rules for trading on an SBSEF are perceived as too burdensome by market participants, SBS trading may continue in the OTC market absent a mandatory clearing determination and a triggering of the mandatory trade execution requirement, thus frustrating the goals of the Dodd-Frank Act.[421] At the same time, if the proposed rules relating to

[414] *See* proposed Rules 834(b) to (g).

[415] *See, e.g.,* proposed Rule 834(b) (proposing a 20% cap on the voting interest held by an individual member of an SBSEF or SBS exchange).

[416] *See supra* note 392 and accompanying text.

[417] In addition, the associated PDF renderer would provide users with a human-readable document for those who prefer to review manually individual reports, while still providing a uniform presentation.

[418] This includes the documents required under: proposed Rule 803(b)(1)(i) and (3) (filings of, and amendments to, a Form SBSEF application); proposed Rules 803(e) and 803(f) (requests to withdraw or vacate an application for registration); proposed Rule 804(a)(1) (filings for listing products for trading by certification); proposed Rule 805(a)(1) (filings for voluntary submission of new products for Commission review and approval); proposed Rule 806(a)(1) (filings for voluntary submission of rules for Commission review and approval); proposed Rule 807(a)(1) (filings for self-certification of rules); proposed Rule 807(d) (filings of weekly notifications to the Commission of rules and rule amendments that were not required to be certified); proposed Rule 829(g)(6) (submission to the Commission of reports related to financial resources and related documentation); proposed Rule 831(j)(2) (submission to the Commission of the annual compliance report of SBSEF's CCO). *See supra* section XV.

[419] *See* proposed Rule 804(c)(3)(v).

[420] For example, because Inline XBRL enables the block tagging of textual narrative disclosures and the individual tagging of numeric disclosures nested within those textual narrative disclosures, it facilitates the comprehensive capture and communication of information contained in notes to financial statements.

[421] *See* section XIX(C) (noting that the benefits and costs associated with the trade execution requirement would not materialize unless and until the Commission makes mandatory clearing determinations).

SBSEFs are too lenient, they may have little or no impact on the market structure and surveillance of the SBS market relative to the *status quo,* which could result in the loss of many of the benefits discussed above and fail to achieve the goals of the Dodd-Frank Act.

In addition, SBS traded on SBSEFs may be perceived to be subject to increased costs, monetary and otherwise. For example, the proposed requirements related to pre-trade transparency could cause market participants to reveal valuable economic information regarding their trading interest more broadly than they may believe would be economically prudent and could discourage participation in the SBS market. An additional impact of pre-trade transparency are perceived costs associated with front running, if customers or SBS dealers are required to show their trading interest before a trade is executed. These potential costs of pre-trade transparency may change market participants' trading strategies, which could result in them working more orders or finding ways to attempt to hide their interest.[422] If market participants view the Commission's proposal as too burdensome with respect to pre-trade transparency, SBS dealers may be less willing to supply liquidity for SBS that trade on SBSEFs or exchanges, thus adversely affecting liquidity and competition. However, such effects could be mitigated by MAT determinations that would require SBS trading to occur on SBSEFs or exchanges. On the other hand, if the proposed requirements with respect to pre-trade transparency are too loose, the result could be that there would be no substantive change from the *status quo,* including no benefits of alleviating informational asymmetries, increasing price competition, and supplying better executions beyond the changes in response to the other requirements of the Dodd-Frank Act. This actual impact would depend on the degree of pre-trade transparency required and the characteristics of the trading market. The proposed rules are intended to provide for greater pre-trade transparency than currently exists without requiring pre-trade transparency in a manner that would cause participants to avoid providing liquidity on SBSEFs.

The Commission preliminarily believes that there would be transaction costs, such as fees and connectivity costs, that trading counterparties would incur in executing or trading SBS subject to the trade execution requirement on SBSEFs. Likewise, although unregulated trading venues exist in today's OTC derivatives market, the Commission does not have information regarding what, if any, fees and connectivity costs are associated with transacting on these unregulated trading venues. The Commission invites commenters to provide feedback on the likely fees and costs associated with transacting on SBSEFs as well as fees and costs associated with transacting on unregulated trading venues that exist in today's OTC derivatives market.

As discussed in section XIX(B), the Commission preliminarily believes that prospective SBSEF registrants are likely to be CFTC-registered SEFs that are active in the index CDS market. Because the proposed rules are harmonized as closely as practicable with analogous CFTC rules for SEFs, unless a reason exists to do otherwise in a particular area, the Commission preliminarily believes that much of the systems, policies, and procedures that are used to support SEF trading also could be used to support SBSEF trading. The prospective SBSEF registrants likely would incur marginal costs associated with listing SBS products on their venues[423] and making limited changes to their systems, policies, and procedures to comply with proposed SEC rules that differ slightly from analogous CFTC rules. The Commission preliminarily estimates the one-time costs associated with such changes to systems, policies, and procedures would range between $25,000 and $1.5 million per SBSEF, depending on the changes needed. The annual ongoing costs of maintaining the technology (*e.g.,* ensuring any necessary technological updates and improvements are made) and applying the technology to ongoing compliance requirements are estimated to be in the range of $1 million to $2 million.[424] The Commission invites commenters to provide feedback on the costs that SEFs may incur should they register as SBSEFs.

We detail below cost estimates for specifics parts of the proposed rules. Many of these costs estimates are based on the PRA estimates of costs and burdens from section XX.[425]

a. Registration Requirements for SBSEFs and Form SBSEF

The Commission preliminarily believes that the proposed registration provisions would impose costs on entities that seek registration as SBSEFs. The Commission preliminarily estimates that initial filings on Form SBSEF by prospective SBSEFs seeking to register with the Commission pursuant to proposed Rule 803 would result in aggregate initial costs of $94,400 for prospective SBSEFs.[426]

b. Ongoing Compliance With Other Requirements That Are Similar to the Remainder of Part 37

As discussed in section XX(D)(2)(b), the Commission preliminarily estimates the aggregate annual paperwork burden for SBSEFs to comply with all of the proposed SBSEF rules that have analogs in part 37 to be 1935 hours.[427] These burdens are estimated to impose

[422] *See, e.g.,* Ananth Madhavan, *Market Microstructure: A Survey,* J. of Fin. Markets, Vol. 3 (2000).

[423] *See infra* section XIX(C)(3)(c) (discussing the costs that these entities might incur to list SBS products).

[424] In the 2011 SBSEF Proposal, the Commission estimated that an entity owning or operating a platform for the trading of OTC derivatives would incur costs of between $50,000 and $3 million to enhance its platform to be compatible with proposed requirements in that release. Further, such an entity would incur annual ongoing costs of between $2 million and $4 million to maintain such enhancements. *See* 2011 SBSEF Proposal, 76 FR at 11041. The Commission is revising these estimates downward by 50%, taking into account any potential inflationary effects, because harmonizing proposed Regulation SE closely with CFTC rules likely would reduce the one-time and annual ongoing costs incurred by SEFs to change their systems, policies, and procedures to comply with proposed Regulation SE, if they choose to register as SBSEFs. Therefore, the Commission preliminarily estimates that the one-time costs associated with changes to systems, policies, and procedures would range between $50,000/2 = $25,000 and $3 million/2 = $1.5 million per SBSEF, depending on the changes needed. The annual ongoing costs are preliminarily estimated to be between $2 million/2 = $1 million and $4 million/2 = $2 million.

[425] In section XX *infra,* for purposes of the PRA, the Commission preliminarily estimates burdens applicable to a stand-alone SBSEF. However, most if not all SBSEFs will be dually registered with the CFTC as SEFs and thus will already be complying with relevant CFTC rules that have analogs to rules proposed in Regulation SE. Therefore, the Commission's burden estimates are greater for stand-alone SBSEFs than may exist in practice, considering the effect of overlapping CFTC rules.

[426] $94,400 = 1,475 burden hours × $64/hour blended hourly rate. The $64/hour blended hourly rate is the $59/hour blended hourly rate computed by the CFTC and adjusted for CPI inflation through December 2021. The CFTC used the blended hourly wage to estimate PRA costs associated with part 37. *See infra* section XX(D)(2)(a); OMB, Supporting Statement for New and Revised Information Collections: Core Principles and Other Requirements for Swap Execution Facilities, OMB Control Number 3038–0074, Attachment A (July 7, 2021), available at *https://omb.report/icr/202107-3038-004/doc/113431800.pdf.* CPI inflation adjustment is based on data published by the Bureau of Labor Statistics. *See CPI Inflation Calculator,* U.S. Bureau of Labor Statistics, available at *https://www.bls.gov/data/inflation_calculator.htm.*

[427] *See infra* section XX(D)(2)(b). This estimate excludes the paperwork burdens associated with registration requirements for SBSEFs and Form SBSEF and provisions of certain proposed rules to be discussed subsequently.

aggregate ongoing annual costs of $123,840 on SBSEFs.[428]

c. Rule and Product Filing Processes for SBSEFs

The Commission preliminarily estimates that the aggregate ongoing annual costs incurred by all SBSEFs to prepare and submit rule and product filings under proposed Rules 804, 805, 806, and 807 (including the cover sheet) would be $31,200.[429]

d. Proposed Rules 809, 811, 819, 826, 829, 833, 834, and 835

The Commission preliminarily estimates the aggregate ongoing annual costs incurred by SBSEFs to comply with proposed Rule 809 would be $108.[430]

The Commission preliminarily estimates the aggregate ongoing annual costs incurred by SBSEFs to comply with requests for documents or information pursuant to proposed Rule 811(d) would be $88.[431]

The Commission preliminarily estimates the aggregate ongoing annual costs incurred by SBSEFs to comply with proposed Rule 819(i) would be $25,546.[432]

The Commission preliminarily estimates the aggregate ongoing annual costs incurred by SBSEFs to comply with proposed Rule 819(j) would be $1,135.[433]

The Commission preliminarily estimates the aggregate ongoing annual costs incurred by SBSEFs to update information required by proposed Rule 826(f) would be $152.[434] The Commission preliminarily estimates that interested parties would incur aggregate one-time costs of $108,960 in the first year and $72,640 in each subsequent year to submit exemption requests under one or both paragraphs of proposed Rule 833.[435]

The Commission preliminarily estimates that SBSEFs and SBS exchanges would incur aggregate one-time costs of $47,880 associated with drafting and implementing rules to comply with proposed Rules 834(b) and (c).[436]

The Commission preliminarily estimates that SBSEFs and SBS exchanges would incur aggregate ongoing annual costs of $640 to comply with proposed Rules 834(d), 834(e), and 834(f).[437]

The Commission preliminarily estimates that SBSEFs and SBS exchanges would incur aggregate one-time costs of $1,024 to comply with proposed Rule 834(g).[438]

The Commission preliminarily estimates that SBSEFs would incur aggregate ongoing annual costs of $20,430 to comply with proposed Rule 835.[439]

The Commission preliminarily believes that SBSEFs likely would incur costs to comply with the financial resources requirement of proposed Rule 829(b). Assuming that SBSEFs satisfy this requirement by holding financial resources in the form of their own capital pursuant to proposed Rule 829(c)(1), the Commission preliminarily estimates that SBSEFs would incur an aggregate annual cost of capital of $33,377.[440] SBSEFs could lower this

[428] $123,840 = 1,935 burden hours × $64/hour blended hourly rate. *See supra* note 426 (derivation of the $64/hour blended hourly rate).

[429] $31,200 = 300 hours × $104/hour blended hourly rate. The $104/hour blended hourly rate is the $96.26/hour blended hourly rate computed by the CFTC and adjusted for CPI inflation through December 2021. The CFTC used the blended hourly rate to estimate PRA costs associated with part 40. *See* section XX(D)(3)(a); OMB, Supporting Statement for Information Collection Renewal: OMB Control Number 3038–0093, Attachment A (July 10, 2020), available at *https://omb.report/icr/202005-3038-001/doc/101274002.pdf.* CPI inflation adjustment is based on data published by the Bureau of Labor Statistics. *See* U.S. Bureau of Labor Statistics, supra note 426. The platform ID requirement on the submission cover sheet would not impose burdens for obtaining a platform ID, because an SBSEF (whether registered or exempt) is already required under Rule 903(a) of Regulation SBSR to obtain an LEI to identify itself as its platform ID. *See supra* note 84.

[430] $108 = 1.25 hours × $86/hour hourly rate for a compliance officer. The $86/hour hourly rate for a compliance officer is the $70/hour hourly rate for a compliance officer computed by the CFTC and adjusted for CPI inflation through December 2021. The CFTC used the hourly rate to estimate PRA costs associated with § 40.12 after which proposed Rule 809 is modelled. *See infra* section XX(D)(3)(b)(ii); Revised Supporting Statement for New Information Collections: part 40, Provisions Common to Registered Entities, OMB Control Number 3038–AD07, Attachment A (October 14, 2011), *available at: https://omb.report/icr/201203-3038-005/doc/31042501.* CPI inflation adjustment is based on data published by the Bureau of Labor Statistics. *See* U.S. Bureau of Labor Statistics, supra note 426.

[431] $88 = 1 hour × $88/hour hourly rate for an attorney. The $88/hour hourly rate is the $80/hour hourly rate computed by the CFTC and adjusted for CPI inflation through December 2021. The CFTC used the hourly rate to estimate PRA costs associated with Part 1.6. *See infra* section XX(D)(4)(a); OMB, Supporting Statement for New and Revised Information Collections: OMB Control Number 3038–0033 (August 23, 2018), available at *https://omb.report/icr/201808-3038-004/doc/85625801.pdf.* CPI inflation adjustment is based on data published by the Bureau of Labor Statistics. *See* U.S. Bureau of Labor Statistics, supra note 426.

[432] $25,546 = 399.15 hours × $64/hour blended hourly rate. The Commission preliminarily believes that the burdens associated with this proposed rule are not different from burdens associated with proposed rules that have part 37 analogs. Thus, the Commission preliminarily believes that it would be appropriate to apply the $64/hour blended hourly rate to estimate the paperwork related costs associated with this proposed rule. *See infra* section XX(D)(4)(c). *See also supra* note 426 (derivation of the $64/hour blended hourly rate).

[433] $1,135 = 2.5 hours × $454/hour national hourly rate for an attorney. *See infra* section XX(D)(4)(d). The per-hour figure for an attorney is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, as modified by Commission staff to adjust for inflation (through December 2021) and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[434] $152 = 2 hours × $76/hour national hourly rate for a compliance clerk. *See infra* section XX(D)(4)(f). The per-hour figure for a compliance clerk is from SIFMA's Office Salaries in the Securities Industry—2013, as modified by Commission staff to adjust for inflation (through December 2021) and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[435] First year costs: $108,960 = 240 hours × $454/hour national hourly rate for an attorney. Costs in each subsequent year: $72,640 = 160 hours × $454/hour national hourly rate for an attorney. *See infra* section XX(D)(5)(a). *See also supra* note 433 (derivation of the national hourly rate for an attorney).

[436] $47,880 = 120 hours × $399/hour national hourly rate for a compliance attorney. The estimate of 120 burden hours is based on the Commission's preliminary estimate that five SBSEFs and three SBS exchanges will incur paperwork burdens associated with proposed Rules 834(b) and (c). *See infra* section XX(D)(4)(g). The per-hour figure for a compliance attorney is from SIFMA's Management and Professional Earnings in the Securities Industry—2013, as modified by Commission staff to adjust for inflation (through December 2021) and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[437] $640 = 10 hours × $64/hour blended hourly rate. Further, the costs incurred by SBSEFs = 5 (number of SBSEFs) × 1.25 hours per SBSEF × $64/hour blended hourly rate = $400. The Commission preliminarily believes that the burdens associated with this proposed rule are not different from burdens associated with proposed rules that have part 37 analogs. Thus, the Commission preliminarily believes that it would be appropriate to apply the $64/hour blended hourly rate to estimate the paperwork related costs associated with this proposed rule. *See infra* section XX(D)(4)(g). *See also supra* note 426 (derivation of the $64/hour blended hourly rate).

[438] $1,024 = 16 hours × $64/hour blended hourly rate. The Commission preliminarily believes that the burdens associated with this proposed rule are not different from burdens associated with proposed rules that have part 37 analogs. Thus, the Commission preliminarily believes that it would be appropriate to apply the $64/hour blended hourly rate to estimate the paperwork related costs associated with this proposed rule. *See infra* section XX(D)(4)(g). *See also supra* note 426 (derivation of the $64/hour blended hourly rate).

[439] $20,430 = 45 hours × $454/hour national hourly rate for an attorney. *See infra* section XX(D)(5)(b). *See also supra* note 433 (derivation of the national hourly rate for an attorney).

[440] The Commission preliminarily estimates the financial resources that SBSEFs would need to hold pursuant to proposed Rule 829(b) as their projected operating costs. *See* proposed Rule 829(b). Further, the Commission preliminarily estimates SBSEFs' projected operating costs as the sum of the aggregate ongoing annual costs incurred by SBSEFs to comply with proposed Regulation SE. Thus, SBSEFs' estimated projected operating costs = $123,840 (ongoing compliance with other proposed requirements that are similar to the remainder of part 37) + $31,200 (rule and product filing processes by SBSEFs) + $108 (proposed Rule 809) + $88 (proposed Rule 811(d)) + $25,546 (proposed Rule 819(i)) + $1,135 (proposed Rule 819(j)) + $152 (proposed Rule 826(f)) + $400 (proposed Rules 834(d), (e), and (f)) + $20,430 (proposed Rule 835)

cost if their capital consists of financial assets that generate a return that would serve to offset the cost of capital. However, this cost mitigation is potentially limited by proposed Rule 829(d), which would require an SBSEF to include among the financial resources it holds, a certain amount of unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities),[441] that tend to generate little or no return.

e. Assessment Costs

The Commission preliminarily believes that 87 entities likely would incur assessment costs as a result of proposed Rule 832, based on an analysis of counterparties to U.S. single-name CDS. Such costs would be related primarily to the identification of the counterparty status and origination location of the transaction to determine whether the trade execution requirement would apply. The Commission preliminarily believes that market participants would request representations from their transaction counterparties to determine the U.S.-person status of their counterparties. In addition, if the transaction is guaranteed by a U.S. person, the guarantee would be part of the trading documentation and, therefore, the existence of the guarantee would be a readily ascertainable fact. Similarly, market participants would be able to rely on their counterparties' representations as to whether a transaction is arranged, negotiated or executed by a person within the United States. Therefore, the Commission preliminarily believes that the assessment costs associated with proposed Rule 832 should be limited to the costs of establishing a compliance policy and procedure of requesting and collecting representations from trading counterparties and maintaining the collected representations as part of the market participants' recordkeeping procedures. The Commission preliminarily believes that such assessment costs would be approximately $18,160 per entity.[442] The Commission preliminarily believes that requesting and collecting representations would be part of the standardized transaction process reflected in the policies and procedures regarding SBS transactions and trading practices and should not result in separate assessment costs.

The Commission also considers the likelihood that market participants could implement systems to keep track of counterparty status for purposes of future trading of SBS that are similar to, if not the same as, the systems implemented by market participants for purposes of assessing SBS dealer or major SBS participant status. Implementation of such a system would involve one-time programming costs of $14,802 per entity.[443] Therefore, the Commission estimates the total one-time costs per entity associated with proposed Rule 832 could be $32,962 and the aggregate one-time costs could be $2,867,694.[444] To the extent that market participants have incurred costs relating to similar or the same assessments with respect to counterparty status and transaction location for other Title VII requirements, their assessment costs with respect to proposed Rule 832 may be less.

f. Structured Data Costs

The Commission preliminarily believes that SBSEFs would likely incur limited costs to comply with the proposed requirement in Rule 825(c)(3) to publish Daily Market Data Reports using the most recent versions of the associated XML schema and PDF renderer as published on the Commission's website. Because SBSEFs are required to use a structured format to fulfill their reporting requirements under Regulation SBSR, the compliance cost associated with the Rule 825(c)(3) requirement would be limited to the cost prospective SBSEF registrants would incur to update their systems to incorporate the Commission's XML schema for Daily Market Data Reports.[445] Such costs are included among the costs for prospective SBSEF registrants in making limited changes to their systems, policies, and procedures to comply with proposed SEC rules that differ slightly from analogous CFTC rules, as discussed in further detail above.[446]

With respect to the proposed Inline XBRL requirement for other documents required under proposed Regulation SE, the Commission preliminarily believes that SBSEFs would incur initial Inline XBRL implementation costs (such as the cost of training in-house staff to prepare filings in Inline XBRL, and the cost to license Inline XBRL filing preparation software from vendors) and ongoing Inline XBRL compliance burdens that would result from the proposed tagging requirement, because prospective SBSEF registrants are not currently subject to Inline XBRL requirements. Similarly, because prospective SBSEF registrants are not currently subject to EDGAR requirements, the Commission preliminarily believes they will incur a one-time compliance burden of submitting a Form ID as required by

= $202,898. Thus, the Commission preliminarily estimates that SBSEFs would hold $203,221 in the form of their own capital to comply with proposed Rule 829(b). The Commission preliminarily estimates SBSEFs' cost of capital using the annual stock returns on a value-weighted portfolio of financial stocks from 1986 to 2021. *See* website of Professor Ken French, available at *http://mba.tuck.dartmouth.edu/pages/faculty/ken.french/ftp/48_Industry_Portfolios_CSV.zip* (accessed on March 14, 2022). These returns were averaged to arrive at an estimate of 16.45%. SBSEFs' aggregate annual cost of capital = $202,898 × 16.45% = $33,377. The Commission acknowledges that there is uncertainty associated with this estimate. The estimate does not account for the fact that SBSEFs may use reasonable discretion in determining the methodologies used to calculate projected operating costs and wind down costs, pursuant to proposed Rule 829(e). Depending on how SBSEFs exercise this reasonable discretion, the resulting methodologies could yield projected operating costs and in turn, required financial resources, that may be higher or lower than the Commission's estimate.

[441] The CFTC's experience overseeing SEFs would appear to support the preliminarily belief that SBSEFs would hold unencumbered, liquid financial assets rather than obtain a line of credit to comply with proposed Rule 829(d). In a previous rulemaking, the CFTC noted that most SEFs satisfy the liquidity requirement of § 37.1303 (the analog of proposed Rule 829(d)) through maintaining liquid assets rather than obtaining a line of credit. *See* CFTC, *Swap Execution Facilities,* 86 FR 9224, 9242, n. 247 (February 11, 2021) (''2021 SEF Amendments Adopting Release'').

[442] $18,160 = 40 hours × $454/hour national hourly rate for an attorney. This estimate is based on an estimated 40 hours of in-house legal or compliance staff's time to establish a procedure of requesting and collecting representations from trading counterparties, taking into account that such representations may be built into a form of standardized trading documentation. *See supra* note 433 (derivation of the national hourly rate for an attorney).

[443] This is based on an estimate of the time required for a programmer analyst to modify the software to track the covered person status of a counterparty, including consultation with internal personnel, and an estimate of the time such personnel would require to ensure that these modifications conformed to the definition of ''covered person'' (as defined in proposed Rule 832). $14,802 = (2 hours × $399/hour national hourly rate for a compliance attorney) + (4 hours × $338/hour national hourly rate for a compliance manager) + (40 hours × $263/hour national hourly rate for a programmer analyst) + (4 hours × $250/hour national hourly rate for a senior internal auditor) + (2 hours × $566/hour rate for a Chief Financial Officer). The per-hour figures for compliance attorney, compliance manager, programmer analyst, and senior internal auditor are from SIFMA's Management & Professional Earnings in the Securities Industry—2013, as modified by Commission staff to adjust for inflation (through December 2021) and to account for an 1,800-hour work-year, and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead. The hourly rate for a Chief Financial Officer is the $473 hourly rate for the same position used in the Cross-Border Proposing Release (*see* 78 FR at 31140, n. 1425) and adjusted for inflation through December 2021.

[444] Total one-time costs per entity = $18,160 (compliance policy and procedure) + $14,802 (systems) = $32,962. Aggregate one-time costs = 87 entities × $32,962 = $2,867,694.

[445] *See* 17 CFR 242.907(a)(2) (requiring information to be submitted to SDRs in an ''open-source structured data format that is widely used by participants'').

[446] *See infra* note 424 and accompanying text.

Rule 10(b) of Regulation S–T.[447] The aforementioned costs are included among the costs for prospective SBSEF registrants in making limited changes to their systems, policies, and procedures to comply with proposed SEC rules that differ slightly from analogous CFTC rules, as discussed in further detail above.[448]

4. Reasonable Alternatives

The Commission considered a number of alternatives when formulating the proposed rules and amendments.

In developing proposed Regulation SE, the Commission considered the alternative of not harmonizing its rules with analogous CFTC rules. As discussed in sections II and XIX(B), the entities that are most likely to register with the Commission as SBSEFs are those already registered with the CFTC as SEFs. These entities have made substantial investments in systems, policies, and procedures to comply with and adapt to the regulatory system developed by the CFTC. Under the proposed approach of harmonizing with CFTC rules to the extent possible, dually registered entities could utilize their existing systems, policies, and procedures to comply with the Commission's SBSEF rules, and SEF market participants would face no or only incremental changes to trade SBS as well as swaps on those facilities, and to comply with the Commission's rules regarding SBS trading. Under the alternative approach whereby the Commission establishes different or additive requirements, dually registered entities and their market participants might need to incur costs and burdens to modify their systems, policies, and procedures to comply with the SEC-specific rules. Further, proposed requirements that are significantly different from the rules that apply to the swap market could cause SEFs to question whether it is economically viable to enter the SBS market and to register with the Commission as SBSEFs. The Commission preliminary believes that the proposed approach would deliver to the SBS market the regulatory benefits generated by the CFTC regulatory framework and help promote the trading of SBS on regulated platforms, while imposing only limited costs on SBSEFs. The Commission preliminarily believes that this trade-off is preferable to the trade-off associated with the alternative approach.

In formulating the proposed definition of ''block trade,'' the Commission considered the alternative of harmonizing the third prong of the proposed definition with the third prong of the CFTC definition of ''block trade.'' The third prong of the CFTC definition characterizes a block trade in a particular swap as having ''a notional or principal amount at or above the appropriate minimum block size applicable to such swap.'' As discussed in section VII(E), because SBS are not within the CFTC's jurisdiction, the CFTC has never considered what an appropriate minimum block size threshold would be for any SBS asset class. There is no CFTC-defined threshold with which to harmonize when formulating the third prong of the proposed definition of ''block trade.'' Accordingly, the Commission preliminarily believes that establishing a threshold tailored specifically for the SBS market is preferable to the alternative.

In formulating proposed Rule 804(a)(2), the Commission considered the alternative of proposing a one-business-day review of a self-certified SBS product before an SBSEF could list the product. This alternative would harmonize with the parallel provision in § 40.2(a).[449] The Commission preliminarily believes that a ten-business-day review period for self-certified SBS products before they can be listed strikes a reasonable balance between allowing SBSEFs to bring new products to market quickly while affording the Commission staff a reasonable period in which to assess them. The proposed ten-business-day review period for self-certified products also accords with the CFTC's ten-business-day review period for self-certified rules,[450] which the Commission is proposing to replicate in Rule 807(a)(3).[451] Thus, the Commission preliminarily believes the proposed approach is preferable to the alternative.

In formulating proposed Rule 825(c), which would require an SBSEF to publish a ''Daily Market Data Report'' on its website, the Commission considered the alternative of requiring SBSEFs to submit the information in such reports directly to the Commission. The Commission believes that the regulatory data that it is receiving pursuant to Regulation SBSR would generate the same information as that contained in such reports. Thus, the Commission preliminarily believes that the proposed approach is preferable to the alternative because it would relieve SBSEFs of the need to send daily reports to Commission while preserving the Commission's ability to be informed about SBSEF market activity via the regulatory data it receives pursuant to Regulation SBSR.

The Commission also considered the alternative of requiring a structured data language other than Inline XBRL for SBSEF filings. For example, the Commission could create an XML-based data language (*i.e.,* an XML schema) specific to SBSEF filings, similar to the XML schema to be used for Daily Market Data Reports under proposed Rule 825. The Commission preliminarily believes, however, that Inline XBRL would be more suitable for SBSEF filings to the Commission. As noted, unlike an XML schema that would be used under this alternative, Inline XBRL would provide the ability to tag detailed facts within narrative text blocks, and is thus likely more well-suited to accommodate the other filings required under proposed Regulation SE, many of which require narrative discussions (*e.g.,* the explanation and analysis of the product and its compliance with applicable provisions of the SEA for a product filing required under Rule 804). In addition, certain proposed SBSEF disclosures consist of financial information (*e.g.,* the financial statements of the SBSEF required under Exhibit I to Form SBSEF), and Inline XBRL is designed specifically for the accurate capture and communication of financial information, among other uses.[452]

Another alternative that the Commission considered is to require that an exemption order under proposed Rule 833(a) could apply to a foreign trading venue *only if* it traded SBS and no other types of securities. Under this alternative, an exemption order would be unavailable to a foreign trading venue that trades SBS and other types of securities. The Commission preliminarily believes, however, that this alternative is unnecessary. Other jurisdictions might have market structures where it is common to trade SBS and other types of securities on the same trading venue. The Commission preliminarily believes that it would be inequitable to disqualify such jurisdictions *ex ante* from qualifying for a Rule 833(a) exemption.

In connection with the proposed amendments to Rule 3a1–1, the

[447] *See* 17 CFR 232.10(b).

[448] *See infra* note 424 and accompanying text.

[449] *See* § 40.2(a)(2) (one condition for a valid self-certification of a product is that the CFTC has received the submission by the open of business on the business day preceding the product's listing).

[450] *See* § 40.6(a)(3) (one condition for a valid self-certification of a rule or rule amendment is that the CFTC has received the submission not later than the open of business on the business day that is ten business days prior to the SEF's implementation of the rule or rule amendment).

[451] *See infra* section VI(D).

[452] *See supra* section XIX(C)(2).

Commission considered the alternative of applying the retraction provisions of Rule 3a1–1(b) to SBSEFs and clearing agencies that are covered by proposed paragraphs (a)(4) and (a)(5), respectively, of Rule 3a1–1. Under this alternative, if a registered SBSEF or a registered clearing agency were to grow above a certain size, its exemption under proposed paragraph (a)(4) or (a)(5), respectively, could be retracted, forcing it to register as a national securities exchange.

The Commission preliminarily believes that, in adopting section 3D of the SEA, Congress gave the Commission a mechanism to regulate SBSEFs of any size. Nothing in section 3D suggests that, if an SBSEF were to grow above a certain size, the Commission should be able to withdraw that entity's ability to operate as an SBSEF and instead compel it to register as a national securities exchange. The Commission preliminarily believes that it is not necessary to apply the retraction provisions in Rule 3a1–1(b) to registered clearing agencies that engage in forced trading sessions and are covered by proposed Rule 3a1–1(a)(5). SBS transactions effected using this functionality are designed to facilitate the clearance and settlement process, and forced trading sessions are carried out by registered clearing agencies under rules that have been approved by the Commission. This trading functionality is not effected for the purpose of conducting open-market transactions. Therefore, the Commission preliminarily believes that it would not be appropriate to apply the retraction provisions of Rule 3a1–1(b) to clearing agencies that would be covered by proposed Rule 3a1–1(a)(5), as this would force these clearing agencies also to register as national securities exchanges. For the above reasons, the Commission preliminarily believes that the proposed approach is preferable to this alternative.

In connection with proposed Rule 15a–12, the Commission considered the alternative of not exempting SBSEF–Bs from section 17(a) of the SEA, *which requires a registered broker (among other types of registered entity) to make and keep records as prescribed by Commission rule.*[453] This approach would subject SBSEF–Bs to the full scope of the Commission's books and records rules under section 17(a). The Commission is proposing instead to utilize proposed Rule 15a–12 to exempt SBSEF–Bs from section 17(a), among other provisions applying to brokers, and instead to subject SBSEF–Bs to proposed new Rule 826, which derives its statutory authority from Core Principle 9 in section 3D of the SEA. This approach would allow the Commission to tailor a books and records rule specifically to the limited business as an SBSEF–B and to better harmonize with the books and records requirements of the CFTC to which the SBSEF–B would likely also be subject.

D. Effects on Efficiency, Competition, and Capital Formation

Proposed Regulation SE and the other proposed rules and rule amendments would likely affect competition, capital formation, and efficiency in various ways discussed below.

1. Competition

As discussed earlier, currently, the SBS market is dominated by a small group of SBS dealers.[454] A mandatory clearing determination by the Commission, followed by a MAT determination by one or more SBSEFs, should help foster greater competition in the trading of SBS by promoting greater order interaction and increasing participation on SBSEFs. Further, proposed rules that improve access to SBSEFs by market participants could increase participation and competition in liquidity provision in the SBS market.[455] To the extent that increased competition in liquidity provision reduces the price of liquidity provision (*e.g.,* bid-ask spread), market participants could benefit in terms of lower transaction costs.

2. Capital Formation

The Commission preliminary believes that the proposal could promote capital formation by helping to improve regulatory oversight and market integrity. Regulation SE would require, among other things, that SBSEFs maintain an audit trail and automated trade surveillance system; conduct real-time market monitoring; establish and enforce rules for information collection; and comply with reporting and recordkeeping requirements.[456] These requirements are designed to provide an SBSEF with sufficient information to oversee trading on its market, including detecting and deterring abusive trading practices.[457] The proposed audit trail and recordkeeping and reporting requirements, by providing the Commission access to information about SBSEFs, would increase the Commission's ability to assess risks in the SBS market and to oversee the market, which all else being equal should reduce the amount of risky or abusive behavior in the SBS market.[458] Further, proposed Rule 831, the proposed requirements relating to the CCO, would promote regulatory compliance on SBSEFs and the SBS market generally.[459] In addition, the proposal would provide for various safeguards to help promote market integrity, including proposed Rule 819(c) relating to impartial access to the SBSEF[460] and proposed Rule 830 relating to systems safeguards. Any resulting increase in regulatory oversight and market integrity likely would increase market participants' confidence in the soundness and fairness of SBSEFs, which in turn could spill over into increased confidence in the soundness and fairness of the SBS market more broadly. Such increased confidence could lead to the greater use of SBS, particularly those traded on SBSEFs, by corporate entities to hedge their business risks and investors to hedge their portfolio risks with respect to positions in underlying securities. To the extent that corporate entities can improve their hedging efficiency with SBS, they may divert resources from precautionary savings into productive assets, thereby promoting capital formation. To the extent that investors can improve their hedging efficiency with SBS, they may be more willing to invest in the underlying securities, which should facilitate capital raising and formation by issuers. Therefore, the Commission preliminarily believes that the proposed rules would help encourage capital formation.

By reducing the risk of trading disruptions on SBSEFs, proposed Rules 829 and 830 could lead to the greater use of SBS traded on SBSEFs. This in turn could promote capital formation as discussed above.

3. Efficiency

The Commission preliminarily believes that the proposed requirements with respect to pre-trade price transparency could lead to more efficient pricing in the SBS market. The proposed rules are designed to increase pre-trade price transparency for SBS, which should aid market participants in evaluating current market prices for

[453] 15 U.S.C. 78q(a).

[454] *See supra* section XIX(B)(2).

[455] *See supra* section XIX(C)(1) (discussing improved access and competition as an overarching benefit of the proposal).

[456] *See* proposed Rules 819, 821, 822, and 826.

[457] *See supra* section XIX(C)(1) (discussing improved oversight of trading by SBSEFs as an overarching benefit of the proposal).

[458] *See supra* section XIX(C)(1) (discussing improved Commission oversight as an overarching benefit of the proposal).

[459] *See supra* section XIX(C)(2) (discussing the benefits associated with proposed Rule 831).

[460] *See supra* note 455.

SBS, thereby furthering more efficient price discovery. Price transparency, coupled with increased competition in liquidity provision as discussed above,[461] could further decrease the spread in quoted prices, and thus could lead to higher efficiency in the trading of these securities.

The Commission recognizes the possibility that pre-trade price transparency could cause market participants to reveal more information about trading interest than they believe would be economically desirable. If market participants consider that pre-trade price transparency requirements are too burdensome and choose not to participate in the market, market efficiency could be reduced insofar as these market participants forgo any potential economic benefits that may have resulted from transacting in the SBS market. The Commission preliminarily believes that several factors mitigate such concerns. First, pursuant to proposed Rule 815(c)(2), an SBSEF may offer any execution method for Permitted Transactions. Thus, a market participant engaging in a Permitted Transaction may choose to use an execution method that reveals only the desired amount of information about trading interest. Second, pursuant to proposed Rule 815(a)(2), and as discussed earlier, an SBSEF would be required to offer two execution methods for Required Transactions (limit order book and RFQ-to-3). Thus, market participants have flexibility in the degree of pre-trade transparency they wish to employ, which should attenuate potential concerns associated with revealing too much information about trading interest.

The Commission preliminarily believes that the proposed Rules 829 and 830 may reduce the risk of trading disruptions on SBSEFs that may otherwise prevent market participants from impounding information into SBS prices through market activity (*e.g.,* order submission), and thus could improve the price efficiency in the SBS market.

F. Request for Comment

The Commission is requesting comment regarding the economic analysis set forth herein. To the extent possible, the Commission requests that market participants and other commenters provide supporting data and analysis with respect to the benefits, costs, and effects on competition, efficiency, and capital formation of adopting the proposed rules and amendments or any reasonable alternatives. In addition, the Commission asks commenters to consider the following questions:

212. What additional qualitative or quantitative information should the Commission include as part of the baseline for its economic analysis of the proposed rules and amendments?

213. What additional information can the Commission use to estimate the costs and benefits of implementing the proposed rules and amendments?

214. Has the Commission considered all relevant aspects of the proposed rules and amendments? Has the Commission accurately described the costs and benefits of the proposed rules and amendments? Why or why not? Please identify any other benefits associated with the proposed rules and amendments in detail. Please identify any costs associated with the proposed rules and amendments that the Commission has not identified. If possible, please provide quantification or data that would enable a quantification of such effects.

215. What are the economic effects of the discussed reasonable alternatives? Are there any additional reasonable alternatives that the Commission should include? If so, please identify such alternatives and any economic effects associated with such alternatives. If possible, please provide data that would enable a quantification of such effects.

216. The Commission preliminarily estimates that five CFTC-registered SEFs likely would register as SBSEFs. How many entities do you believe will seek to register with the Commission as SBSEFs? Of these, how many would be CFTC-registered SEFs seeking to be dually-registered SEF/SBSEFs and how many would be standalone SBSEFs?

217. Are SBS products being traded on unregistered SBSEFs? If so, please provide data on (1) the types of SBS that are being traded on unregistered SBSEFs; and (2) the volume of such SBS that are being traded on unregistered SBSEFs.

218. Does the Commission's description of SBS trade execution practices accurately capture the trade execution practices currently used in the trading of SBS? If not, please identify and describe the execution practices that are currently used to trade SBS.

219. What costs would CFTC-registered SEFs incur if they elect to register and operate as SBSEFs under proposed Regulation SE? Would these entities incur costs associated with the *de novo* formation of an SBSEF? Alternatively, would they incur costs associated with listing SBS products on their venues and making limited changes to their systems, policies, and procedures to the extent that the proposed rules differ from analogous CFTC rules? Are there other costs that have not been identified?

220. What would be the likely fees and costs associated with transacting on SBSEFs? What are the fees and costs associated with transacting on unregulated trading venues that exist in today's OTC derivatives market?

XX. Paperwork Reduction Act

Certain provisions of the proposed rules contain new ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[462] The Commission is submitting the proposed collection of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title of the new collection of information is ''Regulation SE.'' As proposed, Regulation SE would create a regime for the registration and regulation of SBSEFs and address other issues relating to SBS execution.

In addition, the Commission is proposing to amend Rule 3a–1 under the SEA to exempt a registered SBSEF from the statutory definition of ''exchange.'' Furthermore, the Commission is proposing new Rule 15a–12 under the SEA that, while affirming that an SBSEF also would be a broker under the SEA, would exempt a registered SBSEF from certain broker requirements under the SEA.

Proposed Regulation SE would include rules regarding the registration of a prospective SBSEF on Form SBSEF, the filing of new or amended rules or new products with the Commission, and rules harmonizing the Commission's SBSEF regime with the CFTC's parallel SEF regime.[463] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a currently valid OMB control number.

A. Summary of Collection of Information

The proposed rules and rule amendments would include a collection of information within the meaning of the PRA for SBSEFs that would be required to comply with Regulation SE and file a Form SBSEF with the

[461] *See supra* section XIX(D)(1).

[462] 44 U.S.C. 3501 *et seq.*

[463] *See supra* section III. As proposed, Regulation SE contains 36 separately designated rules (800 to 835, inclusive), which (if adopted) would be located in 17 CFR 242; a Form SBSEF (with instructions); and a submission cover sheet (with instructions). If adopted, the form and the submission cover sheet would be located in 17 CFR 249.

Commission. In addition, proposed Rule 833 would include a collection of information within the meaning of the PRA for persons that wish to seek an exemption order under that rule, and proposed Rule 834 would include a collection of information within the meaning of the PRA for SBS exchanges (in addition to SBSEFs).

Many of the proposed rules that comprise Regulation SE are modelled after analogous CFTC rules with only minor edits to reflect differences between the statutory regimes of the two agencies. Entities that are most likely to register with the Commission as SBSEFs are those already registered with the CFTC as SEFs. Such entities have made substantial investments in systems, policies, and procedures to comply with and adapt to the regulatory system developed by the CFTC. Harmonization would allow such dually-registered entities to utilize their existing systems, policies, and procedures to comply with the Commission's SBSEF rules, and SEF members would likely face only marginal additional burdens to trade SBS as well as swaps on those SEF/SBSEFs. In light of these factors, the Commission has based many of its paperwork burden estimates on CFTC burden estimates calculated for analogous CFTC rules. The CFTC estimated PRA burdens by aggregating the burdens produced by a group of related rules, as explained more fully in section XX(D) below. In most cases, the Commission has modelled its methodology, assumptions, and calculations on those of the CFTC, while making adjustments that reflect differences between the scale of the market for swaps relative to the market for SBS, such as the estimated number of SBSEFs, number of SBS market participants, and number of SBS transactions, as necessary.

The following is a summary of the rules contained in proposed Regulation SE.[464] The paperwork burdens associated with proposed Regulation SE are discussed in section XX(D) below.

Proposed rule number and title	Overview of proposed rule	Paperwork burden created?
800—Scope	would state that the provisions of this section shall apply to every SBSEF that is registered or is applying to become registered as an SBSEF under section 3D of the SEA.	No
801—Applicable provisions	would require an SBSEF to comply with all applicable Commission rules, including any related definitions and cross-referenced sections.	No
802—Definitions	Definitions	No
803—Requirements and procedures for registration.	would set out a process for registering with the Commission as an SBSEF, including the submission of Form SBSEF.	Yes
804—Listing products for trading by certification.	procedures by which an SBSEF, via self-certification, may list a product for trading	Yes [465]
805—Voluntary submission of new products for Commission review and approval.	procedures for voluntary submission of new products for Commission review and approval.	Yes
806—Voluntary submission of rules for Commission review and approval.	procedures for voluntary submission of new rules or rule amendments for Commission review and approval.	Yes
807—Self-certification of rules	whereby an SBSEF can implement a new rule or rule amendment via self-certification.	Yes
808—Availability of public information	would set out the information that will be made public with respect to applications to become an SBSEF as well as filings relating to rules and products.	No
809—Staying of certification and tolling of review period pending jurisdictional determination.	would provide for a stay of a product certification or tolling of a review period for a product where it is unclear whether the product should be classified as an SBS under the jurisdiction of the SEC or a swap under the jurisdiction of the CFTC pending the issuance of a joint interpretation by the SEC and CFTC clarifying which agency has jurisdiction over the product.	Yes
810—Product filings by SBSEFs that are not yet registered and by dormant SBSEFs.	would provide that an applicant for registration as an SBSEF may submit for Commission review and approval an SBS's terms and conditions or rules prior to listing the product as part of its application for registration.	Yes
811—Information relating to SBSEF compliance.	would provide that an SBSEF shall submit information to the Commission that the Commission requests, including demonstrations that the SBSEF is in compliance with one or more Core Principles, notification of a transfer 50% or more of the equity interest in the SBSEF, and information about pending legal proceedings.	Yes

[464] *See supra* section IV(A) (discussing proposed Rule 800); section IV(B) (discussing proposed Rule 801); section IV(C) (discussing proposed Rule 802); section V(A) (discussing the registration provisions contained in proposed Rule 803); section V(B) (discussing Form SBSEF); section VI(A) (discussing proposed Rule 804); section VI(B) (discussing proposed Rule 805); section VI(C) (discussing proposed Rule 806); section VI(D) (discussing proposed Rule 807); section VI(F) (discussing proposed Rule 808); section VI(G) (discussing proposed Rule 809); section VI(H) (discussing proposed Rule 810); section VII(A) (discussing proposed Rule 811); section VII(B) (discussing proposed Rule 812); section VII(C) (discussing proposed Rule 813); section VII(D) (discussing proposed Rule 814); section VII(E) (discussing proposed Rule 815); section VII(F) (discussing proposed Rule 816); section VII(G) (discussing proposed Rule 817); section VIII(A) (discussing proposed Rule 818); section VIII(B) (discussing proposed Rule 819); section VIII(C) (discussing proposed Rule 820); section VIII(D) (discussing proposed Rule 821); section VIII(E) (discussing proposed Rule 822); section VIII(F) (discussing proposed Rule 823); section VIII(G) (discussing proposed Rule 824); section VIII(H) (discussing proposed Rule 825); section VIII(I) (discussing proposed Rule 826); section VIII(J) (discussing proposed Rule 827); section VIII(K) (discussing proposed Rule 828); section VIII(L) (discussing proposed Rule 829); section VIII(M) (discussing proposed Rule 830); section VIII(N) (discussing proposed Rule 831); section IX(A) (discussing proposed Rule 832); section IX(B) (discussing proposed Rule 833); section X (discussing proposed Rule 834); section XI (discussing the notice required by proposed Rule 835); section XII (discussing proposed amendments to Rule 3a1–1); section XIII (discussing proposed Rule 15a-12); section XVI (discussing new rules and proposed amendments to the Commission's Rules of Practice).

[465] Each of the filings that would be required by proposed Rules 804 through 807, 809, and 816 would have to include a submission cover sheet that is also being proposed herein. Because the cover sheet is an integral part of the filing—it is the mechanism whereby an SBSEF would inform the Commission what type of filing is enclosed—the paperwork burdens for the cover sheet are not estimated separately from the paperwork burden of the substantive filing.

Proposed rule number and title	Overview of proposed rule	Paperwork burden created?
812—Enforceability	would provide that a transaction entered into on or pursuant to the rules of an SBSEF shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable because of a violation by the SBSEF of section 3D of the SEA or the Commission's rules thereunder; also would require an SBSEF to provide each counterparty to a transaction on the SBSEF with a written record of all the terms of the transaction that were agreed to on the SBSEF.	Yes
813—Prohibited use of data collected for regulatory purposes.	would provide that an SBSEF shall not use for business or marketing purposes any proprietary data or personal information that it collects or receives, from or on behalf of any person, for the purpose of fulfilling its regulatory obligations, without such person's consent; also would require the SBSEF not to condition access to its markets on such consent and provide that the SBSEF may, where necessary for regulatory purposes, share such data or information with other registered SBSEFs or exchanges.	No
814—Entity operating both a national securities exchange and SBSEF.	would provide that an entity that intends to operate both a national securities exchange and an SBSEF shall separately register the two facilities pursuant to section 6 of the SEA and Rule 803, respectively; also would provide that a national securities exchange shall, to the extent that the exchange also operates an SBSEF and uses the same electronic trade execution system, identify whether electronic trading of SBS is taking place on or through the national securities exchange or the SBSEF.	No
815—Methods of execution for Required and Permitted Transactions.	would provide that a Required Transaction must be executed on an SBSEF through an order book or RFQ system, whereas a Permitted Transaction can be executed in any manner; also would require an SBSEF to maintain rules and procedures that facilitate the resolution of error trades and that an SBSEF shall not generally disclose the identity of a counterparty to an SBS that is executed anonymously and intended to be cleared.	Yes
816—Trade execution requirement and exemptions therefrom.	would set out a process and standards for an SBSEF to MAT an SBS; also would establish certain exemptions from the trade execution requirement.	Yes
817—Trade execution compliance schedule.	would provide that an SBS transaction shall be required to be executed on an SBS exchange or SBSEF upon the later of a determination by the Commission that the SBS is required to be cleared and 30 days after a MAT determination submission or certification for that SBS is approved or certified, respectively.	No
818—Core Principle 1 (Compliance with Core Principles).	would require a registered SBSEF to comply with the SEA's Core Principles for SBSEFs.	Yes
819—Core Principle 2 (Compliance with rules).	would require a registered SBSEF to establish, comply with, and enforce its own rules—including rules regarding market access; rules governing trading, trade processing, and participation that will deter abuses; rules governing the operation of the SBSEF; and rules to capture and retain an audit trail—and have the capacity to detect, investigate, and enforce those rules; also would require an SBSEF to establish rules that generally prohibit employees from trading any covered interest or disclosing any material, non-public information obtained as a result of their employment by the SBSEF; also would require an SBSEF to maintain in effect rules that render a person ineligible to serve on the SBSEF's disciplinary committees, arbitration panels, oversight panels, or governing board who has been found to have committed enumerated offenses.	Yes
820—Core Principle 3 (SBS not readily susceptible to manipulation).	would require that SBSEF to permit trading only in SBS that are not readily susceptible to manipulation.	Yes
821—Core Principle 4 (Monitoring of trading and trade processing).	would require an SBSEF to establish and enforce rules detailing trading and trade processing procedures, and to monitor trading and market activity to prevent manipulation, price distortion, and delivery or settlement disruptions; also would require an SBSEF to demonstrate that it has access to sufficient information to assess whether trading on its market or in the underlying assets or indexes is being used to affect prices on its market.	Yes
822—Core Principle 5 (Ability to obtain information).	would require an SBSEF to establish and enforce rules that would allow it to obtain any information necessary to comply with section 3D of the SEA and to provide that information to the Commission on request.	Yes
823—Core Principle 6 (Financial integrity of transactions).	would require an SBSEF to establish and enforce rules for ensuring the financial integrity of SBS on its facility, including the clearance and settlement of the SBS; also would require that SBS that are required to be cleared shall be cleared by a registered clearing agency (or a clearing agency that has obtained an exemption from clearing agency registration to provide central counterparty services for SBS), that the SBSEF provide for minimum financial standards for its members, and that the SBSEF monitor its members for compliance with those standards.	Yes
824—Core Principle 7 (Emergency authority).	would require an SBSEF to adopt rules to provide for the exercise of emergency authority, in order for the SBSEF to maintain fair and orderly trading and prevent or address manipulation or disruptive trading practices.	Yes
825—Core Principle 8 (Timely publication of trading information).	would require an SBSEF to make public timely information on price, trading volume, and other trading data on SBS transactions, as required by Regulation SBSR, and to publish on its website a Daily Market Data Report.	Yes

Proposed rule number and title	Overview of proposed rule	Paperwork burden created?
826—Core Principle 9 (Recordkeeping and reporting).	would set forth recordkeeping and reporting obligations for SBSEFs and require an SBSEF to maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years.	Yes
827—Core Principle 10 (Antitrust considerations).	would provide that, unless necessary or appropriate to achieve the purposes of the SEA, an SBSEF shall not adopt any rules or take any actions that result in any unreasonable restraint of trade or impose any material anticompetitive burden on trading or clearing.	No
828—Core Principle 11 (Conflicts of interest).	would require an SBSEF to establish and enforce rules to minimize conflicts of interest in its decision-making process and establish a process for resolving such conflicts.	Yes
829—Core Principle 12 (Financial resources).	would require an SBSEF to have adequate financial, operational, and managerial resources to discharge its responsibilities; also would set forth the standards used to calculate the adequacy of such resources; and require certain reports to the Commission.	Yes
830—Core Principle 13 (System safeguards).	would require an SBSEF to establish and maintain a program of automated systems and risk analysis to identify and minimize sources of operational risk, through the development of appropriate controls and procedures; also would require an SBSEF to establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery; conduct periodic tests to verify those resources are sufficient; and notify the Commission promptly of any cyber incidents and material planned changes to the SBSEF's systems safeguards.	Yes
831—Core Principle 14 (Designation of CCO).	would require an SBSEF to designate a CCO and set forth regulatory and reporting obligations for the CCO.	Yes
832—Cross-border mandatory trade execution.	would explain when the SEA's trade execution requirement applies to a cross-border SBS transaction.	No
833—Cross-border exemptions	would provide for a process by which the Commission, upon making the requisite findings, could grant exemptions from the SEA definitions of ''exchange,'' ''security-based swap execution facility,'' and ''broker'' and exempt cross-border SBS from the SEA's trade execution requirement.	Yes
834—Mitigation of conflicts of interest of SBSEFs and SBS exchanges.	would provide that each SBSEF and SBS exchange must create and maintain rules to mitigate conflicts of interest between SBSEFs and SBS exchanges and their members, including by prohibiting members from owning 20% or more of the voting securities of an SBSEF or SBS exchange, and from exercising disproportionate influence in disciplinary proceedings; also would require each SBSEF and SBS exchange to submit to the Commission after every governing board election a list of each governing board's members, the groups they represent, and how the composition of the board complies with the requirements of Rule 834.	Yes
835—Notice to Commission by SBSEF of final disciplinary action or denial or limitation of access.	would provide that, if an SBSEF issues a final disciplinary action against a member, denies or conditions membership, or denies or limits access of a person to any services offered by the SBSEF, the SBSEF shall file a notice of such action with the Commission within 30 days and serve a copy on the affected person.	Yes
3a1–1 proposed amendments	would exempt from the SEA definition of ''exchange'' a registered SBSEF that provides a market place for no securities other than SBS, and an entity that has registered with the Commission as a clearing agency and limits its exchange functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations.	No
15a–12—Exemption for certain SBSEFs from certain broker requirements.	would exempt a registered SBSEF from certain broker requirements while affirming that an SBSEF is a broker under the SEA.	No
Proposed rules and amendments to the Commission's Rules of Practice.	new rules and amendments to the Rules of Practice to allow persons who are aggrieved by a final disciplinary action, a denial or conditioning of membership, or a denial or limitation of access by an SBSEF to seek an application for review by the Commission.	No **

** The Commission finds, in accordance with section 553(b)(3)(A) of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(3)(A), that the proposed revisions to the Commission's Rules of Practice relate solely to agency organization, procedure, or practice. They are therefore not subject to the provisions of the APA requiring notice, opportunity for public comment, and publication. However, the Commission believes that it would be useful to publish the rules for notice and comment. To the extent that these rules relate to agency information collections during the conduct of administrative proceedings, they are exempt from review under the PRA.

B. Proposed Use of Information

1. Registration Requirements and Form SBSEF

Proposed Regulation SE would impose various requirements relating to SBSEF registration, which are set forth in proposed Rule 803.[466]

The information collected pursuant to these proposed rules would enhance the ability of the Commission to determine whether to approve the registration of an entity as an SBSEF; to monitor and oversee SBSEFs; to determine that SBSEFs initially comply, and continue to operate in compliance, with the SEA, including the Core Principles applicable to SBSEFs; to carry out its statutorily mandated oversight functions; and to maintain accurate and updated information regarding SBSEFs. Because

[466] *See, e.g.,* proposed Rule 803(b)(1) (requiring an entity that wishes to register with the Commission as an SBSEF to submit a Form SBSEF).

the registration information would be publicly available, it could also be useful to an SBSEF's members, other market participants, other regulators, and the public generally.

2. Requirements for SBSEFs To Establish Rules

Various provisions of proposed Regulation SE would require SBSEFs to establish certain rules, policies, and procedures to comply with applicable requirements of the SEA and the Commission's rules thereunder.[467] The rules also would help an SBSEF's members to understand and comply with requirements of the SBSEF.

3. Reporting Requirements for SBSEFs

Various provisions of proposed Regulation SE would require SBSEFs and certain other persons to submit reports or provide specified information.[468] This information generally would be used by the Commission in its oversight of SBSEFs and the SBS markets; certain of the information to be collected could be used by market participants to confirm their SBS transactions.

4. Recordkeeping Required Under Regulation SE

Proposed Regulation SE would require an SBSEF to keep specified records.[469] The audit trail information required to be maintained under proposed Regulation SE would aid the SBSEF in detecting and deterring fraudulent and manipulative acts with respect to trading on its market, as well as help it to fulfill the statutory requirement in Core Principle 4 that an SBSEF monitor trading in SBS, including through comprehensive and accurate trade reconstructions. In addition, Commission access to these records would provide a valuable tool to help the Commission carry out its oversight responsibility over SBSEFs and the SBS markets in general.

5. Timely Publication of Trading Information Requirement for SBSEFs

Proposed Regulation SE would impose certain publication burdens on SBSEFs in proposed Rule 825.[470]

The requirement contained in proposed Rule 825 that an SBSEF have the capacity to electronically capture, transmit, and disseminate information on price, trading volume, and other trading data on all SBS executed on or through the SBSEF would assist the SBSEF in carrying out its regulatory responsibilities under the SEA and enable the SBSEF to comply with reasonable requests to provide information to others. Furthermore, proposed Rule 825 would require an SBSEF to publish a Daily Market Data Report that is designed to provide market observers with a daily snapshot of market activity on the SBSEF.

6. Rule Filing and Product Filing Processes for SBSEFs

Proposed Regulation SE would establish various filing requirements applicable to SBSEFs. Proposed Rules 804 and 805 would provide mechanisms for an SBSEF to submit filings for new products that they seek to list either through a self-certification process or by voluntarily requesting approval of the Commission, respectively. Proposed Rules 806 and 807 would require an SBSEF to submit new rule or rule amendments either through a self-certification process or by voluntarily requesting approval of the Commission, respectively.

Proposed Rule 808 would address the public availability of certain information in an application to register as an SBSEF and SBSEF filings made under the self-certification procedures or pursuant to Commission review and approval. Proposed Rule 809 would establish procedures for addressing a situation where an SBSEF wishes to list a product and it is unclear whether the product is an SBS or swap (*i.e.,* whether it properly falls under the jurisdiction of the SEC or the CFTC). Proposed Rule 810 would provide that an applicant for registration as an SBSEF may submit for Commission review and approval an SBS's terms and conditions or rules prior to listing the product as part of its application for registration.

The information that would be collected under proposed Rules 804 and 805 would help the Commission assess whether an SBS listed by an SBSEF complies with relevant provisions of the SEA. In addition, this information would assist the Commission in overseeing the SBSEF's compliance with its regulatory obligations generally and to learn about developments in the SBS product market. Proposed Rules 804 and 805 also would provide a mechanism whereby market participants, other SBSEFs, other regulators, and the public generally could learn what products an SBSEF intends to list, and to obtain information regarding such products.

The information that would be collected under proposed Rules 806 and 807 would help the Commission assess whether a new rule or rule amendment of an SBSEF complies with relevant provisions of the SEA, and assist the Commission in overseeing the SBSEF's compliance with its regulatory obligations generally. Proposed Rules 806 and 807 also would provide a mechanism whereby an SBSEF's members (and prospective members) could learn what new rules or rule amendments the SBSEF intends to apply in its market.

The information collected under proposed Rules 809 and 810 would help the Commission assess an SBSEF's compliance with relevant provisions of the SEA, and assist the Commission in overseeing the SBSEF's compliance with its regulatory obligations. This information also would be useful to the SBSEF's members, because they would be subject to such new or amended rules or products and thus would have an interest in learning about those rules or products. Other market participants, other SBSEFs, and other regulators, as well as the public generally, may find information about proposed new or amended rules or products useful.

7. Requirements Relating to the CCO

Proposed Regulation SE includes Rule 831 that would set out requirements relating to an SBSEF's CCO.

The information that would be collected under proposed Rule 831 would help ensure compliance by SBSEFs with relevant provisions of the SEA and assist the Commission in overseeing SBSEFs generally. The Commission could use the annual compliance report to help it evaluate whether an SBSEF is carrying out its statutorily-mandated regulatory obligations and, among other things, to discern the scope of any denials of access or refusals to grant access by the SBSEF and to obtain information on the status of the SBSEF's regulatory compliance program. The SBSEF's fourth-quarter financial report would provide the Commission with important information on the financial health of the SBSEF.

[467] *See, e.g.,* proposed Rule 819(a)(2) (requiring an SBSEF to establish and enforce trading, trade processing, and participation rules).

[468] *See, e.g.,* proposed Rule 829 (requiring an SBSEF, quarterly or upon Commission request, to provide the Commission a report that includes the amount of financial resources necessary to meet the requirements of Rule 829).

[469] *See* proposed Rule 826 (requiring an SBSEF to maintain records of all activities relating to the business of the facility, including a complete audit trail, and to report information to the Commission upon request).

[470] *See* proposed Rule 825 (requiring an SBSEF to make publicly available a ''Daily Market Data Report'').

8. Surveillance Systems Requirements for SBSEFs

The proposed rules that would require an SBSEF to maintain surveillance systems and to monitor trading[471] are designed to promote compliance by an SBSEF with its obligations under the SEA to oversee trading on its market, and to prevent manipulation and other unlawful activity or disruption of its market.

C. Respondents

The respondents subject to the collection of information burdens associated with proposed Regulation SE would be: (1) SBSEFs (and entities wishing to register with the Commission as SBSEFs); (2) in the case of Rule 833, persons that seek an exemption order under that rule; and (3) in the case of Rule 834, SBS exchanges.

Currently there are no registered SBSEFs. Based on the number of SEFs registered with the CFTC that trade index CDS (the closest analog to single-name CDS, which is likely to be the product most frequently traded on SEC-registered SBSEFs) and general industry information, the Commission preliminarily estimates that five entities will seek to register as SBSEFs and thus become subject to the collection of information requirements of these proposed rules.

The Commission preliminarily estimates that three persons would request exemption orders under one or both paragraphs[472] of proposed Rule 833.[473] The CFTC has granted three exemptions similar to those contemplated by proposed Rule 833,[474] which suggests that the number of jurisdictions having organized trading venues for swap and SBS products that overlap with products traded on similar venues in the United States is not large.

The Commission preliminarily estimates that three entities will operate as SBS exchanges. These are likely to be existing national securities exchanges that, in the future, seek to list SBS and thereby become SBS exchanges.

The Commission considered whether any provision of proposed Regulation SE would impose any burdens (as defined in the PRA) on SBSEF members, but has determined that they would not.

D. Total Annual Reporting and Recordkeeping Burden

1. Overview

The CFTC, based on experience gained in developing rules for SEFs and regulating the SEF market, over the years has developed, refined, and received approval from OMB for paperwork burden hours estimates, both for SEF rules directly as well as for ancillary rules on which various rules in proposed Regulation SE are modelled.[475] Those estimates are presented in the form of aggregate totals for compliance with:

- *Part 37 of the CFTC regulations* regarding initial registration requirements applicable to SEFs;
- *Part 37* regarding other requirements applicable to SEFs, including the statutory Core Principles;
- *Part 40 of the CFTC regulations* regarding requirements applicable to SEFs (and other CFTC-registered entities); and
- *§§ 1.60(a), 1.60(c), 1.60(e), 36.1, 1.59, 1.63, 1.67, 15.05, 1.37(c), 1.64, and 1.69* regarding requirements applicable to SEFs (and other CFTC-registered entities).

The rules applicable to SBSEFs would be, with limited exceptions discussed above, substantively similar to those applicable to SEFs. Therefore, the Commission is basing its preliminary estimates for the paperwork burdens for SBSEFs on the CFTC's paperwork burden calculations for analog rules that apply to SEFs, which have been approved by OMB.[476] However, in certain cases, the paperwork burdens estimated by the CFTC are scaled down for SBSEFs to account for the likelihood that there will be fewer SBSEFs than SEFs and the SBS business of dually registered SEF/SBSEFs is likely to be smaller than the swap business.

Although there are minor differences between the CFTC rules and the proposed Commission rules, the Commission does not believe it needs to substantially deviate from the CFTC's estimates of aggregated burden hours for compliance (beyond scaling back the CFTC's estimates to account for fewer SBSEFs than SEFs, and the smaller size of the SBS market relative to the swap market). These minor differences between the CFTC's existing rules for SEFs and the Commission's proposed rules for SBSEFs are prompted, in some cases, by minor differences between the statutory provisions that apply to SEFs under the CEA and the statutory provisions that apply to SBSEFs under the SEA, or, in other cases, by differences between the swap market and SBS market. In either case, however, the Commission preliminarily anticipates that the burdens on SBSEFs would be substantially similar to the burdens set out in the CFTC estimates,

[471] *See, e.g.,* proposed Rule 819(d)(3) (requiring an SBSEF to establish and maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring).

[472] *See supra* note 254.

[473] The Commission anticipates that such persons could include foreign SBS trading venues, foreign authorities that license and regulate those trading venues, or covered persons (as defined in proposed Rule 832) who are members of such trading venues.

[474] *See supra* note 244.

[475] *See* Core Principles and Other Requirements for Swap Execution Facilities (May 17, 2013), 78 FR 33476, 33548–49 (June 4, 2013) (Final Rule PRA for CFTC part 37); Swap Execution Facility Requirements (November 27, 2020), 85 FR 82313, 82324 (December 18, 2020) (Final Rule PRA for § 36.1); Core Principles and Other Requirements for Swap Execution Facilities: OMB Control Number 3038–0074 Supporting Statements (last updated July 26, 2021), available at *https://omb.report/omb/3038-0074* (PRA Supporting Statements for CFTC Core Principles for SEFs, § 36.1); Provisions Common to Registered Entities (July 19, 2011), 76 FR 44776, 44789–90 (July 27, 2011) (Final Rule PRA for CFTC part 40); part 40, Provisions Common to Registered Entities: OMB Control Number 3038–0093 Supporting Statements (last updated February 24, 2021), available at *https://omb.report/omb/3038-0093* (PRA Supporting Statements for CFTC part 40, § 36.1); Notification of Pending Legal Proceedings: OMB Control Number 3038–0033 Supporting Statements (last updated August 24, 2018), available at *https://omb.report/omb/3038-0033* (PRA Supporting Statements for §§ 1.60(a), (c), and (e)); Adaptation of Regulations To Incorporate Swaps (October 16, 2012), 77 FR 66288, 66306–08 (November 2, 2012) (Final Rule PRA for §§ 1.59 and 1.37(c)); Recordkeeping (May 23, 2017), 82 FR 24479, 24485 (May 30, 2017) (Final Rule PRA for § 1.31); Adaptation of Regulations to Incorporate Swaps-Exclusion of Utility Operations-Related Swaps with Utility Special Entities from De Minimis Threshold: OMB Control Number 3038–0090 Supporting Statements (last updated July 1, 2020), available at *https://omb.report/omb/3038-0090* (PRA Supporting Statements for §§ 1.31, 1.37(c), 1.59, and 1.67); Service on Self-Regulatory Organization Governing Boards or Committees by Persons with Disciplinary Histories (February 27, 1990), 55 FR 7884, 7890 (March 6, 1990) (Final Rule PRA for § 1.63); Final Rule and Rule Amendments Concerning Composition of Various Self-Regulatory Organization Governing Boards and Major Disciplinary Committees (June 29, 1993), 58 FR 37644, 37653 (July 13, 1993) (Final Rule PRA for § 1.64); Voting by Interested Members of Self-Regulatory Organization Governing Boards and Committees (December 23, 1998), 64 FR 16, 22 (January 4, 1999) (Final Rule PRA for § 1.69); Rules Pertaining to Contract Markets and Their Members: OMB Control Number 3038–0022 Supporting Statements (last updated December 21, 2010), available at *https://omb.report/omb/3038-0022* (PRA Supporting Statements for §§ 1.63, 1.64, and 1.69); Swap Data Recordkeeping and Reporting Requirements (December 20, 2011), 77 FR 2136, 2171–76 (January 13, 2012) (Final Rule PRA for § 45.2); Swap Data Recordkeeping and Reporting Requirements: OMB Control Number 3038–0096 Supporting Statements (last updated March 16, 2021), available at *https://omb.report/omb/3038-0096* (PRA Supporting Statements for § 45.2); Repeal of the Exempt Commercial Market and Exempt Board of Trade Exemptions (September 28, 2015), 80 FR 59575, 59576 (October 2, 2015) (Final Rule PRA for § 15.05).

[476] Proposed Rule 835, which would require SBSEFs to file with the Commission notices of final disciplinary actions and denials and limitations of access, is not based on a CFTC rule but rather on an existing Commission rule that imposes a similar filing requirement on SROs. Therefore, the Commission is utilizing the burden estimates in its rulemaking for SROs to estimate the burdens of this rule for SBSEFs.

which serve as the basis for the Commission's estimates.[477] Furthermore, the Commission preliminarily believes that basing the burden estimates for SBSEFs on the CFTC's estimates for SEFs would be more accurate than using burden hours estimates for any other entity that the Commission currently regulates (*e.g.,* national securities exchanges) because SBSEFs share many more similarities with SEFs than they do with any other SEC-registered entities.

The Commission anticipates that most if not all entities that seek to register with the Commission as SBSEFs will also register, or will already be registered, with the CFTC as SEFs. With a few exceptions, the rules being proposed by the Commission are adapted from existing rules of the CFTC. With these proposed rules, the Commission intends to obtain comparable regulatory benefits as the CFTC rules while imposing only marginal additional burdens on SEF/SBSEFs. However, for purposes of its PRA analysis, the Commission will estimate the burdens as if a respondent were subject only to the Commission's rules.[478] The Commission requests comments on its entire proposed approach to estimating burden hours.[479]

2. Aggregate Burdens for Rules Modelled After CFTC Part 37 Rules

a. Registration Requirements for SBSEFs and Form SBSEF

A submission by an entity wishing to register with the Commission as an SBSEF would be required to be made on Form SBSEF, pursuant to proposed Rule 803, on a one-time basis. The Commission preliminarily estimates that five entities initially would seek to register with the Commission as SBSEFs. The Commission estimates the burdens of proposed Rule 803 and Form SBSEF to be 1,475 hours. These entities would incur initial, one-time burdens, because once an entity is registered as an SBSEF, its registration obligations are complete. The Commission's estimate regarding the initial burden that an entity would incur to file a Form SBSEF is informed by the estimates made by the CFTC for the completion of Form SEF and compliance with § 37.3 of the CFTC regulations (which governs registration of SEFs). Proposed Form SBSEF would request almost exactly the same information as required by Form SEF. Proposed Rule 803 is substantially similar to § 37.3. The CFTC has estimated that the initial compliance burden associated with its registration requirements in § 37.3 and Form SEF to be 295 hours per SEF applicant.[480] For purposes of calculating burden hours, the CFTC considered the entire SEF application process to constitute a single information collection; the Commission is utilizing the same approach for SBSEFs. The Commission preliminarily believes that SBSEFs would prepare Form SBSEF internally. The Commission requests comment on the accuracy of this estimate.

b. Ongoing Compliance With Other Requirements That Are Similar to the Remainder of Part 37

The Commission preliminarily estimates the aggregate ongoing annual hour burden for compliance with all of the proposed SBSEF rules that have analogs in part 37 to be 1,935 hours.[481] The CFTC has estimated that the compliance burden for all of the sections of part 37 combined, other than the initial burden of 295 hours per SEF for registration-related compliance discussed above, to be an ongoing annual burden of 387 hours per SEF.[482] With exception of § 37.600, which implements a CEA Core Principle for SEFs relating to position limits that is not in the SEA, every other section of part 37 has an analog in proposed Regulation SE that is substantively similar.[483] Therefore, the Commission preliminarily estimates that the aggregate CFTC estimate of 387 hours per SEF per year serves as a reasonable estimate for the annual hourly burden on each SBSEF.

As discussed in more detail below, certain SBSEF rules proposed in Regulation SE are derived from other parts of the CFTC rules (*e.g.,* part 40) and the burdens for those section will be based on the appropriate burden hours of the corresponding CFTC part. For reference, the following table lists all sections of part 37 and the corresponding proposed SBSEF rule. Please see above for more detailed descriptions of a particular proposed SBSEF rule.

CFTC part 37 section (387 aggregate burden hours per SEF not including § 37.3 (registration)	Topic	Analogous SBSEF Rule No. (387 aggregate burden hours per SBSEF not including proposed Rule 803 (registration) and certain other rules not modelled on part 37 rules (discussed separately in the following sections)
37.1	scope	800.
37.2	applicable provisions	801.
37.4	procedures for listing products	810.
37.5	compliance	811.

[477] The Commission notes that, when the CFTC adopted the SEF rules in 2013, the CFTC took a similar approach to burden hours estimation. The CFTC relied on the aggregate burden hours for three types of entities that it regulated (DCMs, derivatives transaction execution facilities, and certain exempt commercial markets) and applied those burden hours to SEFs unadjusted, even though there are differences between the regulations that govern SEFs and those that govern the other entities. The CFTC noted that those entities, like SEFs, were subject to certain statutory core principles and rules thereunder, and despite variations in the applicable regulations, it was still appropriate to use the average aggregate burden number for those entities as the estimate for SEFs without adjustment. *See* CFTC, *Core Principles and Other Requirements for Swap Execution Facilities,* 78 FR at 33548–51.

[478] However, the Commission will note instances where a proposed rule would require an SBSEF to generate the same paperwork that is already being created pursuant to a CFTC rule. In such cases, compliance with the existing CFTC requirement would satisfy the proposed SEC requirement, and in reality there would be few or perhaps even zero marginal burdens imposed on dually registered SEF/SBSEFs.

[479] The burden hours discussed below represent annual/ongoing burdens, with three exceptions that represent initial, one-time burdens: registration burdens for SBSEFs under proposed Rule 803, exemption requests regarding foreign SBS trading venues under proposed Rule 833, and certain rules under proposed Rules 834(b) and (c).

[480] *See* OMB, Supporting Statement for New and Revised Information Collections: Core Principles and Other Requirements for Swap Execution Facilities, OMB Control Number 3038–0074, Attachment A (July 7, 2021), available at *https://omb.report/icr/202107-3038-004/doc/113431800.pdf.*

[481] 1,935 hours = 387 hours (annual burden per respondent) × 5 (number of respondents).

[482] *See* OMB, Supporting Statement for New and Revised Information Collections, OMB Control Number 3038–0074, at 8 (estimating that on a net basis the total burden hours imposed on each SEF will be 387 hours).

[483] As discussed previously, portions of the CFTC guidance have been incorporated into certain rules being proposed by the Commission in Regulation SE. The CFTC guidance clarifies portions of its rules by suggesting means for compliance and does not fundamentally alter those rules. Therefore, the Commission believes that no adjustments to the CFTC estimates, on which the Commission is basing its own estimates, would be appropriate despite adapting that guidance into the Commission's proposed rules.

CFTC part 37 section (387 aggregate burden hours per SEF not including § 37.3 (registration)	Topic	Analogous SBSEF Rule No. (387 aggregate burden hours per SBSEF not including proposed Rule 803 (registration) and certain other rules not modelled on part 37 rules (discussed separately in the following sections)
37.6	enforceability	812.
37.7	prohibited use of data	813.
37.8	entities operating as SEFs and DCMs	814.
37.9	methods of execution	815.
37.10	process to make swaps available for trade	816.
37.11	reserved section	not applicable.
37.12	trade execution compliance schedule	817.
37.100	CP 1 (compliance with Core Principles)	818 (CP1).
37.200 through 37.206	CP 2 (compliance with rules)	819 (CP2).
37.300 through 37.301	CP 3 (manipulation)	820 (CP3).
37.400 through 37.408	CP 4 (monitoring of trading and trade processing)	821 (CP4).
37.500 through 37.504	CP 5 (ability to obtain information)	822 (CP5).
37.600 through 37.601	CP 6 (position limits)	no equivalent requirement in the SEA; CP numbering diverges after this point.
37.700 through 37.703	CP 7 (financial integrity of transactions)	823 (CP6).
37.800 through 37.801	CP 8 (emergency authority)	824 (CP7).
37.900 through 37.901	CP 9 (publication of trading information)	825 (CP 8).
37.1000 through 37.1001	CP 10 (recordkeeping and reporting)	826 (CP 9).
37.1100 through 37.1101	CP 11 (anti-trust)	827 (CP10).
37.1200	CP 12 (conflicts of interest)	828 (CP 11).
37.1300 through 37.1307	CP 13 (financial resources)	829 (CP 12).
37.1400 through 37.1401	CP 14 (system safeguards)	830 (CP 13).
37.1500 through 1501	CP 15 (CCO)	831 (CP 14).
Appendix A (Form SEF)	Form SEF	Form SBSEF.[484]
Appendix B	Guidance relating to Core Principles	guidance incorporated throughout proposed rules 818 through 831.

3. Aggregate Burdens for Rules Modelled on CFTC Part 40 Rules

A number of rules contained in Proposed Regulation SE are modelled after rules in part 40 of the CFTC's rules, including §§ 40.2 (Listing products for trading by certification), 40.3 (Voluntary submission of new products for Commission review and approval), 40.5 (Voluntary submission of rules for Commission review and approval), and 40.6 (Self-certification of rules). The Commission is proposing Rules 804, 805, 806, and 807—which are closely modelled on §§ 40.2, 40.3, 40.5, and 40.6, respectively—in order to harmonize with the procedures that the CFTC applies to SEFs with respect to establishing new rules and listing products. In addition, proposed Rule 808 is modelled after § 40.8 and would provide that certain information in a Form SBSEF application or a rule or product filing would be made publicly available, notwithstanding the SBSEF's request for confidential treatment. Proposed Rule 809 is loosely modelled after § 40.12 and would set forth a mechanism for a tolling of the period for consideration of a product pending the issuance by the SEC and the CFTC of joint interpretation clarifying which agency has jurisdiction over the product.

a. Rule and Product Filing Processes for SBSEFs

Under proposed Rules 804 and 805, an SBSEF would be required to submit filings for new products that it seeks to list. Under proposed Rules 806 and 807, an SBSEF would be required to submit rule filings for new rules or rule amendments, including changes to a product's terms or conditions. The Commission's estimate regarding the burdens that an SBSEF would incur to comply with the proposed rule and product filing processes in proposed Rules 804, 805, 806, and 807 is informed by the estimates made by the CFTC for compliance with §§ 40.2, 40.3, 40.5, and 40.6, the burden hours for which have been approved by OMB.[485] The Commission is estimating a total of five SBSEF respondents. The Commission preliminarily estimates that the aggregate ongoing annual hourly burden for all SBSEFs to prepare and submit rule and product filings under proposed Rules 804, 805, 806, and 807 (including the cover sheet)[486] would be 300 hours.

Based on the CFTC's experience with SEFs, the Commission estimates that on average an SBSEF would incur an ongoing annual burden of 2 hours of work per rule or product filing. Although the CFTC estimated an average of 100 responses per year per respondent,[487] the Commission believes that an estimate of 30 responses is appropriate given the more limited scope of the SBS market, as opposed to the swap market. This would result in a total estimated ongoing annual burden of 60 hours per respondent[488] and 300 hours for all the respondents

[484] The burdens of registering using Form SBSEF are discussed in the previous section.

[485] *See* 75 FR 67282 (November 2, 2010) (CFTC proposal to amend 17 CFR 40.2 through 40.5); OMB, Supporting Statement for Information Collection Renewal: OMB Control Number 3038–0093, Attachment A (July 10, 2020), available at *https://omb.report/icr/202005-3038-001/doc/101274002.pdf* (noting the estimated average number of hours to burden hours report is 2 hours, and the number of annual responses from each entity is 100).

[486] Each of the filings that would be required by proposed Rules 804 through 807 would have to include a submission cover sheet that is modelled on the cover sheet and instructions used by SEFs in conjunction with analogous filings with the CFTC, with the submitting entity checking the appropriate box to indicate which type of the filing it is making. Any burden hours attributable to a respondent completing this cover sheet, which is an integral part of the filing, are not estimated separately from the paperwork burden of the substantive filing. Instead, they are contained within the aggregate burden hours estimate for rule and product filings pursuant to proposed Rules 804 through 807, which are based upon the CFTC's estimates. *See supra* note 465.

[487] *See id.*

[488] 60 hours = 30 (number of responses per year per respondent) × 2 hours (burden per response).

annually.[489] The Commission solicits comments regarding the accuracy of its estimates.

b. Burdens Related to Rules Modelled After Other Part 40 Rules

i. Rule 802

Certain definitions contained in proposed Rule 802 are modelled after provisions of part 40. These definitions would not result in any paperwork burden.

ii. Rule 809

Proposed Rule 809 is loosely modelled on § 40.12 of the CFTC's rules and would apply in situations where an SBSEF wishes to list a product and it is unclear whether the product should be classified as an SBS subject to the jurisdiction of the SEC or a swap subject to the jurisdiction of the CFTC. Proposed Rule 809 would provide that a product certification made by an SBSEF pursuant to proposed Rule 804 shall be stayed, or the review period for a product that has been submitted for Commission approval by an SBSEF pursuant to proposed Rule 805 shall be tolled, upon request for a joint interpretation of whether the product is a swap, SBS, or mixed swap made pursuant to Rule 3a68–2 under the SEA [490] by the SBSEF, the SEC, or the CFTC.

Proposed Rule 809 itself does not include a process for determining whether the SEC or CFTC has jurisdiction over a product. Proposed Rule 809 would enable the SEC to stay or toll the product filing while the SEC and CFTC consider a joint interpretation under existing SEA Rule 3a68–2, the burden hours of which have already been approved by OMB.[491] The only burden imposed on an SBSEF under Rule 809 would be checking a box on the submission cover sheet if the SBSEF intends to request a joint interpretation from the Commission and the CFTC pursuant to SEA Rule 3a68–2.[492] The Commission preliminarily estimates that each such indication would impose a burden of 0.25 hours. Furthermore, the Commission preliminarily estimates that each SBSEF would make one such indication per year.[493] Accordingly, the aggregate ongoing annual burden for all SBSEFs to comply with Rule 809 would be 1.25 hours.[494] The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

4. Aggregate Burdens for Rules Modelled After CFTC Rules Other Than Parts 37 and 40

The proposed rules similar to rules of the CFTC other than part 37 and part 40 are proposed Rules 811(d), 816(e), 819(h), 819(i), 819(j), 819(k), 826(f), and 834. These proposed rules generate various categories of burdens for SBSEFs or market participants.

a. Rule 811(d)

Section 1.60 of the CFTC's rules requires a SEF to provide the CFTC with copies of any legal proceeding to which it is a party, or to which its property or assets is subject.

Paragraph (d) of proposed Rule 811 would adapt paragraphs (a), (c), and (e) of § 1.60 to apply to SBSEFs. Paragraph (d)(1) would require an SBSEF to provide the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the SBSEF is a party or its property or assets is subject. Paragraph (d)(2) would require an SBSEF to provide notices of similar actions against any officer, director, or other official of the SBSEF from conduct in such person's capacity as an official of the SBSEF alleging violations of certain enumerated actions.

The Commission preliminarily estimates that an SBSEF would provide the information required by proposed Rule 811(d) once per year, and that each submission would take 0.20 hours. Thus, the Commission preliminarily estimates that the aggregate ongoing annual burden for all SBSEFs to comply with requests for documents or information pursuant to proposed Rule 811(d) would be 1 hour.[495] The Commission is basing its estimate on the CFTC estimate included in its submission to OMB for § 1.60 of the CFTC's rules, for which the CFTC estimated that each of the 79 entities to which the rule applies makes, on average, one submission of documents to the Commission per year. The CFTC further estimated that the time required to prepare one submission is approximately 0.20 hour, totaling 15.8 hours (79 × 0.20) annually.[496]

For PRA purposes, the Commission preliminarily believes that it is reasonable to apply the CFTC's approach to proposed Rule 811(d). The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

b. Rule 819(h)

Paragraph (h) of proposed Rule 819 generally would prohibit persons who are employees of an SBSEF, or who otherwise might have access to confidential information because of their role with the SBSEF, from improperly utilizing that information. Proposed Rule 819(h) is modelled on § 1.59 of the CFTC's rules. The Commission does not believe that this proposed rule would result in a paperwork burden.

c. Rule 819(i)

Paragraph (i) of proposed Rule 819 would bar persons with specified disciplinary histories from serving on the governing board or committees of an SBSEF, and impose certain other duties on the SBSEF associated with that fundamental requirement. Proposed Rule 819(i) is modelled on § 1.63 of the CFTC's rules.

[489] 300 hours = 60 hours (annual burden per respondent pursuant to proposed Rules 804, 805, 806, and 807) × 5 (number of respondents).

[490] 17 CFR 240.3a68–2.

[491] OMB recently approved an extension without change of the collection for Rule 3a68–2. *See* Supporting Statement for the Paperwork Reduction Act New Information Collection Submission for Rule 3a68–2 (Interpretation of Swaps, Security-Based Swaps, and Mixed Swaps) and Rule 3a68–4(c) (Process for Determining Regulatory Treatment for Mixed Swaps), OMB Control Number 3235–0685, Supporting Statement A (December 23, 2021), available at *https://omb.report/icr/202112-3235-018/doc/117438500.pdf.*

[492] *See supra* section VI(E).

[493] The Commission preliminarily believes that the establishment of a registration regime and listing procedures for SBSEFs could affect the distribution, but likely not the total number, of requests for joint interpretations under Rule 3a68–2 of the SEA. SBS products may be developed in the bilateral market before they are listed on SBSEFs, and there are incentives to resolving jurisdictional issues before they can develop traction in the market. Accordingly, requests for a joint interpretation under Rule 3a68–2 could occur before such products are listed by an SBSEF, and such requests are already considered in the approved PRA burden estimates for Rule 3a68–2.

[494] 1.25 hours = 1 (number of responses per year per respondent) × 0.25 hours (burden per response) × 5 (number of respondents).

[495] 1 (number of responses per year per respondent) × 0.20 hours (burden per response) × 5 (number of respondents) = 1 hour.

[496] *See* OMB, Supporting Statement for New and Revised Information Collections: OMB Control Number 3038–0033 (August 23, 2018), available at *https://omb.report/icr/201808-3038-004/doc/85625801.pdf.*

The Commission preliminarily estimates that an SBSEF would provide the information required by proposed Rule 819(i) once per year, and that each submission would take 79.83 hours. Thus, the Commission preliminarily estimates that the aggregate ongoing annual burden for all SBSEFs to comply with proposed Rule 819(i) would be 399.15 hours.[497] The Commission is basing its estimate on the one that the CFTC included in its submission to OMB for its adoption of § 1.63, where the CFTC estimated that each respondent would make, on average, one submission to the CFTC per year. The CFTC further estimated that the time required to prepare one submission is approximately 79.83 hours.[498]

For PRA purposes, the Commission preliminarily believes that it is reasonable to apply the CFTC's approach to proposed Rule 819(i), and that this work would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

d. Rule 819(j)

Paragraph (j) of proposed Rule 819 is modelled on § 1.67 of the CFTC's rules. Rule 819(j)(1) would provide that, upon any final disciplinary action in which an SBSEF finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer, the SBSEF must promptly provide written notice of the disciplinary action to the member.

The Commission preliminarily estimates that an SBSEF would need 0.5 hours to prepare a notice and provide it to a member. This estimate is based on a previous Commission estimate for the time that it would take to prepare and submit a simple notice.[499] The Commission estimates that these notices would occur once per year at each SBSEF, resulting in an aggregate ongoing annual burden to comply with proposed Rule 819(j) of 2.5 hours.[500] The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

e. Rule 819(k)

Paragraph (k) of proposed Rule 819 would require non-U.S. persons who trade on an SBSEF to have an agent for service process, which could be an agent of its own choosing or, by default, the SBSEF. Proposed Rule 819(k) is modelled on provisions of § 15.05 of the CFTC's rules that apply to SEFs. The Commission does not believe that this proposed rule would result in a paperwork burden.

f. Rule 826(f)

Proposed Rule 826(f) is modelled on § 1.37(c) and would require an SBSEF to keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any non-U.S. member that executes transactions on the SBSEF and must, upon request, provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such non-U.S. member.

The Commission preliminarily estimates that each SBSEF would need to update information required by Rule 826(f) once per year and that each submission would take 0.4 hours. Thus, the Commission preliminarily estimates that the aggregate ongoing annual burden for all SBSEFs to comply with requests for documents or information pursuant to proposed Rule 826(f) would be 2 hours.[501] The Commission is basing its estimate on the estimate included by the CFTC in its submission to OMB regarding § 1.37(c), where the CFTC estimated that it would take a SEF 0.4 hours to prepare each record in accordance with § 1.37(c).

For PRA purposes, the Commission preliminarily believes that it is reasonable to apply the CFTC's approach to proposed Rule 826(f). The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

g. Rule 834

Proposed Rule 834 of Regulation SE would implement section 765 of the Dodd-Frank Act with respect to SBSEFs and SBS exchanges and, in addition, adapt certain CFTC rules that are designed to mitigate conflicts of interest at SEFs (and other CFTC-registered entities). Proposed Rule 834 would provide that each SBSEF and SBS exchange must create and maintain rules to mitigate conflicts of interest between SBSEFs and SBS exchanges and their members, including by prohibiting members from owning 20% or more of the voting rights of an SBSEF or SBS exchange and from exercising disproportionate influence in disciplinary proceedings. Proposed Rule 834 also would require each SBSEF and SBS exchange to submit to the Commission after every governing board election a list of each governing board's members, the groups they represent, and how the composition of the board complies with the requirements of Rule 834. Establishing such rules and submitting such lists to the Commission would result in a paperwork burden for SBSEFs and SBS exchanges.

The Commission preliminarily estimates that proposed Rules 834(b) and (c) together would have an initial, one-time paperwork burden of 15 hours per entity associated with drafting and implementing any such rules, for an aggregate one-time paperwork burden of 120 hours.[502] Proposed Rules 834(b) and (c) are substantially similar to proposed Rule 702(c) of Regulation MC.[503] In its PRA analysis for proposed Rule 702(c), the Commission estimated that there would be a one-time paperwork burden of 15 hours per entity associated with drafting and implementation of any such rules by each SBSEF or SBS exchange.[504]

Additionally, the Commission preliminarily estimates that proposed Rule 834(d), proposed Rule 834(e), and proposed Rule 834(f), combined, would result in an aggregate ongoing annual paperwork burden of 10 hours.[505] Proposed Rules 834(d), (e), and (f) are substantially similar to proposed Rule 702(h) in Regulation MC in 2010[506] and CFTC § 1.64(c)(4), CFTC § 1.64(b), and CFTC § 1.64(d), respectively. The Commission is basing its estimate on the

[497] 1 (number of responses per year per respondent) × 79.83 hours (burden per response) × 5 (number of respondents) = 399.15 hours.

[498] *See* CFTC, *Service on Self-Regulatory Organization Governing Boards or Committees by Persons with Disciplinary Histories* (February 27, 1990), 55 FR 7884, 7890 (March 6, 1990) (final rule PRA for § 1.63).

[499] Proposed Rule 819(j) would not address any of the requirements or process concerning taking final disciplinary actions; it merely would require that a notice be provided. A provision of Regulation SCI, Rule 1000(b)(4)(i), also requires providing a simple notice and the Commission estimated that it would take 0.5 hours to prepare and such a notice. *See Regulation Systems Compliance and Integrity; Final Rule,* SEA Release No. 73639 (November 19, 2014), 79 FR 72251, 72381 (December 5, 2014).

[500] 2.5 hours (0.5 hours of in-house counsel time) × (1 responses per year) × (5 respondents). The once per year estimate is based on a previous CFTC estimate included in its submission to OMB for § 1.67 along with other rules.

[501] 1 (number of responses per year per respondent) × 0.40 hours (burden per response) × 5 (number of respondents) = 2 hours.

[502] 1 (number of responses per respondent) × 15 hours (burden per response) × 8 (5 SBSEFs + 3 SBS exchanges) = 120 hours.

[503] Regulation MC Proposal, 75 FR at 65916.

[504] *See id.*

[505] 10 hours = 1 (number of responses per respondent) × 1.25 hours (burden per response) × 8 (number of SBSEF + SBS exchange respondents).

[506] Regulation MC Proposal, 75 FR at 65932.

CFTC's estimate that Rules 1.41(d),[507] 1.63, 1.64, and 1.67 would result in an average annual paperwork burden of 1.25 hours per response that was included in its submission to OMB.[508]

The Commission preliminarily estimates that proposed Rule 834(g) would have an aggregate ongoing annual burden of 16 hours.[509] Proposed Rule 834(g) is substantially similar to § 1.69 of the CFTC's rules, and the Commission is basing its estimate on the CFTC's estimate for § 1.69 of 2 hours per response that was included in its submission to OMB.[510]

The Commission does not believe that proposed Rule 834(h) would result in a paperwork burden not already included in the above estimates. Proposed Rule 834(h) collates into a single rule the requirements for an SBSEF to file rules to comply with proposed Rule 834. As it has already described the paperwork burdens of proposed Rules 834(b) through (g), the Commission does not believe that proposed Rule 834(h) would result in a separate paperwork burden not already included above. Thus, the total aggregate ongoing annual burden is estimated at 26 hours.[511]

5. Miscellaneous Burdens

a. Rule 833

Proposed Rule 833 would describe how exemptions could be obtained for foreign SBS trading venues from the SEA definitions of ''exchange,'' ''security-based swap execution facility,'' and ''broker'' and how SBS executed on a foreign trading venue could become exempt from the SEA's trade execution requirement. Based on the CFTC's experience in the SEF market,[512] the Commission preliminarily estimates that there would be three requests for an exemption order under either or both paragraphs (a) and (b) of Rule 833 in the first year and 2 requests in each subsequent year; and that each submission would require an initial, one-time burden of 80 hours. Once an exemption has been granted to an applicant, no further action is required. The Commission preliminarily estimates the burden to submit an exemption request under one or both paragraphs of proposed Rule 833 would be 240 hours in the first year[513] and 160 hours in each subsequent year.[514] The Commission solicits comment as to the accuracy of these estimates.

b. Rule 835

Proposed Rule 835 would provide that, if an SBSEF issues a final disciplinary action against a member, takes final action with respect to a denial or conditioning membership, or takes final action with respect to a denial or limitation of access of a person to any services offered by the SBSEF, the SBSEF shall file a notice of such action with the Commission within 30 days and serve a copy on the affected person.

The Commission preliminarily estimates that it would take 0.5 hours to prepare this notice and provide it to the Commission and the affected person. This estimate is based on a previous Commission estimate for the time that it would take to prepare and submit a simple notice.[515] The Commission preliminarily believes that it would take an additional 0.25 hours to create and serve a copy of that notice on the affected person. The Commission estimates that these notices would occur once per month at each SBSEF, resulting in an aggregate annual burden to comply with proposed Rule 835 of 45 hours.[516] The Commission believes that this work, should it be required, would be conducted internally. The Commission solicits comment as to the accuracy of these estimates.

6. Total Paperwork Burden Under Proposed Regulation SE

Based on the foregoing, the Commission preliminarily estimates that the total one-time burden for all SBSEFs, persons that seek an exemption order under proposed Rule 833, and SBS exchanges combined pursuant to the requirements under Regulation SE is equal to 1,995 hours. The Commission preliminarily estimates that annual ongoing burden for all SBSEFs, persons that seek an exemption order under proposed Rule 833, and SBS exchanges combined pursuant to the requirements under Regulation SE is equal to 2,711.9 hours.

SUMMARY OF AGGREGATE BURDEN HOURS

Proposed rule or provision	Burden hours per respondent	One-time or ongoing	Respondents	Total hours
Registration (Rule 803, Form SBSEF)	295	One-Time	5	1,475
Rules modelled on CFTC part 37 (other than registration)	387	Ongoing	5	1,935
Rule and product filing processes (Rules 804 through 807)	60	Ongoing	5	300
809	0.25	Ongoing	5	1.25
811(d)	0.2	Ongoing	5	1
819(i)	79.83	Ongoing	5	399.15
819(j)	0.5	Ongoing	5	2.5
826(f)	0.4	Ongoing	5	2
833	80	One-Time	[517] 3 & 2	240 & 160

[507] While § 1.41(d) created an exemption from the requirements of section 5a(a)(12)(A) of the CEA for contract market rules not related to terms and conditions, the CFTC did not break out the portion of the burden hours for which this amendment is responsible. Therefore, to be conservative, the Commission is including it in its estimate for the burden hours of proposed Rules 834(d), (e), and (f).

[508] *See* 58 FR 37644, 37653.

[509] 16 hours = 1 (number of responses per respondent) × 2 hours (burden per response) × 8 (number of SBSEF + SBS exchange respondents).

[510] *See* 64 FR at 16, 22.

[511] 26 hours = 10 hours (from the second sentence of proposed Rules 834(d), 834(e), and 834(f)) + 16 hours (from proposed Rule 834(g)) + 0 hours (from proposed Rule 834(h).

[512] *See supra* note 244.

[513] 240 hours (80 hours of in-house counsel time) × (3 respondents).

[514] 160 hours (80 hours of in-house counsel time) × (2 respondents). This estimate is informed by Rule 908(c) of the Commission's Regulation SBSR, which sets forth the requirements surrounding requests under which regulatory reporting and public dissemination of SBS transactions can be satisfied by complying with the rules of a foreign jurisdiction rather than the parallel rules applicable in the United States. The materials necessary to support such a request under Rule 908(c) are broadly similar to the materials necessary to support a request for an exemption order under one or both paragraphs of proposed Rule 833. The Commission estimated that the burden of a request under Rule 908(c) would be 80 hours of in-house counsel time; therefore, the Commission preliminarily estimates that burden for submitting documents and information in support of a request for an exemption order under Rule 833 would be the same.

[515] A provision of Regulation SCI, Rule 1000(b)(4)(i), also requires providing a simple notice and the Commission estimated that it would take 0.5 hours to prepare and such a notice. *See Regulation Systems Compliance and Integrity; Final Rule,* SEA Release No. 73639 (November 19, 2014), 79 FR 72251, 72381 (December 5, 2014).

[516] 45 hours (0.75 hours of in-house counsel time) × (12 responses per year) × (5 respondents).

[517] Three respondents in the first year and then two each subsequent year.

SUMMARY OF AGGREGATE BURDEN HOURS—Continued

Proposed rule or provision	Burden hours per respondent	One-time or ongoing	Respondents	Total hours
834(b) through (c)	15	One-Time	8	120
834(d) through (g)	3.25	Ongoing	8	26
835	9	Ongoing	5	45

E. Collection of Information Is Mandatory

The collections of information imposed on SBSEFs throughout Regulation SE would be mandatory for registered SBSEFs. The collection of information with respect to proposed Rule 833 would be mandatory for persons that seek an exemption order under Rule 833. The collection of information with respect to proposed Rule 834 would be mandatory for SBS exchanges.

F. Responses to Collection of Information Will Not Be Confidential

The collection of information required under Regulation SE would generally not be kept confidential, unless confidential treatment is requested and granted by the Commission pursuant to Rule 24b–2 under the SEA.

G. Retention Period of Recordkeeping Requirements

Although recordkeeping and retention requirements have not yet been established for SBSEFs, the Commission is authorized to adopt such rules under section 3D of the SEA. Proposed Rule 826 under Regulation SE would implement section 3D(d)(9) of the SEA to require an SBSEF to maintain records, for a minimum of five years, of all activities relating to the business of the SBSEF, including a complete audit trail.

H. Request for Comment

The Commission solicits comment on all aspects of its PRA estimates regarding the above, particularly the following:

221. Please provide any data or analysis bearing on whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

222. Do you believe that the Commission's estimate of the burden of the proposed collections of information is accurate? Why or why not? If not, what aspects (in your view) require adjustment? To the extent possible, please provide data to support your contention.

223. Do you believe that there are ways to enhance the quality, utility, and clarity of the information proposed to be collected? If so, please describe.

224. Do you believe that there are ways to minimize the burden of collection of information on respondents, including through the use of automated collection techniques or other forms of information technology? If so, please describe.

225. Do you believe that the proposed rules and amendments would have any effects on any other collection of information not previously identified in this section? If so, please describe and quantify to the extent feasible.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments 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 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. S7–14–22. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for the materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–14–22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. As OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

XXI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'')[518] requires Federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) of the Administrative Procedure Act,[519] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities.''[520] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment which, if adopted, would not have a significant economic impact on a substantial number of small entities.[521]

A. SBSEFs

Most of proposed Regulation SE, and the related rules and rule amendments, would apply to registered SBSEFs (or entities that are seeking to register with the Commission as SBSEFs). In the Dodd-Frank Act, Congress defined SBSEFs as a new type of trading venue for SBS and mandated the registration of these entities. Based on its understanding of the market, and review of and consultation with industry sources, the Commission preliminarily estimates that five entities will seek to

[518] 5 U.S.C. 601 *et seq.*

[519] 5 U.S.C. 603(a).

[520] Although section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10 under the SEA, 17 CFR 240.0–10. *See* SEA Release No. 18452 (January 28, 1982), 47 FR 5215 (February 4, 1982) (File No. AS–305).

[521] *See* 5 U.S.C. 605(b).

register as SBSEFs and thus would be subject to Regulation SE and the related rules and rule amendments.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less;[522] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the SEA,[523] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[524] Under the standards adopted by the Small Business Administration (''SBA''), entities in financial investments and related activities[525] are considered small entities if they have $41.5 million or less in annual receipts.

The Commission preliminarily believes that most, if not all, SBSEFs would be large business entities or subsidiaries of large business entities, and that every SBSEF (or its parent entity) would have assets in excess of $5 million and annual receipts in excess of $41,500,000. Therefore, the Commission preliminarily believes that none of the potential SBSEFs would be considered small entities.

B. Persons Requesting an Exemption Order Pursuant to Rule 833

Proposed Rule 833 would describe how foreign SBS trading venues could become exempt from the SEA definitions of ''exchange,'' ''security-based swap execution facility,'' and ''broker'' and how SBS executed on a foreign trading venue could become exempt from the SEA's trade execution requirement. Based on the fact that the CFTC has granted similar exemptions with respect to three foreign jurisdictions,[526] the Commission preliminarily estimates that there would be three requests under one or both paragraphs of proposed Rule 833 in the first year and two in each subsequent year. These requests would likely be submitted by foreign SBS trading venues, foreign authorities that license and regulate those trading venues, or covered persons (as defined in proposed Rule 832) who are members of such trading venues.

Based on the Commission's existing information about the SBS market, the Commission preliminarily believes that no person likely to request an exemption order pursuant to proposed Rule 833 would be considered a small entity. The Commission preliminarily believes that most, if not all, of the persons requesting exemptions would be large business entities or subsidiaries of large business entities, and on its own, or through its parent entity, would have assets in excess of $5 million (or in the case of a broker-dealer, total capital of less than $500,000) and annual receipts in excess of $41,500,000. Therefore, the Commission preliminarily believes that they would not be considered small entities.

C. SBS Exchanges

Certain rules under proposed Regulation SE would apply to SBS exchanges. Currently, there are no SBS exchanges. However, the Commission preliminarily estimates that there could be up to three entities would be considered SBS exchanges and would thus be subject to certain requirements of proposed Regulation SE.

For purposes of Commission rulemaking in connection with the RFA, a small entity includes, when used with reference to an exchange, an exchange that has been exempted from the reporting requirements of Rule 601 of Regulation NMS[527] and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[528] Under the standards adopted by the SBA, entities involved in financial investments and related activities[529] are considered small entities if they have $41.5 million or less in annual receipts.

Based on these definitions and the Commission's existing information about national securities exchanges, the Commission preliminarily believes that the entities likely to be considered SBS exchanges would not be considered small entities. Under the standard requiring exemption from the reporting requirements of Rule 601 under the SEA, none of the exchanges subject to the proposed Regulation SE is a ''small entity'' for the purposes of the RFA. In addition, the Commission preliminarily believes that any SBS exchange would have annual receipts in excess of $41,500,000. Therefore, the Commission preliminarily believes that no potential SBS exchange would be considered small entities.

D. Certification

For the foregoing reasons, the Commission certifies that the proposed rules, form, and cover sheet under Regulation SE and the related rules and rule amendments, if adopted, would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission invites commenters to address whether the proposed rules would have a significant economic impact on a substantial number of small entities, and, if so, what would be the nature of any impact on small entities. The Commission requests that commenters provide empirical data to illustrate the extent of the impact.

XXII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, (''SBREFA''),[530] the Commission requests comment on the potential effect of the proposed Regulation SE, and related proposed rules and rule amendments under the SEA, on the United States economy on an annual basis. The Commission also requests comment on any potential increases in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

Statutory Authority

Pursuant to the SEA (particularly Sections 3(b), 3C, 3D, and 36 thereof, 15 U.S.C. 78c, 78c–3, 78c–4, and 78mm,

[522] *See* 17 CFR 240.0–10(a).

[523] 17 CFR 240.17a–5(d).

[524] *See* 17 CFR 240.0–10(c).

[525] These entities would include firms involved in investment banking and securities dealing; securities brokerage; commodity contracts dealing; commodity contracts brokerage; securities and commodity exchanges; portfolio management; investment advice; trust, fiduciary and custody activities; miscellaneous intermediation; and miscellaneous financial investment activities. *See* SBA's Table of Small Business Size Standards, Subsector 523.

[526] *See supra* note 244.

[527] 17 CFR 242.601.

[528] *See* 17 CFR 240.0–10(e).

[529] These entities would include firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities. *See* SBA's Table of Small Business Size Standards, Subsector 523.

[530] 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).

respectively) and the Dodd-Frank Act (particularly section 765 thereof, 15 U.S.C. 8343), the Commission is proposing to amend §§ 201.101, 201.202, 201.210, 201.401, 201.450, 201.460, 232.405, and 240.3a1–1 of chapter II of title 17 of the Code of Federal Regulations and is proposing new §§ 201.442, 201.443, 240.15a–12, and 242.800 through 242.835, as set forth below.

List of Subjects

17 CFR Part 201

Administrative practice and procedure.

17 CFR Part 232

Administrative practice and procedure, Confidential business information, Incorporation by reference, Reporting and recordkeeping requirements, Securities.

17 CFR Part 240

Brokers, Dealers, Registration, Securities.

17 CFR 242 and 249

Brokers, Security-based swap execution facilities, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission is proposing to amend title 17, chapter II of the Code of the Federal Regulations as follows:

PART 201—RULES OF PRACTICE

■ 1. The authority citation for part 201, subpart D, is revised to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78c–4, 78d–1, 78d–2, 78l, 78m, 78n, 78o(d), 78o–3, 78s, 78u–2, 78u–3, 78v, 78w, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, 80b–12, 7202, 7215, and 7217.

§ 201.101 Definitions.

■ 2. Amend § 201.101 by adding paragraph (a)(9)(ix) to read as follows:

* * * * *

(a) * * *

(9) * * *

(ix) By the filing, pursuant to § 201.442, of an application for review of a determination of a security-based swap execution facility;

* * * * *

■ 3. Amend § 201.202 by revising paragraph (a) to read as follows:

§ 201.202 Specification of procedures by parties in certain proceedings.

(a) *Motion to specify procedures.* In any proceeding other than an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, a proceeding to review a determination of the Board pursuant to §§ 201.440 and 201.441, or a proceeding to review a determination by a security-based swap execution facility pursuant to §§ 201.442 and 201.443, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding with particular reference to:

(1) Whether there should be an initial decision by a hearing officer;

(2) Whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(3) Whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective.

* * * * *

■ 4. Amend § 201.210 by revising the paragraph (a) heading, paragraph (a)(1), paragraph (b) heading, paragraph (b)(1), and paragraph (c) introductory text to read as follows:

§ 201.210 Parties, limited participants and amici curiae.

(a) *Parties in an enforcement or disciplinary proceeding, a proceeding to review a self-regulatory organization determination, a proceeding to review a Board determination, or a proceeding to review a determination by a security-based swap execution facility*—(1) *Generally.* No person shall be granted leave to become a party or a non-party participant on a limited basis in an enforcement or disciplinary proceeding, a proceeding to review a determination by a self-regulatory organization pursuant to §§ 201.420 and 201.421, a proceeding to review a determination by the Board pursuant to §§ 201.440 and 201.441, or a proceeding to review a determination by a security-based swap execution facility pursuant to §§ 201.442 and 201.443, except as authorized by paragraph (c) of this section.

* * * * *

(b) *Intervention as party*—(1) *Generally.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, a proceeding to review a Board determination, or a proceeding to review a security-based swap execution facility determination, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. No person, however, shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) of this section would be inadequate for the protection of the person's interests. In a proceeding under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors, may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding.

* * * * *

(c) *Leave to participate on a limited basis.* In any proceeding, other than an enforcement proceeding, a disciplinary proceeding, a proceeding to review a self-regulatory determination, a proceeding to review a Board determination, or a proceeding to review a security-based swap execution facility determination, any person may seek leave to participate on a limited basis as a non-party participant as any matter affecting the person's interests:

* * * * *

■ 5. Amend § 201.401 by adding paragraph (f) to read as follows:

§ 201.401 Consideration of stays.

* * * * *

(f) *Lifting of stay of action by a security-based swap execution facility*—(1) *Availability.* Any person aggrieved by a stay of action by a security-based swap execution facility entered in accordance with § 201.442(c) may make a motion to lift the stay. The Commission may, at any time, on its own motion determine whether to lift the automatic stay.

(2) *Summary action.* The Commission may lift a stay summarily, without notice and opportunity for hearing.

(3) *Expedited consideration.* The Commission may expedite consideration of a motion to lift a stay of action by a security-based swap execution facility, consistent with the Commission's other responsibilities. Where consideration is expedited, persons opposing the lifting of the stay may file a statement in opposition within two days of service of the motion requesting lifting of the stay unless the Commission, by written order, shall specify a different period.

■ 6. Add § 201.442 to read as follows:

§ 201.442 Appeal of determination by security-based swap execution facility.

(a) *Application for review; when available.* An application for review by the Commission may be filed by any person who is aggrieved by a determination of a security-based swap execution facility with respect to any:

(1) Final disciplinary action, as defined in § 240.835(b)(1);

(2) Final action with respect to a denial or conditioning of membership, as defined in § 240.835(b)(2); or

(3) Final action with respect to a denial or limitation of access to any service offered by the security-based swap execution facility, as defined in § 240.835(b)(2).

(b) *Procedure.* An aggrieved person may file an application for review with the Commission pursuant to § 201.151 within 30 days after the notice filed with the Commission pursuant to § 242.835 by the security-based swap execution facility of the determination is received by the aggrieved person. The aggrieved person shall serve the application on the security-based swap execution facility at the same time. The application shall identify the determination complained of, set forth in summary form a statement of alleged errors in the action and supporting reasons therefor, and state an address where the applicant can be served. The application should not exceed two pages in length. If the applicant will be represented by a representative, the application shall be accompanied by the notice of appearance required by § 201.102(d). Any exception to an action not supported in an opening brief that complies with § 201.450(b) may, at the discretion of the Commission, be deemed to have been waived by the applicant.

(c) *Stay of determination.* Filing an application for review with the Commission pursuant to paragraph (b) of this section operates as a stay of the security-based swap execution facility's determination, unless the Commission otherwise orders either pursuant to a motion filed in accordance with § 201.401(f) or upon its own motion.

(d) *Certification of the record; service of the index.* Within 14 days after receipt of an application for review, the security-based swap execution facility shall certify and file electronically in the form and manner specified by the Office of the Secretary one unredacted copy of the record upon which it took the complained-of action.

(1) The security-based swap execution facility shall file electronically with the Commission one copy of an index of such record in the form and manner specified by the Commission, and shall serve one copy of the index on each party. If such index contains any sensitive personal information, as defined in paragraph (d)(2) of this section, the security-based swap execution facility also shall file electronically with the Commission one redacted copy of such index, subject to the requirements of paragraph (d)(2).

(2) *Sensitive personal information* includes a Social Security number, taxpayer identification number, financial account number, credit card or debit card number, passport number, driver's license number, State-issued identification number, home address (other than city and State), telephone number, date of birth (other than year), names and initials of minor children, as well as any unnecessary health information identifiable by individual, such as an individual's medical records. Sensitive personal information shall not be included in, and must be redacted or omitted from, all filings.

(i) *Exceptions.* The following information may be included and is not required to be redacted from filings:

(A) The last four digits of a financial account number, credit card or debit card number, passport number, driver's license number, and State-issued identification number;

(B) Home addresses and telephone numbers of parties and persons filing documents with the Commission; and

(C) Business telephone numbers.

(ii) [Reserved]

(e) *Certification.* Any filing made pursuant to this section, other than the record upon which the action complained of was taken, must include a certification that any information described in paragraph (d)(2) of this section has been omitted or redacted from the filing.

■ 7. Add § 201.443 to read as follows:

§ 201.443 Commission consideration of security-based swap execution facility determinations.

(a) *Commission review other than pursuant to an application for review.* The Commission may, on its own initiative, order review of any determination by a security-based swap execution facility that could be subject to an application for review pursuant to § 201.442(a) within 40 days after the security-based swap execution facility provided notice to the Commission thereof.

(b) *Supplemental briefing.* The Commission may at any time before issuing its decision raise or consider any matter that it deems material, whether or not raised by the parties. The Commission will give notice to the parties and an opportunity for supplemental briefing with respect to issues not briefed by the parties where the Commission believes that such briefing could significantly aid the decisional process.

■ 8. Amend § 201.450, by redesignating paragraphs (a)(2)(iv) and (a)(2)(v) as paragraphs (a)(2)(v) and (a)(2)(vi) and adding new paragraph (a)(2)(iv).

The addition reads as follows:

§ 201.450 Briefs filed with the Commission.

* * * * *

(a) * * *

(2) * * *

(iv) Receipt by the Commission of an index to the record of a determination by a security-based swap execution facility filed pursuant to § 201.442(d).

* * * * *

■ 9. Amend § 201.460 by adding paragraph (a)(4) to read as follows:

§ 201.460 Record before the Commission.

* * * * *

(a) * * *

(4) In a proceeding for final decision before the Commission reviewing a determination of a security-based swap execution facility, the record shall consist of:

(i) The record certified pursuant to § 201.442(d) by the security-based swap execution facility;

(ii) Any application for review; and

(iii) Any submissions, moving papers, and briefs filed on appeal or review.

* * * * *

PART 232—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 10. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 11. Amend § 232.405 by:

■ a. Revising the introductory text and paragraphs (a)(2) and (4);

■ b. Adding paragraph (b)(1)(iii); and

■ c. Revising Note 1 to § 232.405.

The revisions and addition read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g)

of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), Rules 803(b)(1)(i), 803(b)(3), 803(e), 804(a)(1), 805(a)(1), 806(a)(1), 807(a)(1), 807(d), 829(g)(6), and 831(j)(2) of Regulation SE (§§ 242.803 through 807, 829, and 831 of this chapter), Registration Instructions to Form SBSEF (§ 249.2001 of this chapter), and Instruction A to the Security-Based Swap Execution Facility Submission Cover Sheet (§ 249.2002 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format, and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), Rules 803(b)(1)(i), 803(b)(3), 803(e), 804(a)(1), 805(a)(1), 806(a)(1), 807(a)(1), 807(d), 829(g)(6), and 831(j)(2) of Regulation SE (§§ 242.803 through 242.807, 242.829, and 242.831 of this chapter), Registration Instructions to Form SBSEF (§ 249.2001 of this chapter), and Instruction A to the Security-Based Swap Execution Facility Submission Cover Sheet (§ 249.2002 of this chapter), as applicable;

* * * * *

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), Rules 803(b)(1)(i), 803(b)(3), 803(e), 804(a)(1), 805(a)(1), 806(a)(1), 807(a)(1), 807(d), 829(g)(6), and 831(j)(2) of Regulation SE (§§ 242.803 through 242.807, 242.829, and 242.831 of this chapter), Registration Instructions to Form SBSEF (§ 249.2001 of this chapter), or Instruction A to the Security-Based Swap Execution Facility Submission Cover Sheet (§ 249.2002 of this chapter), as applicable.

(b) * * *

(1) * * *

(iii) For electronic filers subject to Regulation SE (§§ 242.800 *et seq.*), the content of documents required to be filed electronically under Rules 803(b)(1)(i), 803(b)(3), 803(e), 804(a)(1), 805(a)(1), 806(a)(1), 807(a)(1), 807(d), 829(g)(6), and 831(j)(2) of Regulation SE (§§ 242.803 through 807, 829, and 831 of this chapter), Registration Instructions to Form SBSEF (§ 249.2001 of this chapter), and Instruction A to the Security-Based Swap Execution Facility Submission Cover Sheet (§ 249.2002 of this chapter), as applicable.

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S–1), § 239.13 of this chapter (Form S–3), § 239.25 of this chapter (Form S–4), § 239.18 of this chapter (Form S–11), § 239.31 of this chapter (Form F–1), § 239.33 of this chapter (Form F–3), § 239.34 of this chapter (Form F–4), § 249.310 of this chapter (Form 10–K), § 249.308a of this chapter (Form 10–Q), and § 249.308 of this chapter (Form 8–K). Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter (Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40–F) and § 249.306 of this chapter (Form 6–K). Rules 803(b)(1)(i), 803(b)(3), 803(e), 804(a)(1), 805(a)(1), 806(a)(1), 807(a)(1), 807(d), 829(g)(6), and 831(j)(2) of Regulation SE (§§ 242.803 through 242.807, 242.829, and 242.831 of this chapter), Registration Instructions to Form SBSEF (§ 249.2001 of this chapter), and Instruction A to the Security-Based Swap Execution Facility Submission Cover Sheet (§ 249.2002 of this chapter), as applicable. Section 229.601(b)(101) (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 12. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 13. Amend § 240.3a1–1 by adding paragraphs (a)(4) and (5) and revising paragraph (b) introductory text to read as follows:

§ 240.3a1–1 Exemption from the definition of ''exchange'' under Section 3(a)(1) of the Act.

* * * * *

(a) * * *

(4) Has registered with the Commission as a security-based swap execution facility pursuant § 242.803 and provides a market place for no securities other than security-based swaps; or

(5) Has registered with the Commission as a clearing agency pursuant to section 17A of the Act (15 U.S.C. 78q–1) and limits its exchange functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations.

(b) Notwithstanding paragraphs (a)(1) through (a)(3) of this section, an organization, association, or group of persons shall not be exempt under this section from the definition of ''exchange,'' if:

* * * * *

■ 14. Add § 240.15a–12 to read as follows:

§ 240.15a–12 Exemption for certain security-based swap execution facilities from certain broker requirements.

(a) For purposes of this section, an *SBSEF–B* means a security-based swap execution facility that does not engage in any securities activity other than facilitating the trading of security-based swaps on or through the security-based swap execution facility.

(b) An SBSEF–B that registers with the Commission pursuant to § 242.803 shall be deemed also to have registered with the Commission pursuant to sections 15(a) and (b) of the Act (15 U.S.C. 78o(a)(1) and (b)).

(c) Except as provided in paragraph (d) of this section, an SBSEF–B shall be exempt from any provision of the Act or the Commission's rules thereunder applicable to brokers that, by its terms, requires, prohibits, restricts, limits, conditions, or affects the activities of a broker, unless such provision specifies that it applies to a security-based swap execution facility.

(d) Notwithstanding paragraph (c) of this section, the following provisions of the Act and the Commission's rules thereunder shall apply to an SBSEF–B:

(1) Section 15(b)(4) of the Act (15 U.S.C. 78o(b)(4));

(2) Section 15(b)(6) of the Act (15 U.S.C. 78o(b)(6)); and

(3) Section 17(b) of the Act (15 U.S.C. 78q(b)).

(e) An SBSEF–B shall be exempt from the Securities Investor Protection Act.

PART 242—REGULATIONS M, SHO, ATS, AC, NMS, AND SE AND CUSTOMER MARGIN REQUIREMENTS FOR SECURITY FUTURES

■ 15. The general authority citation for part 242 is revised and an authority citation for §§ 242.800 through 242.835 is added to read as follows:

Authority: 15 U.S.C. 77g, 77q(a), 77s(a), 78b, 78c, 78c–4, 78g(c)(2), 78i(a), 78j, 78k–1(c), 78l, 78m, 78n, 78o(b), 78o(c), 78o(g), 78q(a), 78q(b), 78q(h), 78w(a), 78dd–1, 78mm, 80a–23, 80a–29, 80a–37, and 8343.

* * * * *

Sections 242.800 through 242.835 are also issued under sec. 943, Pub. L. 111–203, Section 763.

■ 16. The heading for part 242 is revised to read as set forth above.

■ 17. Sections 242.800 through 242.835 are added to read as follows:

Sec.

* * * * *

242.800 Scope.
242.801 Applicable provisions.
242.802 Definitions.
242.803 Requirements and procedures for registration.
242.804 Listing products for trading by certification.
242.805 Voluntary submission of new products for Commission review and approval.
242.806 Voluntary submission of rules for Commission review and approval.
242.807 Self-certification of rules.
242.808 Availability of public information.
242.809 Stay of certification and tolling of review period pending jurisdictional determination.
242.810 Product filings by security-based swap execution facilities that are not yet registered and by dormant security-based swap execution facilities.
242.811 Information relating to security-based swap execution facility compliance.
242.812 Enforceability.
242.813 Prohibited use of data collected for regulation purposes.
242.814 Entity operating both a national securities exchange and security-based swap execution facility.
242.815 Methods of execution for Required and Permitted Transactions.
242.816 Trade execution requirement and exemptions therefrom.
242.817 Trade execution compliance schedule.
242.818 Core Principle 1—Compliance with core principles.
242.819 Core Principle 2—Compliance with rules.
242.820 Core Principle 3—Security-based swaps not readily susceptible to manipulation.
242.821 Core Principle 4—Monitoring of trading and trade processing.
242.822 Core Principle 5—Ability to obtain information.
242.823 Core Principle 6—Financial integrity of transactions.
242.824 Core Principle 7—Emergency authority.
242.825 Core Principle 8—Timely publication of trading information.
242.826 Core Principle 9—Recordkeeping and reporting.
242.827 Core Principle 10—Antitrust considerations.
242.828 Core Principle 11—Conflicts of interest.
242.829 Core Principle 12—Financial resources.
242.830 Core Principle 13—System safeguards.
242.831 Core Principle 14—Designation of chief compliance officers.
242.832 Application of the trade execution requirement to cross-border security-based swap transactions.
242.833 Cross-border exemptions.
242.834 Mitigation of conflicts of interest of security-based swap execution facilities and certain exchanges.
242.835 Notice to Commission by security-based swap execution facility of final disciplinary action or denial or limitation of access.

§ 242.800 Scope.

The provisions of this section shall apply to every security-based swap execution facility that is registered or is applying to become registered as a security-based swap execution facility under section 3D of the Securities Exchange Act (the ''Act'').

§ 242.801 Applicable provisions.

A security-based swap execution facility shall comply with the requirements of this section and all other applicable Commission rules, including any related definitions and cross-referenced sections.

§ 242.802 Definitions.

The following terms, and any other terms defined within a rule in this chapter, are defined as follows solely for purposes of this chapter:

Block trade means a security-based swap transaction that is subject to

public dissemination pursuant to § 242.902 and:

(1) Involves a security-based swap that is listed on a security-based swap execution facility or national securities exchange;

(2) Is executed on a security-based swap execution facility's trading system or platform that is not an order book or occurs away from the security-based swap execution facility's or national securities exchange's system or platform and is executed pursuant to the rules and procedures of the security-based swap execution facility or national securities exchange;

(3) Is a security-based swap based on a single credit instrument (or issuer of credit instruments) or a narrow-based index of credit instruments (or issuers of credit instruments) having a notional size of $5 million or greater; and

(4) Is reported subject to the rules and procedures of the security-based swap execution facility or national securities exchange.

Business day means the intraday period of time starting at 8:15 a.m. and ending at 4:45 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect in Washington, DC, on all days except Saturdays, Sundays, and Federal holidays in Washington, DC.

Committee member means a member, or functional equivalent thereof, of any committee of a security-based swap execution facility.

Correcting trade means a trade executed and submitted for clearing to a registered clearing agency with the same terms and conditions as an error trade other than any corrections to any operational or clerical error and the time of execution.

Disciplinary committee means any person or committee of persons, or any subcommittee thereof, that is authorized by a security-based swap execution facility or SBS exchange to issue disciplinary charges, to conduct disciplinary proceedings, to settle disciplinary charges, to impose disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the security-based swap execution facility or SBS exchange, except those cases where the person or committee is authorized summarily to impose minor penalties for violating rules regarding decorum, attire, the timely submission of accurate records for clearing or verifying each day's transactions, or other similar activities.

Dormant product means:

(1) Any security-based swap listed on security-based swap execution facility that has no open interest and in which no trading has occurred for a period of 12 complete calendar months following a certification to, or approval by, the Commission; provided, however, that no security-based swap initially and originally certified to, or approved by, the Commission within the preceding 36 complete calendar months shall be considered to be a dormant product;

(2) Any security-based swap of a dormant security-based swap execution facility; or

(3) Any security-based swap not otherwise a dormant product that a security-based swap execution facility self-declares through certification to be a dormant product.

Dormant security-based swap execution facility means a security-based swap execution facility on which no trading has occurred for the previous 12 consecutive calendar months; provided, however, that no security-based swap execution facility shall be considered to be a dormant security-based swap execution facility if its initial and original Commission order of registration was issued within the preceding 36 consecutive calendar months.

Dormant rule means:

(1) Any rule of a security-based swap execution facility which remains unimplemented for 12 consecutive calendar months following a certification with, or an approval by, the Commission; or

(2) Any rule or rule amendment of a dormant security-based swap execution facility.

Electronic trading facility means a trading facility that operates by means of an electronic or telecommunications network and maintains an automated audit trail of bids, offers, and the matching orders or the execution of transactions on the facility.

Emergency means any occurrence or circumstance that, in the opinion of the governing board of a security-based swap execution facility, or a person or persons duly authorized to issue such an opinion on behalf of the governing board of the security-based swap execution facility under circumstances and pursuant to procedures that are specified by rule, requires immediate action and threatens or may threaten such things as the fair and orderly trading in, or the liquidation of or delivery pursuant to, any security-based swaps, including:

(1) Any manipulative or attempted manipulative activity;

(2) Any actual, attempted, or threatened corner, squeeze, congestion, or undue concentration of positions;

(3) Any circumstances which may materially affect the performance of security-based swaps or transactions, including failure of the payment system or the bankruptcy or insolvency of any market participant;

(4) Any action taken by any governmental body, or any other security-based swap execution facility, market, or facility which may have a direct impact on trading or clearing and settlement; and

(5) Any other circumstance which may have a severe, adverse effect upon the functioning of the security-based swap execution facility.

Employee means any person hired or otherwise employed on a salaried or contract basis by a security-based swap execution facility, but does not include:

(1) Any governing board member compensated by the security-based swap execution facility solely for governing board activities; or

(2) Any committee member compensated by a security-based swap execution facility solely for committee activities; or

(3) Any consultant hired by a security-based swap execution facility.

Error trade means any trade executed on or subject to the rules of a security-based swap execution facility that contains an operational or clerical error.

Governing board means the board of directors of a security-based swap execution facility, or for a security-based swap execution facility whose organizational structure does not include a board of directors, a body performing a function similar to a board of directors.

Governing board member means a member, or functional equivalent thereof, of the governing board of a security-based swap execution facility.

Member, with respect to a national securities exchange, has the same meaning as in section 3(a)(3) of the Act. *Member,* with respect to a security-based swap execution facility, means an individual, association, partnership, corporation, or trust owning or holding a membership in, admitted to membership representation on, or having trading privileges on the security-based swap execution facility.

Non-U.S. member means a member of a security-based swap execution facility that is not a U.S. person.

Offsetting trade means a trade executed and submitted for clearing to a registered clearing agency with terms and conditions that economically reverse an error trade that was accepted for clearing.

Order book means an electronic trading facility, a trading facility, or a trading system or platform in which all market participants in the trading system or platform have the ability to

enter multiple bids and offers, observe or receive bids and offers entered by other market participants, and transact on such bids and offers.

Oversight panel means any panel, or any subcommittee thereof, authorized by an SBSEF or SBS exchange to recommend or establish policies or procedures with respect to the surveillance, compliance, rule enforcement, or disciplinary responsibilities of the SBSEF or SBS exchange.

Records has the meaning as in section 3(a)(37) of the Act (15 U.S.C. 78c(a)(37)).

Rule means any constitutional provision, article of incorporation, by-law, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement, or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a security-based swap execution facility or by the governing board thereof or any committee thereof, in whatever form adopted.

SBS exchange means a national securities exchange that posts or makes available for trading security-based swaps.

Security-based swap execution facility has the same meaning as in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77)) but does not include an entity that is registered with the Commission as a clearing agency pursuant to section 17A of the Act (15 U.S.C. 78q–1) and limits its security-based swap execution facility functions to operation of a trading session that is designed to further the accuracy of end-of-day valuations.

Senior officer means the chief executive officer or other equivalent officer of a security-based swap execution facility.

Terms and conditions means any definition of the trading unit or the specific asset underlying a security-based swap, description of the payments to be exchanged under a security-based swap, specification of cash settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the security-based swap. Terms and conditions of a security-based swap include provisions relating to the following:

(1) Identification of the major group, category, type, or class in which the security-based swap falls (such as a credit or equity security-based swap) and of any further sub-group, category, type, or class that further describes the security-based swap;

(2) Notional amounts, quantity standards, or other unit size characteristics;

(3) Any applicable premiums or discounts for delivery of a non-par product;

(4) Trading hours and the listing of security-based swaps;

(5) Pricing basis for establishing the payment obligations under, and mark-to-market value of, the security-based swap including, as applicable, the accrual start dates, termination, or maturity dates, and, for each leg of the security-based swap, the initial cash flow components, spreads, and points, and the relevant indexes, prices, rates, coupons, or other price reference measures;

(6) Any price limits, trading halts, or circuit breaker provisions, and procedures for the establishment of daily settlement prices;

(7) Payment and reset frequency, day count conventions, business calendars, and accrual features;

(8) If physical delivery applies, delivery standards and procedures, including fees related to delivery or the delivery process, alternatives to delivery, and applicable penalties or sanctions for failure to perform;

(9) If cash-settled, the definition, composition, calculation, and revision of the cash settlement price, and the settlement currency;

(10) Payment or collection of option premiums or margins;

(11) Option exercise price, if it is constant, and method for calculating the exercise price, if it is variable;

(12) Threshold prices for an option, the existence of which is contingent upon those prices;

(13) Any restrictions or requirements for exercising an option; and

(14) Life cycle events.

Trading facility—(1) *In general.* The term *trading facility* means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—

(i) By accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

(ii) Through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm.

(2) *Exclusions.* (i) The term *trading facility* does not include:

(A) A person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

(B) A government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms *government securities dealer, government securities broker,* and *government securities* are defined in section 3(a) of the Act); or

(C) A facility on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

(ii) Any person, group of persons, dealer, broker, or facility described in paragraphs (z)(2)(i)(A) through (C) is excluded from the meaning of the term ''trading facility'' for the purposes of this chapter without any prior specific approval, certification, or other action by the Commission.

(3) *Special rule.* A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a registered clearing agency of transactions executed on or through the person or group of persons.

U.S. person has the same meaning as in § 240.3a71–3(a)(4).

§ 242.803 Requirements and procedures for registration.

(a) *Requirements for registration.* (1) Any person operating a facility that offers a trading system or platform in which more than one market participant has the ability to execute or trade security-based swaps with more than one other market participant on the system or platform shall register the facility as a security-based swap execution facility under this section or as a national securities exchange pursuant to section 6 of the Act.

(2) *Minimum trading functionality.* A security-based swap execution facility shall, at a minimum, offer an order book.

(3) A security-based swap execution facility is not required to provide an order book under this section for transactions defined in § 242.815(d)(2),

(3), and (4) except that a security-based swap execution facility must provide an order book under this section for Required Transactions that are components of transactions defined in § 242.815(d)(2), (3), and (4) when such Required Transactions are not executed as components of transactions defined in § 242.815(d)(2), (3), and (4).

(b) *Procedures for full registration.* (1) An entity requesting registration as a security-based swap execution facility shall:

(i) File electronically a complete Form SBSEF as set forth in § 249.2001, or any successor forms, and all information and documentation described in such forms with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405; and

(ii) Provide to the Commission, upon the Commission's request, any additional information and documentation necessary to review an application.

(2) *Request for confidential treatment.* (i) An applicant requesting registration as a security-based swap execution facility shall identify with particularity any information in the application that will be subject to a request for confidential treatment pursuant to § 240.24b–2.

(ii) As set forth in § 242.808, certain information provided in an application shall be made publicly available.

(3) *Amendment of application prior to full registration.* An applicant amending a pending application for registration as a security-based swap execution facility or requesting an amendment to an order of registration shall file an amended application electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405.

(4) *Effect of incomplete application.* If an application is incomplete pursuant to paragraph (b)(1) of this section, the Commission shall notify the applicant that its application will not be deemed to have been submitted for purposes of the Commission's review.

(5) *Commission review period.* The Commission shall approve or deny an application for registration as a security-based swap execution facility within 180 days of the filing of the application. If the Commission notifies the person that its application is materially incomplete and specifies the deficiencies in the application, the running of the 180-day period shall be stayed from the time of such notification until the application is resubmitted in completed form, *provided* that the Commission shall have not less than 60 days to approve or deny the application from the time the application is resubmitted in completed form.

(6) *Commission determination.* (i) The Commission shall issue an order granting registration upon a Commission determination, in its own discretion, that the applicant has demonstrated compliance with the Act and the Commission's rules applicable to security-based swap execution facilities. If deemed appropriate, the Commission may issue an order granting registration subject to conditions.

(ii) The Commission may issue an order denying registration upon a Commission determination, in its own discretion, that the applicant has not demonstrated compliance with the Act and the Commission's rules applicable to security-based swap execution facilities. If the Commission denies an application, it shall specify the grounds for the denial.

(c) *Reinstatement of dormant registration.* A dormant security-based swap execution facility may reinstate its registration under the procedures of paragraph (b) of this section. The applicant may rely upon previously submitted materials if such materials accurately describe the dormant security-based swap execution facility's conditions at the time that it applies for reinstatement of its registration.

(d) *Request for transfer of registration.* (1) A security-based swap execution facility seeking to transfer its registration from its current legal entity to a new legal entity as a result of a corporate change shall file a request for approval to transfer such registration with the Commission in the form and manner specified by the Commission.

(2) A request for transfer of registration shall be filed no later than three months prior to the anticipated corporate change; or in the event that the security-based swap execution facility could not have known of the anticipated change three months prior to the anticipated change, as soon as it knows of such change.

(3) The request for transfer of registration shall include the following:

(i) The underlying agreement that governs the corporate change;

(ii) A description of the corporate change, including the reason for the change and its impact on the security-based swap execution facility, including its governance and operations, and its impact on the rights and obligations of members;

(iii) A discussion of the transferee's ability to comply with the Act, including the core principles applicable to security-based swap execution facilities and the Commission's rules thereunder;

(iv) The governing documents of the transferee, including, but not limited to, articles of incorporation and bylaws;

(v) The transferee's rules marked to show changes from the current rules of the security-based swap execution facility;

(vi) A representation by the transferee that it:

(A) Will be the surviving entity and successor-in-interest to the transferor security-based swap execution facility and will retain and assume, without limitation, all of the assets and liabilities of the transferor;

(B) Will assume responsibility for complying with all applicable provisions of the Act and the Commission's rules thereunder;

(C) Will assume, maintain, and enforce all rules implementing and complying with the core principles applicable to security-based swap execution facilities, including the adoption of the transferor's rulebook, as amended in the request, and that any such amendments will be submitted to the Commission pursuant to § 242.806 or § 242.807;

(D) Will comply with all regulatory responsibilities except if otherwise indicated in the request, and will maintain and enforce all regulatory programs; and

(E) Will notify members of all changes to the transferor's rulebook prior to the transfer and will further notify members of the concurrent transfer of the registration to the transferee upon Commission approval and issuance of an order permitting this transfer.

(vii) A representation by the transferee that upon the transfer:

(A) It will assume responsibility for and maintain compliance with core principles for all security-based swaps previously made available for trading through the transferor, whether by certification or approval; and

(B) None of the proposed rule changes will affect the rights and obligations of any member.

(4) Upon review of a request for transfer of registration, the Commission, as soon as practicable, shall issue an order either approving or denying the request.

(e) *Request for withdrawal of application for registration.* An applicant for registration as a security-based swap execution facility may withdraw its application submitted pursuant to paragraph (b) of this section by filing a withdrawal request electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with

§ 232.405. Withdrawal of an application for registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the application was pending with the Commission.

(f) *Request for vacation of registration.* A security-based swap execution facility may request that its registration be vacated by filing a vacation request electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405 at least 90 days prior to the date that the vacation is requested to take effect. Upon receipt of such request, the Commission shall promptly order the vacation to be effective upon the date named in the request and send a copy of the request and its order to all other security-based swap execution facilities, SBS exchanges, and registered clearing agencies that clear security-based swaps. Vacation of registration shall not affect any action taken or to be taken by the Commission based upon actions, activities, or events occurring during the time that the security-based swap execution facility was registered by the Commission. From and after the date upon which the vacation became effective the said security-based swap execution facility can thereafter be registered again by applying to the Commission in the manner provided in paragraph (b) of this section for an original application.

§ 242.804 Listing products for trading by certification.

(a) *General.* A security-based swap execution facility must comply with the submission requirements of this section prior to listing a product for trading that has not been approved under § 242.805 or that remains a dormant product subsequent to being submitted under this section or approved under § 242.805 of this section. A submission shall comply with the following conditions:

(1) The security-based swap execution facility has filed its submission electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405;

(2) The Commission has received the submission by the open of business on the business day that is ten business days preceding the product's listing; and

(3) The submission includes:

(i) A copy of the submission cover sheet in accordance with the instructions in § 249.2002;

(ii) A copy of the product's rules, including all rules related to its terms and conditions;

(iii) The intended listing date;

(iv) A certification by the security-based swap execution facility that the product to be listed complies with the Act and the Commission's rules thereunder;

(v) A concise explanation and analysis of the product and its compliance with applicable provisions of the Act, including core principles, and the Commission's rules thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(vi) A certification that the security-based swap execution facility posted a notice of pending product certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution's website but must be republished consistent with any determination made pursuant to § 240.24b–2; and

(vii) A request for confidential treatment, if appropriate, as permitted under § 240.24b–2.

(b) *Additional information.* If requested by Commission staff, a security-based swap execution facility shall provide any additional evidence, information, or data that demonstrates that the security-based swap meets, initially or on a continuing basis, the requirements of the Act or the Commission's rules or policies thereunder.

(c) *Stay of certification of product.* (1) *General.* The Commission may stay the certification of a product submitted pursuant to paragraph (a) of this section by issuing a notification informing the security-based swap execution facility that the Commission is staying the certification of the product on the grounds that the product presents novel or complex issues that require additional time to analyze, the product is accompanied by an inadequate explanation, or the product is potentially inconsistent with the Act or the Commission's rules thereunder. The Commission will have an additional 90 days from the date of the notification to conduct the review.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day period in which the stay is in effect, as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission's website. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of product.* A product subject to a stay pursuant to this paragraph shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section, unless the Commission withdraws the stay prior to that time, or the Commission notifies the security-based swap execution facility during the 90-day time period that it objects to the proposed certification on the grounds that the product is inconsistent with the Act or the Commission's rules.

§ 242.805 Voluntary submission of new products for Commission review and approval.

(a) *Request for approval.* A security-based swap execution facility may request that the Commission approve a new or dormant product prior to listing the product for trading, or if a product was initially submitted under § 242.804, subsequent to listing the product for trading. A submission requesting approval shall:

(1) Be filed electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405;

(2) Include a copy of the submission cover sheet in accordance with the instructions in § 249.2002;

(3) Include a copy of the rules that set forth the security-based swap's terms and conditions;

(4) Include an explanation and analysis of the product and its compliance with applicable provisions of the Act, including the core principles and the Commission's rules thereunder. This explanation and analysis shall either be accompanied by the documentation relied upon to establish the basis for compliance with the applicable law, or incorporate information contained in such documentation, with appropriate citations to data sources;

(5) Describe any agreements or contracts entered into with other parties that enable the security-based swap execution facility to carry out its responsibilities;

(6) Include, if appropriate, a request for confidential treatment as permitted under § 240.24b–2;

(7) Certify that the security-based swap execution facility posted a notice of its request for Commission approval

of the new product and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution facility's website but must be republished consistent with any determination made pursuant to § 240.24b–2; and

(8) Include, if requested by Commission staff, additional evidence, information, or data demonstrating that the security-based swap meets, initially or on a continuing basis, the requirements of the Act, or other requirement for registration under the Act, or the Commission's rules or policies thereunder. The security-based swap execution facility shall submit the requested information by the open of business on the date that is two business days from the date of request by Commission staff, or at the conclusion of such extended period agreed to by Commission staff after timely receipt of a written request from the security-based swap execution facility.

(b) *Standard for review and approval.* The Commission shall approve a new product unless the terms and conditions of the product violate the Act or the Commission's rules thereunder.

(c) *45-day review.* A product submitted for Commission approval under this paragraph shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of an extended period as provided under paragraph (d) of this section, unless notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section; and

(2) The submitting security-based swap execution facility does not amend the terms or conditions of the product or supplement the request for approval, except as requested by the Commission or for correction of typographical errors, renumbering, or other non-substantive revisions, during that period. Any voluntary, substantive amendment by the security-based swap execution facility will be treated as a new submission under this section.

(d) *Extension of time.* The Commission may extend the 45-day review period in paragraph (c) of this section for:

(1) An additional 45 days, if the product raises novel or complex issues that require additional time to analyze, in which case the Commission shall notify the security-based swap execution facility within the initial 45-day review period and shall briefly describe the nature of the specific issue(s) for which additional time for review is required; or

(2) Any extended review period to which the security-based swap execution facility agrees in writing.

(e) *Notice of non-approval.* The Commission, at any time during its review under this section, may notify the security-based swap execution facility that it will not, or is unable to, approve the product. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's rules thereunder, including the form or content requirements of paragraph (a) of this section, that the product violates, appears to violate, or potentially violates but which cannot be ascertained from the submission.

(f) *Effect of non-approval.* (1) Notification to a security-based swap execution facility under paragraph (e) of this section of the Commission's determination not to approve a product does not prejudice the security-based swap execution facility from subsequently submitting a revised version of the product for Commission approval, or from submitting the product as initially proposed pursuant to a supplemented submission.

(2) Notification to a security-based swap execution facility under paragraph (e) of this section of the Commission's refusal to approve a product shall be presumptive evidence that the security-based swap execution facility may not truthfully certify under § 242.804 that the same, or substantially the same, product does not violate the Act or the Commission's rules thereunder.

§ 242.806 Voluntary submission of rules for Commission review and approval.

(a) *Request for approval of rules.* A security-based swap execution facility may request that the Commission approve a new rule, rule amendment, or dormant rule prior to implementation of the rule, or if the request was initially submitted under § 242.806 or 242.807, subsequent to implementation of the rule. A request for approval shall:

(1) Be filed electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405;

(2) Include a copy of the submission cover sheet in accordance with the instructions in appendix B to Regulation SE (17 CFR 242.800 through 242.835);

(3) Set forth the text of the rule or rule amendment (in the case of a rule amendment, deletions and additions must be indicated);

(4) Describe the proposed effective date of the rule or rule amendment and any action taken or anticipated to be taken to adopt the proposed rule by the security-based swap execution facility or by its governing board or by any committee thereof, and cite the rules of the security-based swap execution facility that authorize the adoption of the proposed rule;

(5) Provide an explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including the core principles relating to security-based swap execution facilities and the Commission's rules thereunder and, as applicable, a description of the anticipated benefits to market participants or others, any potential anticompetitive effects on market participants or others, and how the rule fits into the security-based swap execution facility's framework of regulation;

(6) Certify that the security-based swap execution facility posted a notice of pending rule with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution facility's website but must be republished consistent with any determination made pursuant to § 240.24b–2;

(7) Provide additional information which may be beneficial to the Commission in analyzing the new rule or rule amendment. If a proposed rule affects, directly or indirectly, the application of any other rule of the security-based swap execution facility, the pertinent text of any such rule must be set forth and the anticipated effect described;

(8) Provide a brief explanation of any substantive opposing views expressed to the security-based swap execution facility by governing board or committee members, members of the security-based swap execution facility, or market participants that were not incorporated into the rule, or a statement that no such opposing views were expressed; and

(9) As appropriate, include a request for confidential treatment as permitted under § 240.24b–2.

(b) *Standard for review and approval.* The Commission shall approve a new rule or rule amendment unless the rule or rule amendment is inconsistent with

the Act or the Commission's rules thereunder.

(c) *45-day review.* A rule or rule amendment submitted for Commission approval under paragraph (a) of this section shall be deemed approved by the Commission 45 days after receipt by the Commission, or at the conclusion of such extended period as provided under paragraph (d) of this section, unless the security-based swap execution facility is notified otherwise within the applicable period, if:

(1) The submission complies with the requirements of paragraph (a) of this section;

(2) The security-based swap execution facility does not amend the proposed rule or supplement the submission, except as requested by the Commission, during the pendency of the review period, other than for correction of typographical errors, renumbering, or other non-substantive revisions. Any amendment or supplementation not requested by the Commission will be treated as the submission of a new filing under this section.

(d) *Extension of time for review.* The Commission may further extend the review period in paragraph (c) of this section for:

(1) An additional 45 days, if the proposed rule or rule amendment raises novel or complex issues that require additional time for review or is of major economic significance, the submission is incomplete, or the requestor does not respond completely to Commission questions in a timely manner, in which case the Commission shall notify the submitting security-based swap execution facility within the initial 45-day review period and shall briefly describe the nature of the specific issues for which additional time for review shall be required; or

(2) Any period, beyond the additional 45 days provided in paragraph (d)(1) of this section, to which the security-based swap execution facility agrees in writing.

(e) *Notice of non-approval.* Any time during its review under this section, the Commission may notify the security-based swap execution facility that it will not, or is unable to, approve the new rule or rule amendment. This notification will briefly specify the nature of the issues raised and the specific provision of the Act or the Commission's rules thereunder, including the form or content requirements of this section, with which the new rule or rule amendment is inconsistent or appears to be inconsistent with the Act or the Commission's rules thereunder.

(f) *Effect of non-approval.* (1) Notification to a security-based swap execution facility under paragraph (e) of this section does not prevent the security-based swap execution facility from subsequently submitting a revised version of the proposed rule or rule amendment for Commission review and approval or from submitting the new rule or rule amendment as initially proposed in a supplemented submission. The revised submission will be reviewed without prejudice.

(2) Notification to a security-based swap execution facility under paragraph (e) of this section of the Commission's determination not to approve a proposed rule or rule amendment shall be presumptive evidence that the security-based swap execution facility may not truthfully certify the same, or substantially the same, proposed rule or rule amendment under § 242.807(a).

(g) *Expedited approval.* Notwithstanding the provisions of paragraph (c) of this section, changes to a proposed rule or a rule amendment, including changes to terms and conditions of a product that are consistent with the Act and the Commission's rules thereunder, may be approved by the Commission at such time and under such conditions as the Commission shall specify in the written notification; provided, however, that the Commission may, at any time, alter or revoke the applicability of such a notice to any particular product or rule amendment.

§ 242.807 Self-certification of rules.

(a) *Required certification.* A security-based swap execution facility shall comply with the following conditions prior to implementing any rule—other than a rule delisting or withdrawing the certification of a product with no open interest and submitted in compliance with paragraphs (a)(1), (2) and (6) of this section—that has not obtained Commission approval under § 242.806, or that remains a dormant rule subsequent to being submitted under this section or approved under § 242.806.

(1) The security-based swap execution facility has filed its submission electronically with the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405 of this chapter.

(2) The security-based swap execution facility has provided a certification that it posted a notice of pending certification with the Commission and a copy of the submission, concurrent with the filing of a submission with the Commission, on the security-based swap execution facility's website. Information that the security-based swap execution facility seeks to keep confidential may be redacted from the documents published on the security-based swap execution facility's website but it must be republished consistent with any determination made pursuant to § 240.24b–2 of this chapter.

(3) The Commission has received the submission not later than the open of business on the business day that is ten business days prior to the security-based swap execution facility's implementation of the rule or rule amendment.

(4) The Commission has not stayed the submission pursuant to § 242.807(c).

(5) A new rule or rule amendment that establishes standards for responding to an emergency shall be submitted pursuant to § 242.807(a). A rule or rule amendment implemented under procedures of the governing board to respond to an emergency shall, if practicable, be filed with the Commission prior to implementation or, if not practicable, be filed with the Commission at the earliest possible time after implementation, but in no event more than 24 hours after implementation. Any such submission shall be subject to the certification and stay provisions of paragraphs (b) and (c) of this section.

(6) The rule submission shall include:

(i) A copy of the submission cover sheet in accordance with the instructions in § 249.2002 of this chapter (in the case of a rule or rule amendment that responds to an emergency, ''Emergency Rule Certification'' should be noted in the description section of the submission cover sheet);

(ii) The text of the rule (in the case of a rule amendment, deletions and additions must be indicated);

(iii) The date of intended implementation;

(iv) A certification by the security-based swap execution facility that the rule complies with the Act and the Commission's rules thereunder;

(v) A concise explanation and analysis of the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles relating to security-based swap execution facilities and the Commission's rules thereunder;

(vi) A brief explanation of any substantive opposing views expressed to the security-based swap execution facility by governing board or committee members, members of the security-based swap execution facility, or market participants, that were not incorporated

into the rule, or a statement that no such opposing views were expressed; and

(vii) As appropriate, a request for confidential treatment pursuant to the procedures provided in § 240.24b–2 of this chapter.

(7) The security-based swap execution facility shall provide, if requested by Commission staff, additional evidence, information, or data that may be beneficial to the Commission in conducting a due diligence assessment of the filing and the security-based swap execution facility's compliance with any of the requirements of the Act or the Commission's rules or policies thereunder.

(b) *Review by the Commission.* The Commission shall have ten business days to review the new rule or rule amendment before the new rule or rule amendment is deemed certified and can be made effective, unless the Commission notifies the security-based swap execution facility during the ten-business-day review period that it intends to issue a stay of the certification under paragraph (c) of this section.

(c) *Stay*—(1) *Stay of certification of new rule or rule amendment.* The Commission may stay the certification of a new rule or rule amendment submitted pursuant to paragraph (a) of this section by issuing a notification informing the security-based swap execution facility that the Commission is staying the certification of the rule or rule amendment on the grounds that the rule or rule amendment presents novel or complex issues that require additional time to analyze, the rule or rule amendment is accompanied by an inadequate explanation, or the rule or rule amendment is potentially inconsistent with the Act or the Commission's rules thereunder. The Commission will have an additional 90 days from the date of the notification to conduct the review.

(2) *Public comment.* The Commission shall provide a 30-day comment period within the 90-day period in which the stay is in effect, as described in paragraph (c)(1) of this section. The Commission shall publish a notice of the 30-day comment period on the Commission website. Comments from the public shall be submitted as specified in that notice.

(3) *Expiration of a stay of certification of new rule or rule amendment.* A new rule or rule amendment subject to a stay pursuant to this paragraph shall become effective, pursuant to the certification, at the expiration of the 90-day review period described in paragraph (c)(1) of this section, unless the Commission withdraws the stay prior to that time, or the Commission notifies the security-based swap execution facility during the 90-day time period that it objects to the proposed certification on the grounds that the proposed rule or rule amendment is inconsistent with the Act or the Commission's rules thereunder.

(d) *Notification of rule amendments.* Notwithstanding the rule certification requirement of paragraph (a) of this section, a security-based swap execution facility may place the following rules or rule amendments into effect without certification to the Commission if the following conditions are met:

(1) The security-based swap execution facility provides to the Commission at least weekly a summary notice of all rule amendments made effective pursuant to this paragraph during the preceding week. Such notice must be labeled ''Weekly Notification of Rule Amendments'' and need not be filed for weeks during which no such actions have been taken. One copy of each such submission shall be furnished electronically using the EDGAR system as an Interactive Data File in accordance with § 232.405; and

(2) The rule governs:

(i) *Non-substantive revisions.* Corrections of typographical errors, renumbering, periodic routine updates to identifying information about the security-based swap execution facility, and other such non-substantive revisions of a product's terms and conditions that have no effect on the economic characteristics of the product;

(ii) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(A) Total $1.00 or more per contract, and

(B) Are established by an independent third party or are unrelated to delivery, trading, clearing, or dispute resolution.

(iii) *Survey lists.* Changes to lists of banks, brokers, dealers, or other entities that provide price or cash market information to an independent third party and that are incorporated by reference as product terms;

(iv) *Approved brands.* Changes in lists of approved brands or markings pursuant to previously certified or Commission approved standards or criteria;

(v) *Trading months.* The initial listing of trading months, which may qualify for implementation without notice pursuant to paragraph (d)(3)(ii)(F) of this section, within the currently established cycle of trading months; or

(vi) *Minimum tick.* Reductions in the minimum price fluctuation (or ''tick'').

(3) *Notification of rule amendments not required.* Notwithstanding the rule certification requirements of paragraph (a) of this section, a security-based swap execution facility may place the following rules or rule amendments into effect without certification or notice to the Commission if the following conditions are met:

(i) The security-based swap execution facility maintains documentation regarding all changes to rules; and

(ii) The rule governs:

(A) *Transfer of membership or ownership.* Procedures and forms for the purchase, sale, or transfer of membership or ownership, but not including qualifications for membership or ownership, any right or obligation of membership or ownership, or dues or assessments;

(B) *Administrative procedures.* The organization and administrative procedures of a security-based swap execution facility's governing bodies such as a governing board, officers, and committees, but not voting requirements, governing board, or committee composition requirements or procedures, decision-making procedures, use or disclosure of material non-public information gained through the performance of official duties, or requirements relating to conflicts of interest;

(C*) Administration.* The routine daily administration, direction, and control of employees, requirements relating to gratuity and similar funds, but not guaranty, reserves, or similar funds; declaration of holidays; and changes to facilities housing the market, trading floor, or trading area;

(D) *Standards of decorum.* Standards of decorum or attire or similar provisions relating to admission to the floor, badges, or visitors, but not the establishment of penalties for violations of such rules; and

(E) *Fees.* Fees or fee changes, other than fees or fee changes associated with market making or trading incentive programs, that:

(*1*) Are less than $1.00; or

(*2*) Relate to matters such as dues, badges, telecommunication services, booth space, real-time quotations, historical information, publications, software licenses, or other matters that are administrative in nature.

(F) *Trading months.* The initial listing of trading months which are within the currently established cycle of trading months.

§ 242.808 Availability of public information.

(a) The Commission shall make publicly available on its website the following parts of an application to register as a security-based swap

execution facility, unless confidential treatment is obtained pursuant to § 240.24b–2 of this chapter:

(1) Transmittal letter and first page of the application cover sheet;

(2) Exhibit C;

(3) Exhibit G;

(4) Exhibit L; and

(5) Exhibit M.

(b) The Commission shall make publicly available on its website, unless confidential treatment is obtained pursuant to § 240.24b–2 of this chapter, a security-based swap execution facility's filing of new products pursuant to the self-certification procedures of § 242.804, new products for Commission review and approval pursuant to § 242.805, new rules and rule amendments for Commission review and approval pursuant to § 242.806, and new rules and rule amendments pursuant to the self-certification procedures of § 242.807.

(c) The terms and conditions of a product submitted to the Commission pursuant to § 242.804, 242.805, 242.806, or 242.807 shall be made publicly available at the time of submission unless confidential treatment is obtained pursuant to § 240.24b–2 of this chapter.

§ 242.809 Staying of certification and tolling of review period pending jurisdictional determination.

(a) A product certification made by a security-based swap execution facility pursuant to § 242.804 shall be stayed, or the review period for a product that has been submitted for Commission approval by a security-based swap execution facility pursuant to § 242.805 shall be tolled, upon request for a joint interpretation of whether the product is a swap, security-based swap, or mixed swap made pursuant to § 240.3a68–2 of this chapter by the security-based swap execution facility, the Commission, or the Commodity Futures Trading Commission.

(b) The Commission shall provide the security-based swap execution facility with a written notice of the stay or tolling pending issuance of a joint interpretation.

(c) The stay shall be withdrawn, or the approval review period shall resume, if a joint interpretation finding that the Commission has jurisdiction over the product is issued.

§ 242.810 Product filings by security-based swap execution facilities that are not yet registered and by dormant security-based swap execution facilities.

(a) An applicant for registration as a security-based swap execution facility may submit a security-based swap's terms and conditions prior to listing the product as part of its application for registration.

(b) Any security-based swap terms and conditions or rules submitted as part of a security-based swap execution facility's application for registration shall be considered for approval by the Commission at the time the Commission issues the security-based swap execution facility's order of registration.

(c) After the Commission issues the order of registration, the security-based swap execution facility shall submit a security-based swap's terms and conditions, including amendments to such terms and conditions, new rules, or rule amendments pursuant to the procedures in §§ 242.804, 242.805, 242.806, and 242.807.

(d) Any security-based swap terms and conditions or rules submitted as part of an application to reinstate the registration of a dormant security-based swap execution facility shall be considered for approval by the Commission at the time the Commission approves the reinstatement of registration of the dormant security-based swap execution facility.

§ 242.811 Information relating to security-based swap execution facility compliance.

(a) *Request for information.* Upon the Commission's request, a security-based swap execution facility shall file with the Commission information related to its business as a security-based swap execution facility in the form and manner, and within the timeframe, specified by the Commission.

(b) *Demonstration of compliance.* Upon the Commission's request, a security-based swap execution facility shall file with the Commission a written demonstration, containing supporting data, information, and documents, that it is in compliance with one or more core principles or with its other obligations under the Act or the Commission's rules thereunder, as the Commission specifies in its request. The security-based swap execution facility shall file such written demonstration in the form and manner, and within the timeframe, specified by the Commission.

(c) *Equity interest transfer*—(1) *Equity interest transfer notification.* A security-based swap execution facility shall file with the Commission a notification of any transaction involving the direct or indirect transfer of 50 percent or more of the equity interest in the security-based swap execution facility. The Commission may, upon receiving such notification, request supporting documentation of the transaction.

(2) *Timing of notification.* The equity interest transfer notice described in paragraph (c)(1) of this section shall be filed with the Commission in a form and manner specified by the Commission at the earliest possible time, but in no event later than the open of business ten business days following the date upon which the security-based swap execution facility enters into a firm obligation to transfer the equity interest.

(3) *Rule filing.* Notwithstanding the foregoing, if any aspect of an equity interest transfer described in paragraph (c)(1) of this section requires a security-based swap execution facility to file a rule, the security-based swap execution facility shall comply with the applicable rule filing requirements of § 242.806 or § 242.807.

(4) *Certification.* Upon a transfer of an equity interest of 50 percent or more in a security-based swap execution facility, the security-based swap execution facility shall file with the Commission, in a form and manner specified by the Commission, a certification that the security-based swap execution facility meets all of the requirements of section 3D of the Act and the Commission rules thereunder, no later than two business days following the date on which the equity interest of 50 percent or more was acquired.

(d) *Pending legal proceedings.* (1) A security-based swap execution facility shall submit to the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding to which the security-based swap execution facility is a party or its property or assets is subject.

(2) A security-based swap execution facility shall submit to the Commission a copy of the complaint, any dispositive or partially dispositive decision, any notice of appeal filed concerning such decision, and such further documents as the Commission may thereafter request filed in any material legal proceeding instituted against any officer, director, or other official of the security-based swap execution facility from conduct in such person's capacity as an official of the security-based swap execution facility and alleging violations of:

(i) The Act or any rule, regulation, or order thereunder;

(ii) The constitution, bylaws, or rules of the security-based swap execution facility; or

(iii) The applicable provisions of State law relating to the duties of officers, directors, or other officials of business organizations.

(3) All documents required by this paragraph (d) to be submitted to the

Commission shall be submitted electronically in a form and manner specified by the Commission within ten days after the initiation of the legal proceedings to which they relate, after the date of issuance, or after receipt by the security-based swap execution facility of the notice of appeal, as the case may be.

(4) For purposes of this paragraph (d), a ''material legal proceeding'' includes but is not limited to actions involving alleged violations of the Act or the Commission rules thereunder. However, a legal proceeding is not ''material'' for the purposes of this rule if the proceeding is not in a Federal or State court or if the Commission is a party.

§ 242.812 Enforceability.

(a) A transaction entered into on or pursuant to the rules of a security-based swap execution facility shall not be void, voidable, subject to rescission, otherwise invalidated, or rendered unenforceable as a result of a violation by the security-based swap execution facility of the provisions of section 3D of the Act or the Commission's rules thereunder.

(b) A security-based swap execution facility shall, as soon as technologically practicable after the time of execution of a transaction entered into on or pursuant to the rules of the facility, provide a written record to each counterparty of all of the terms of the transaction that were agreed to on the facility, which shall legally supersede any previous agreement regarding such terms.

§ 242.813 Prohibited use of data collected for regulatory purposes.

A security-based swap execution facility shall not use for business or marketing purposes any proprietary data or personal information it collects or receives, from or on behalf of any person, for the purpose of fulfilling its regulatory obligations; provided, however, that a security-based swap execution facility may use such data or information for business or marketing purposes if the person from whom it collects or receives such data or information clearly consents to the security-based swap execution facility's use of such data or information in such manner. A security-based swap execution facility shall not condition access to its market(s) or market services on a person's consent to the security-based swap execution facility's use of proprietary data or personal information for business or marketing purposes. A security-based swap execution facility, where necessary for regulatory purposes, may share such data or information with one or more security-based swap execution facilities or national securities exchanges registered with the Commission.

§ 242.814 Entity operating both a national securities exchange and security-based swap execution facility.

(a) An entity that intends to operate both a national securities exchange and a security-based swap execution facility shall separately register the two facilities pursuant to section 6 of the Act and § 242.803, respectively.

(b) A national securities exchange shall, to the extent that the exchange also operates a security-based swap execution facility and uses the same electronic trade execution system for listing and executing trades of security-based swaps on or through the exchange and the facility, identify whether electronic trading of such security-based swaps is taking place on or through the national securities exchange or the security-based swap execution facility.

§ 242.815 Methods of execution for Required and Permitted Transactions.

(a) *Execution methods for Required Transactions*—(1) *Required Transaction* means any transaction involving a security-based swap that is subject to the trade execution requirement in section 3C(h) of the Act.

(2) *Execution methods.* (i) Each Required Transaction that is not a block trade shall be executed on a security-based swap execution facility in accordance with one of the following methods of execution, except as provided in paragraph (d) or (e) of this section:

(A) An order book; or

(B) A request-for-quote system that operates in conjunction with an order book.

(ii) In providing either one of the execution methods set forth in paragraph (a)(2)(i)(A) or (B) of this section, a security-based swap execution facility may for purposes of execution and communication use any means of interstate commerce, including, but not limited to, the mail, internet, email, and telephone, provided that the chosen execution method satisfies the requirements for order books in § 242.800(x) or in paragraph (a)(3) of this section for request-for-quote systems.

(3) *Request-for-quote system* means a trading system or platform in which a market participant transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all such market participants may respond. The three market participants shall not be affiliates of or controlled by the requester and shall not be affiliates of or controlled by each other. A security-based swap execution facility that offers a request-for-quote system in connection with Required Transactions shall provide the following functionality:

(i) At the same time that the requester receives the first responsive bid or offer, the security-based swap execution facility shall communicate to the requester any firm bid or offer pertaining to the same instrument resting on any of the security-based swap execution facility's order books;

(ii) The security-based swap execution facility shall provide the requester with the ability to execute against such firm resting bids or offers along with any responsive orders; and

(iii) The security-based swap execution facility shall ensure that its trading protocols provide each of its market participants with equal priority in receiving requests for quotes and in transmitting and displaying for execution responsive orders.

(b) *Time delay requirement for Required Transactions on an order book*—(1) *Time delay requirement.* A security-based swap execution facility shall require that a broker or dealer who seeks to either execute against its customer's order or execute two of its customers' orders against each other through the security-based swap execution facility's order book, following some form of pre-arrangement or pre-negotiation of such orders, be subject to at least a 15-second time delay between the entry of those two orders into the order book, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction, whether for the broker's or dealer's own account or for a second customer, is submitted for execution.

(2) *Adjustment of time delay requirement.* A security-based swap execution facility may adjust the time period of the 15-second time delay requirement described in paragraph (b)(1) of this section, based upon a security-based swap's liquidity or other product-specific considerations; however, the time delay shall be set for a sufficient period of time so that an order is exposed to the market and other market participants have a meaningful opportunity to execute against such order.

(c) *Execution methods for Permitted Transactions*—(1) *Permitted Transaction* means any transaction not involving a security-based swap that is

subject to the trade execution requirement in section 3C(h) of the Act.

(2) *Execution methods.* A security-based swap execution facility may offer any method of execution for each Permitted Transaction.

(d) *Exceptions to required methods of execution for package transactions.* (1) For purposes of this paragraph, a package transaction consists of two or more component transactions executed between two or more counterparties where:

(i) At least one component transaction is a Required Transaction;

(ii) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(iii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

(2) A Required Transaction that is executed as a component of a package transaction that includes a component security-based swap that is subject exclusively to the Commission's jurisdiction, but is not subject to the clearing requirement under section 3C of the Act, may be executed on a security-based swap execution facility in accordance with paragraph (c)(2) of this section as if it were a Permitted Transaction;

(3) A Required Transaction that is executed as a component of a package transaction that includes a component that is not a security-based swap may be executed on a security-based swap execution facility in accordance with paragraph (c)(2) of this section as if it were a Permitted Transaction. This provision shall not apply to:

(i) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are U.S. Treasury securities;

(ii) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are contracts for the purchase or sale of a commodity for future delivery;

(iii) A Required Transaction that is executed as a component of a package transaction in which all other non-security-based swap components are agency mortgage-backed securities; and

(iv) A Required Transaction that is executed as a component of a package transaction that includes a component transaction that is the issuance of a bond in a primary market.

(4) A Required Transaction that is executed as a component of a package transaction that includes a component security-based swap that is not exclusively subject to the Commission's jurisdiction may be executed on a security-based swap in accordance with paragraph (c)(2) of this section as if it were a Permitted Transaction.

(e) *Resolution of operational and clerical error trades.* (1) A security-based swap execution facility shall maintain rules and procedures that facilitate the resolution of error trades. Such rules shall be fair, transparent, and consistent; allow for timely resolution; require members to provide prompt notice of an error trade—and, as applicable, offsetting and correcting trades—to the security-based swap execution facility; and permit members to:

(i) Execute a correcting trade, in accordance with paragraph (c)(2) of this section, regardless of whether it is a Required or Permitted Transaction, for an error trade that has been rejected from clearing as soon as technologically practicable, but no later than one hour after a registered clearing agency provides notice of the rejection; or

(ii) Execute an offsetting trade and a correcting trade, in accordance with paragraph (c)(2) of this section, regardless of whether it is a Required or Permitted Transaction, for an error trade that was accepted for clearing as soon as technologically practicable, but no later than three days after the error trade was accepted for clearing at a registered clearing agency.

(2) If a correcting trade is rejected from clearing, then the security-based swap execution facility shall not allow the counterparties to execute another correcting trade.

(f) *Counterparty anonymity.* (1) Except as otherwise required under the Act or the Commission's rules thereunder, a security-based swap execution facility shall not directly or indirectly, including through a third-party service provider, disclose the identity of a counterparty to a security-based swap that is executed anonymously and intended to be cleared.

(2) A security-based swap execution facility shall establish and enforce rules that prohibit any person from directly or indirectly, including through a third-party service provider, disclosing the identity of a counterparty to a security-based swap execution facility that is executed anonymously and intended to be cleared.

(3) For purposes of paragraphs (f)(1) and (2) of this section, ''executed anonymously'' shall include a security-based swap that is pre-arranged or pre-negotiated anonymously, including by a member of the security-based swap execution facility.

(4) For a package transaction that includes a component transaction that is not a security-based swap intended to be cleared, disclosing the identity of a counterparty shall not violate paragraph (f)(1) or (2) of this section. For purposes of this paragraph (f), a ''package transaction'' consists of two or more component transactions executed between two or more counterparties where:

(i) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(ii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

§ 242.816 Trade execution requirement and exemptions therefrom.

(a) General. (1) *Required submission.* A security-based swap execution facility that makes a security-based swap available to trade in accordance with paragraph (b) of this section, shall submit to the Commission its determination with respect to such security-based swap as a rule, pursuant to the procedures under § 242.806 or 242.807.

(2) *Listing requirement.* A security-based swap execution facility that makes a security-based swap available to trade must demonstrate that it lists or offers that security-based swap for trading on its trading system or platform.

(b) *Factors to consider.* To make a security-based swap available to trade for purposes of section 3C(h) of the Act, a security-based swap execution facility shall consider, as appropriate, the following factors with respect to such security-based swap:

(1) Whether there are ready and willing buyers and sellers;

(2) The frequency or size of transactions;

(3) The trading volume;

(4) The number and types of market participants;

(5) The bid/ask spread; or

(6) The usual number of resting firm or indicative bids and offers.

(c) *Applicability.* Upon a determination that a security-based swap is available to trade on a security-based swap execution facility or national securities exchange, all other security-based swap execution facilities and SBS exchanges shall comply with the requirements of section 3C(h) of the Act in listing or offering such security-based swap for trading.

(d) *Removal.* The Commission may issue a determination that a security-based swap is no longer available to trade upon determining that no security-based swap execution facility or SBS exchange lists such security-based swap for trading.

(e) *Exemptions to trade execution requirement.* (1) A security-based swap transaction that is executed as a component of a package transaction that also includes a component transaction that is the issuance of a bond in a primary market is exempt from the trade execution requirement in section 3C(h) of the Act. For purposes of paragraph (e) of this section, a package transaction consists of two or more component transactions executed between two or more counterparties where:

(i) At least one component transaction is subject to the trade execution requirement in section 3C(h) of the Act;

(ii) Execution of each component transaction is contingent upon the execution of all other component transactions; and

(iii) The component transactions are priced or quoted together as one economic transaction with simultaneous or near-simultaneous execution of all components.

(2) Section 3C(h) of the Act does not apply to a security-based swap transaction that qualifies for an exception under section 3C(g) of the Act, or any exemption from the clearing requirement that is granted by the Commission, for which the associated requirements are met.

(3)(i) Section 3C(h) of the Act does not apply to a security-based swap transaction that is executed between counterparties that qualify as ''eligible affiliate counterparties,'' as defined below.

(ii) For purposes of this paragraph (e)(3), counterparties will be ''eligible affiliate counterparties'' if:

(A) One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, and the counterparty that holds the majority interest in the other counterparty reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned counterparty; or

(B) A third party, directly or indirectly, holds a majority ownership interest in both counterparties, and the third party reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of both of the counterparties.

(iii) For purposes of this paragraph (e)(3), a counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

§ 242.817 Trade execution compliance schedule.

(a) A security-based swap transaction shall be subject to the requirements of section 3C(h) of the Act upon the later of:

(1) A determination by the Commission that the security-based swap is required to be cleared as set forth in section 3C(a) or any later compliance date that the Commission may establish as a term or condition of such determination or following a stay and review of such determination pursuant to section 3C(c) of the Act and § 240.3Ca–1 of this chapter thereunder; and

(2) Thirty days after the available-to-trade determination submission or certification for that security-based swap is, respectively, deemed approved under § 242.806 or deemed certified under § 242.807.

(b) Nothing in this section shall prohibit any counterparty from complying voluntarily with the requirements of section 3C(h) of the Act sooner than as provided in paragraph (a) of this section.

§ 242.818 Core Principle 1—Compliance with core principles.

(a) *In general.* To be registered, and maintain registration, as a security-based swap execution facility, the security-based swap execution facility shall comply with the core principles described in section 3D of the Act, and any requirement that the Commission may impose by rule or regulation.

(b) *Reasonable discretion of security-based swap execution facility.* Unless otherwise determined by the Commission, by rule or regulation, a security-based swap execution facility described in paragraph (a) of this section shall have reasonable discretion in establishing the manner in which it complies with the core principles described in section 3D of the Act.

§ 242.819 Core Principle 2—Compliance with rules.

(a) *General.* A security-based swap execution facility shall:

(1) Establish and enforce compliance with any rule established by such security-based swap execution facility, including the terms and conditions of the security-based swaps traded or processed on or through the facility, and any limitation on access to the facility;

(2) Establish and enforce trading, trade processing, and participation rules that will deter abuses and have the capacity to detect, investigate, and enforce those rules, including means to provide market participants with impartial access to the market and to capture information that may be used in establishing whether rule violations have occurred; and

(3) Establish rules governing the operation of the facility, including rules specifying trading procedures to be used in entering and executing orders traded or posted on the facility, including block trades.

(b) *Operation of security-based swap execution facility and compliance with rules.* (1) A security-based swap execution facility shall establish rules governing the operation of the security-based swap execution facility, including, but not limited to, rules specifying trading procedures to be followed by members when entering and executing orders traded or posted on the security-based swap execution facility, including block trades, if offered.

(2) A security-based swap execution facility shall establish and impartially enforce compliance with the rules of the security-based swap execution facility, including, but not limited to:

(i) The terms and conditions of any security-based swaps traded or processed on or through the security-based swap execution facility;

(ii) Access to the security-based swap execution facility;

(iii) Trade practice rules;

(iv) Audit trail requirements;

(v) Disciplinary rules; and

(vi) Mandatory trading requirements.

(c) *Access requirements*—(1) *Impartial access to markets and market services.* A security-based swap execution facility shall provide any eligible contract participant and any independent software vendor with impartial access to its market(s) and market services, including any indicative quote screens or any similar pricing data displays, provided that the facility has:

(i) Criteria governing such access that are impartial, transparent, and applied in a fair and non-discriminatory manner;

(ii) Procedures whereby eligible contract participants provide the security-based swap execution facility

with written or electronic confirmation of their status as eligible contract participants, as defined by the Act and Commission rules thereunder, prior to obtaining access; and

(iii) Comparable fee structures for eligible contract participants and independent software vendors receiving comparable access to, or services from, the security-based swap execution facility.

(2) *Jurisdiction.* Prior to granting any eligible contract participant access to its facilities, a security-based swap execution facility shall require that the eligible contract participant consent to its jurisdiction.

(3) *Limitations on access.* A security-based swap execution facility shall establish and impartially enforce rules governing any decision to allow, deny, suspend, or permanently bar an eligible contract participant's access to the security-based swap execution facility, including when a decision is made as part of a disciplinary or emergency action taken by the security-based swap execution facility.

(d) *Rule enforcement program.* A security-based swap execution facility shall establish and enforce trading, trade processing, and participation rules that will deter abuses and it shall have the capacity to detect, investigate, and enforce those rules.

(1) *Abusive trading practices prohibited.* A security-based swap execution facility shall prohibit abusive trading practices on its markets by members. A security-based swap execution facility that permits intermediation shall prohibit customer-related abuses including, but not limited to, trading ahead of customer orders, trading against customer orders, accommodation trading, and improper cross trading. Specific trading practices that shall be prohibited include front-running, wash trading, pre-arranged trading (except for block trades or other types of transactions approved by or certified to the Commission pursuant § 242.806 or § 242.807, respectively), fraudulent trading, money passes, and any other trading practices that a security-based swap execution facility deems to be abusive. A security-based swap execution facility shall also prohibit any other manipulative or disruptive trading practices prohibited by the Act or by the Commission pursuant to Commission regulation.

(2) *Capacity to detect and investigate rule violations.* A security-based swap execution facility shall have arrangements and resources for effective enforcement of its rules. Such arrangements shall include the authority to collect information and documents on both a routine and non-routine basis, including the authority to examine books and records kept by the security-based swap execution facility's members and by persons under investigation. A security-based swap execution facility's arrangements and resources shall also facilitate the direct supervision of the market and the analysis of data collected to determine whether a rule violation has occurred.

(3) *Compliance staff and resources.* A security-based swap execution facility shall establish and maintain sufficient compliance staff and resources to ensure that it can conduct effective audit trail reviews, trade practice surveillance, market surveillance, and real-time market monitoring. The security-based swap execution facility's compliance staff shall also be sufficient to address unusual market or trading events as they arise, and to conduct and complete investigations in a timely manner, as set forth in paragraph (d)(6) of this section.

(4) *Automated trade surveillance system.* A security-based swap execution facility shall maintain an automated trade surveillance system capable of detecting potential trade practice violations. The automated trade surveillance system shall load and process daily orders and trades no later than 24 hours after the completion of the trading day. The automated trade surveillance system shall have the capability to detect and flag specific trade execution patterns and trade anomalies; compute, retain, and compare trading statistics; reconstruct the sequence of market activity; perform market analyses; and support system users to perform in-depth analyses and ad hoc queries of trade-related data.

(5) *Real-time market monitoring.* A security-based swap execution facility shall conduct real-time market monitoring of all trading activity on its system(s) or platform(s) to identify any market or system anomalies. A security-based swap execution facility shall have the authority to adjust trade prices or cancel trades when necessary to mitigate market disrupting events caused by malfunctions in its system(s) or platform(s) or errors in orders submitted by members. Any trade price adjustments or trade cancellations shall be transparent to the market and subject to standards that are clear, fair, and publicly available.

(6) *Investigations and investigation reports*—(i) *Procedures.* A security-based swap execution facility shall establish and maintain procedures that require its compliance staff to conduct investigations of possible rule violations. An investigation shall be commenced upon the receipt of a request from Commission staff or upon the discovery or receipt of information by the security-based swap execution facility that indicates a reasonable basis for finding that a violation may have occurred or will occur.

(ii) *Timeliness.* Each compliance staff investigation shall be completed in a timely manner. Absent mitigating factors, a timely manner is no later than 12 months after the date that an investigation is opened. Mitigating factors that may reasonably justify an investigation taking longer than 12 months to complete include the complexity of the investigation, the number of firms or individuals involved as potential wrongdoers, the number of potential violations to be investigated, and the volume of documents and data to be examined and analyzed by compliance staff.

(iii) *Investigation reports when a reasonable basis exists for finding a violation.* Compliance staff shall submit a written investigation report for disciplinary action in every instance in which compliance staff determines from surveillance or from an investigation that a reasonable basis exists for finding a rule violation. The investigation report shall include the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; compliance staff's analysis and conclusions; and a recommendation as to whether disciplinary action should be pursued.

(iv) *Investigation reports when no reasonable basis exists for finding a violation.* If after conducting an investigation, compliance staff determines that no reasonable basis exists for finding a rule violation, it shall prepare a written report including the reason the investigation was initiated; a summary of the complaint, if any; the relevant facts; and compliance staff's analysis and conclusions.

(v) *Warning letters.* The rules of a security-based swap execution facility may authorize its compliance staff to issue a warning letter to a person or entity under investigation or to recommend that a disciplinary panel take such an action. No more than one warning letter may be issued to the same person or entity found to have committed the same rule violation within a rolling 12-month period.

(e) *Regulatory services provided by a third party*—(1) *Use of regulatory service provider permitted.* A security-based swap execution facility may choose to contract with a registered futures association (under section 17 of the Commodity Exchange Act), a national securities exchange, a national

securities association, or another security-based swap execution facility (each a ''regulatory service provider''), for the provision of services to assist in complying with the Act and Commission rules thereunder, as approved by the Commission. A security-based swap execution facility that chooses to contract with a regulatory service provider shall ensure that such provider has the capacity and resources necessary to provide timely and effective regulatory services, including adequate staff and automated surveillance systems. A security-based swap execution facility shall at all times remain responsible for the performance of any regulatory services received, for compliance with the security-based swap execution facility's obligations under the Act and Commission rules thereunder, and for the regulatory service provider's performance on its behalf.

(2) *Duty to supervise regulatory service provider.* A security-based swap execution facility that elects to use the service of a regulatory service provider shall retain sufficient compliance staff to supervise the quality and effectiveness of the regulatory services provided on its behalf. Compliance staff of the security-based swap execution facility shall hold regular meetings with the regulatory service provider to discuss ongoing investigations, trading patterns, market participants, and any other matters of regulatory concern. A security-based swap execution facility shall also conduct periodic reviews of the adequacy and effectiveness of services provided on its behalf. Such reviews shall be documented carefully and made available to the Commission upon request.

(3) *Regulatory decisions required from the security-based swap execution facility.* A security-based swap execution facility that elects to use the service of a regulatory service provider shall retain exclusive authority in all substantive decisions made by its regulatory service provider, including, but not limited to, decisions involving the cancellation of trades, the issuance of disciplinary charges against members, and denials of access to the trading platform for disciplinary reasons. A security-based swap execution facility shall document any instances where its actions differ from those recommended by its regulatory service provider, including the reasons for the course of action recommended by the regulatory service provider and the reasons why the security-based swap execution facility chose a different course of action.

(f) *Audit trail.* A security-based swap execution facility shall establish procedures to capture and retain information that may be used in establishing whether rule violations have occurred.

(1) *Audit trail required.* A security-based swap execution facility shall capture and retain all audit trail data necessary to detect, investigate, and prevent customer and market abuses. Such data shall be sufficient to reconstruct all indications of interest, requests for quotes, orders, and trades within a reasonable period of time and to provide evidence of any violations of the rules of the security-based swap execution facility. An acceptable audit trail shall also permit the security-based swap execution facility to track a customer order from the time of receipt through execution on the security-based swap execution facility.

(2) *Elements of an acceptable audit trail program*—(i) *Original source documents.* A security-based swap execution facility's audit trail shall include original source documents. Original source documents include unalterable, sequentially-identified records on which trade execution information is originally recorded, whether recorded manually or electronically. Records for customer orders (whether filled, unfilled, or cancelled, each of which shall be retained or electronically captured) shall reflect the terms of the order, an account identifier that relates back to the account(s) owner(s), the time of order entry, and the time of trade execution. A security-based swap execution facility shall require that all orders, indications of interest, and requests for quotes be immediately captured in the audit trail.

(ii) *Transaction history database.* A security-based swap execution facility's audit trail program shall include an electronic transaction history database. An adequate transaction history database shall include a history of all indications of interest, requests for quotes, orders, and trades entered into a security-based swap execution facility's trading system or platform, including all order modifications and cancellations. An adequate transaction history database shall also include:

(A) All data that are input into the trade entry or matching system for the transaction to match and clear;

(B) The customer type indicator code; and

(C) Timing and sequencing data adequate to reconstruct trading.

(iii) *Electronic analysis capability.* A security-based swap execution facility's audit trail program shall include electronic analysis capability with respect to all audit trail data in the transaction history database. Such electronic analysis capability shall ensure that the security-based swap execution facility has the ability to reconstruct indications of interest, requests for quotes, orders, and trades, and identify possible trading violations with respect to both customer and market abuse.

(iv) *Safe-storage capability.* A security-based swap execution facility's audit trail program shall include the capability to safely store all audit trail data retained in its transaction history database. Such safe-storage capability shall include the capability to store all data in the database in a manner that protects it from unauthorized alteration, as well as from accidental erasure or other loss. Data shall be retained in accordance with the recordkeeping requirements of Core Principle 9 and § 242.826.

(3) *Enforcement of audit trail requirements*—(i) *Annual audit trail and recordkeeping reviews.* A security-based swap execution facility shall enforce its audit trail and recordkeeping requirements through at least annual reviews of all members and persons and firms subject to the security-based swap execution facility's recordkeeping rules to verify their compliance with the security-based swap execution facility's audit trail and recordkeeping requirements. Such reviews shall include, but are not limited to, reviews of randomly selected samples of front-end audit trail data for order routing systems; a review of the process by which user identifications are assigned and user identification records are maintained; a review of usage patterns associated with user identifications to monitor for violations of user identification rules; and reviews of account numbers and customer type indicator codes in trade records to test for accuracy and improper use.

(ii) *Enforcement program required.* A security-based swap execution facility shall establish a program for effective enforcement of its audit trail and recordkeeping requirements. An effective program shall identify members, persons, and firms subject to the security-based swap execution facility's recordkeeping rules that have failed to maintain high levels of compliance with such requirements, and impose meaningful sanctions when deficiencies are found. Sanctions shall be sufficient to deter recidivist behavior. No more than one warning letter shall be issued to the same person or entity found to have committed the same violation of audit trail or recordkeeping

requirements within a rolling 12-month period.

(g) *Disciplinary procedures and sanctions.* A security-based swap execution facility shall establish trading, trade processing, and participation rules that will deter abuses and have the capacity to enforce such rules through prompt and effective disciplinary action, including suspension or expulsion of members that violate the rules of the security-based swap execution facility.

(1) *Enforcement staff.* (i) A security-based swap execution facility shall establish and maintain sufficient enforcement staff and resources to effectively and promptly prosecute possible rule violations within the disciplinary jurisdiction of the security-based swap execution facility.

(ii) The enforcement staff of a security-based swap execution facility shall not include members or other persons whose interests conflict with their enforcement duties.

(iii) A member of the enforcement staff shall not operate under the direction or control of any person or persons with trading privileges at the security-based swap execution facility.

(iv) The enforcement staff of a security-based swap execution facility may operate as part of the security-based swap execution facility's compliance department.

(2) *Disciplinary panels.* A security-based swap execution facility shall establish one or more disciplinary panels that are authorized to fulfill their obligations under the rules of this section. Disciplinary panels shall meet the composition requirements of § 242.834(d), and shall not include any members of the security-based swap execution facility's compliance staff or any person involved in adjudicating any other stage of the same proceeding.

(3) *Notice of charges.* If compliance staff authorized by a security-based swap execution facility or disciplinary panel thereof determines that a reasonable basis exists for finding a violation and adjudication is warranted, it shall direct that the person or entity alleged to have committed the violation be served with a notice of charges. A notice of charges shall adequately state the acts, conduct, or practices in which the respondent is alleged to have engaged; state the rule or rules alleged to have been violated (or about to be violated); advise the respondent that it is entitled, upon request, to a hearing on the charges; and prescribe the period within which a hearing on the charges may be requested. If the rules of the security-based swap execution facility so provide, a notice may also advise:

(i) That failure to request a hearing within the period prescribed in the notice, except for good cause, may be deemed a waiver of the right to a hearing; and

(ii) That failure to answer or to deny expressly a charge may be deemed to be an admission of such charge.

(4) *Right to representation.* Upon being served with a notice of charges, a respondent shall have the right to be represented by legal counsel or any other representative of its choosing in all succeeding stages of the disciplinary process, except by any member of the security-based swap execution facility's governing board or disciplinary panel, any employee of the security-based swap execution facility, or any person substantially related to the underlying investigations, such as a material witness or respondent.

(5) *Answer to charges.* A respondent shall be given a reasonable period of time to file an answer to a notice of charges. The rules of a security-based swap execution facility governing the requirements and timeliness of a respondent's answer to a notice of charges shall be fair, equitable, and publicly available.

(6) *Admission or failure to deny charges.* The rules of a security-based swap execution facility may provide that, if a respondent admits or fails to deny any of the charges, a disciplinary panel may find that the violations alleged in the notice of charges for which the respondent admitted or failed to deny any of the charges have been committed. If the security-based swap execution facility's rules so provide, then:

(i) The disciplinary panel may impose a sanction for each violation found to have been committed;

(ii) The disciplinary panel shall promptly notify the respondent in writing of any sanction to be imposed and shall advise the respondent that the respondent may request a hearing on such sanction within the period of time, which shall be stated in the notice; and

(iii) The rules of a security-based swap execution facility may provide that, if a respondent fails to request a hearing within the period of time stated in the notice, the respondent will be deemed to have accepted the sanction.

(7) *Denial of charges and right to hearing.* Where a respondent has requested a hearing on a charge that is denied, or on a sanction set by the disciplinary panel, the respondent shall be given an opportunity for a hearing in accordance with the rules of the security-based swap execution facility.

(8) *Settlement offers.* (i) The rules of a security-based swap execution facility may permit a respondent to submit a written offer of settlement at any time after an investigation report is completed. The disciplinary panel presiding over the matter may accept the offer of settlement, but may not alter the terms of a settlement offer unless the respondent agrees.

(ii) The rules of a security-based swap execution facility may provide that, in its discretion, a disciplinary panel may permit the respondent to accept a sanction without either admitting or denying the rule violations upon which the sanction is based.

(iii) If an offer of settlement is accepted, the panel accepting the offer shall issue a written decision specifying the rule violations it has reason to believe were committed, including the basis or reasons for the panel's conclusions, and any sanction to be imposed, which shall include full customer restitution where customer harm is demonstrated, except where the amount of restitution or to whom it should be provided cannot be reasonably determined. If an offer of settlement is accepted without the agreement of the enforcement staff, the decision shall adequately support the disciplinary panel's acceptance of the settlement. Where applicable, the decision shall also include a statement that the respondent has accepted the sanctions imposed without either admitting or denying the rule violations.

(iv) The respondent may withdraw its offer of settlement at any time before final acceptance by a disciplinary panel. If an offer is withdrawn after submission, or is rejected by a disciplinary panel, the respondent shall not be deemed to have made any admissions by reason of the offer of settlement and shall not be otherwise prejudiced by having submitted the offer of settlement.

(9) *Hearings.* A security-based swap execution facility shall adopt rules that provide for the following minimum requirements for any hearing:

(i) The hearing shall be fair, shall be conducted before members of the disciplinary panel, and shall be promptly convened after reasonable notice to the respondent. A security-based swap execution facility need not apply the formal rules of evidence for a hearing; nevertheless, the procedures for the hearing may not be so informal as to deny a fair hearing;

(ii) No member of the disciplinary panel for the hearing may have a financial, personal, or other direct interest in the matter under consideration;

(iii) In advance of the hearing, the respondent shall be entitled to examine

all books, documents, or other evidence in the possession or under the control of the security-based swap execution facility. The security-based swap execution facility may withhold documents that are privileged or constitute attorney work product; were prepared by an employee of the security-based swap execution facility but will not be offered in evidence in the disciplinary proceedings; may disclose a technique or guideline used in examinations, investigations, or enforcement proceedings; or disclose the identity of a confidential source;

(iv) The security-based swap execution facility's enforcement and compliance staffs shall be parties to the hearing, and the enforcement staff shall present their case on those charges and sanctions that are the subject of the hearing;

(v) The respondent shall be entitled to appear personally at the hearing, to cross-examine any persons appearing as witnesses at the hearing, to call witnesses, and to present such evidence as may be relevant to the charges;

(vi) The security-based swap execution facility shall require persons within its jurisdiction who are called as witnesses to participate in the hearing and produce evidence. The security-based swap execution facility shall make reasonable efforts to secure the presence of all other persons called as witnesses whose testimony would be relevant. The rules of a security-based swap execution facility may provide that a sanction may be summarily imposed upon any person within its jurisdiction whose actions impede the progress of a hearing; and

(vii) If the respondent has requested a hearing, a copy of the hearing shall be made and shall become a part of the record of the proceeding. The record shall not be required to be transcribed unless:

(A) The transcript is requested by Commission staff or the respondent;

(B) The decision is appealed pursuant to the rules of the security-based swap execution facility; or

(C) The decision is reviewed by the Commission pursuant to § 201.442 of this chapter. In all other instances, a summary record of a hearing is permitted.

(10) *Decisions.* Promptly following a hearing conducted in accordance with the rules of the security-based swap execution facility, the disciplinary panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include:

(i) The notice of charges or a summary of the charges;

(ii) The answer, if any, or a summary of the answer;

(iii) A summary of the evidence produced at the hearing or, where appropriate, incorporation by reference of the investigation report;

(iv) A statement of findings and conclusions with respect to each charge and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge;

(v) An indication of each specific rule that the respondent was found to have violated; and

(vi) A declaration of all sanctions imposed against the respondent, including the basis for such sanctions and the effective date of such sanctions.

(11) *Emergency disciplinary actions.*

(i) A security-based swap execution facility may impose a sanction, including suspension, or take other summary action against a person or entity subject to its jurisdiction upon a reasonable belief that such immediate action is necessary to protect the best interest of the market place.

(ii) Any emergency disciplinary action shall be taken in accordance with a security-based swap execution facility's procedures that provide for the following:

(A) If practicable, a respondent should be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice shall state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

(B) The respondent shall have the right to be represented by legal counsel or any other representative of its choosing in all proceedings subsequent to the emergency action taken. The respondent shall be given the opportunity for a hearing as soon as reasonably practicable and the hearing shall be conducted before the disciplinary panel pursuant to the rules of the security-based swap execution facility.

(C) Promptly following the hearing, the security-based swap execution facility shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall provide a copy to the respondent. The decision shall include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should be affirmed, modified, or reversed; and a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.

(12) *Right to appeal.* The rules of a security-based swap execution facility may permit the parties to a proceeding to appeal promptly an adverse decision of a disciplinary panel in all or in certain classes of cases. Such rules may require a party's notice of appeal to be in writing and to specify the findings, conclusions, or sanctions to which objection are taken. If the rules of a security-based swap execution facility permit appeals, then both the respondent and the enforcement staff shall have the opportunity to appeal and:

(i) The security-based swap execution facility shall establish an appellate panel that is authorized to hear appeals. The rules of the security-based swap execution facility may provide that the appellate panel may, on its own initiative, order review of a decision by a disciplinary panel within a reasonable period of time after the decision has been rendered;

(ii) The composition of the appellate panel shall be consistent with § 242.834(d) and shall not include any members of the security-based swap execution facility's compliance staff or any person involved in adjudicating any other stage of the same proceeding. The rules of a security-based swap execution facility shall provide for the appeal proceeding to be conducted before all of the members of the appellate panel or a panel thereof;

(iii) Except for good cause shown, the appeal or review shall be conducted solely on the record before the disciplinary panel, the written exceptions filed by the parties, and the oral or written arguments of the parties; and

(iv) Promptly following the appeal or review proceeding, the appellate panel shall issue a written decision and shall provide a copy to the respondent. The decision issued by the appellate panel shall adhere to all the requirements of paragraph (g)(10) of this section to the extent that a different conclusion is reached from that issued by the disciplinary panel.

(13) *Disciplinary sanctions*—(i) *In general.* All disciplinary sanctions imposed by a security-based swap execution facility or its disciplinary panels shall be commensurate with the violations committed and shall be clearly sufficient to deter recidivism or similar violations by other members. All disciplinary sanctions, including sanctions imposed pursuant to an accepted settlement offer, shall take into

account the respondent's disciplinary history. In the event of demonstrated customer harm, any disciplinary sanction shall also include full customer restitution, except where the amount of restitution or to whom it should be provided cannot be reasonably determined.

(ii) *Summary fines for violations of rules regarding timely submission of records.* A security-based swap execution facility may adopt a summary fine schedule for violations of rules relating to the failure to timely submit accurate records required for clearing or verifying each day's transactions. A security-based swap execution facility may permit its compliance staff, or a designated panel of security-based swap execution facility officials, to summarily impose minor sanctions against persons within the security-based swap execution facility's jurisdiction for violating such rules. A security-based swap execution facility's summary fine schedule may allow for warning letters to be issued for first-time violations or violators. If adopted, a summary fine schedule shall provide for progressively larger fines for recurring violations.

(h) *Activities of security-based swap execution facility's employees, governing board members, committee members, and consultants*—(1) *Definitions.* The following definitions shall apply only in this paragraph (h) of this section:

(i) *Covered interest,* with respect to a security-based swap execution facility, means:

(A) A security-based swap that trades on the security-based swap execution facility;

(B) A security of an issuer that has issued a security that underlies a security-based swap that is listed on that facility; or

(C) A derivative based on a security that falls within paragraph (h)(1)(i)(B) of this section.

(ii) *Pooled investment vehicle* means an investment company registered under the Investment Company Act of 1940 in which no covered interest constitutes more than ten percent of the investment company's assets.

(2) *Required rules.* A security-based swap execution facility must maintain in effect rules which have been submitted to the Commission pursuant to § 242.806 or 242.807 that, at a minimum, prohibit an employee of the security-based swap execution facility from:

(i) Trading, directly or indirectly, any covered interest; and

(ii) Disclosing to any other person any material, non-public information which such employee obtains as a result of their employment at the security-based swap execution facility, where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any covered interest; provided, however, that such rules shall not prohibit disclosures made in the course of an employee's duties, or disclosures made to another security-based swap execution facility, court of competent jurisdiction, or representative of any agency or department of the Federal or State government acting in their official capacity.

(3) *Possible exemptions.* A security-based swap execution facility may adopt rules, which must be submitted to the Commission pursuant to § 242.806 or § 242.807, which set forth circumstances under which exemptions from the trading prohibition contained in paragraph (h)(2)(i) of this section may be granted; such exemptions are to be administered by the security-based swap execution facility on a case-by-case basis. Specifically, such circumstances may include:

(i) Participation by an employee in a pooled investment vehicle where the employee has no direct or indirect control with respect to transactions executed for or on behalf of such vehicle;

(ii) Trading by an employee in a derivative based on a pooled investment vehicle that falls within paragraph (h)(3)(i) of this section;

(iii) Trading by an employee in a derivative based on an index in which no covered interest constitutes more than ten percent of the index; and

(iv) Trading by an employee under circumstances enumerated by the security-based swap execution facility in rules which the security-based swap execution facility determines are not contrary to applicable law, the public interest, or just and equitable principles of trade.

(4) *Prohibited conduct.* (i) No employee, governing board member, committee member, or consultant of a security-based swap execution facility shall:

(A) Trade for such person's own account, or for or on behalf of any other account, in any covered interest on the basis of any material, non-public information obtained through special access related to the performance of such person's official duties as an employee, governing board member, committee member, or consultant; or

(B) Disclose for any purpose inconsistent with the performance of such person's official duties as an employee, governing board member, committee member, or consultant any material, non-public information obtained through special access related to the performance of such duties.

(ii) No person shall trade for such person's own account, or for or on behalf of any other account, in any covered interest on the basis of any material, non-public information that such person knows was obtained in violation of this paragraph (h)(4) from an employee, governing board member, committee member, or consultant.

(*i*) *Service on security-based swap execution facility governing boards or committees by persons with disciplinary histories.* (1) A security-based swap execution facility shall maintain in effect rules which have been submitted to the Commission pursuant to § 242.806 or § 242.807 that render a person ineligible to serve on its disciplinary committees, arbitration panels, oversight panels, or governing board who:

(i) Was found within the prior three years by a final decision of a security-based swap execution facility, a self-regulatory organization, an administrative law judge, a court of competent jurisdiction, or the Commission to have committed a disciplinary offense;

(ii) Entered into a settlement agreement with a security-based swap execution facility, a court of competent jurisdiction, or the Commission within the prior three years in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(iii) Currently is suspended from trading on any security-based swap execution facility, is suspended or expelled from membership with a self-regulatory organization, is serving any sentence of probation, or owes any portion of a fine imposed pursuant to:

(A) A finding by a final decision of a security-based swap execution facility, a self-regulatory organization, an administrative law judge, a court of competent jurisdiction, or the Commission that such person committed a disciplinary offense; or

(B) A settlement agreement with a security-based swap execution facility, a court of competent jurisdiction, or the Commission in which any of the findings or, in the absence of such findings, any of the acts charged included a disciplinary offense;

(iv) Currently is subject to an agreement with the Commission, a security-based swap execution facility, or a self-regulatory organization not to apply for registration with the Commission or membership in any self-regulatory organization;

(v) Currently is subject to or has had imposed on him or her within the prior three years a Commission registration revocation or suspension in any capacity for any reason, or has been convicted within the prior three years of any felony; or

(vi) Currently is subject to a denial, suspension, or disqualification from serving on a disciplinary committee, arbitration panel, or governing board of any security-based swap execution facility or self-regulatory organization.

(2) No person may serve on a disciplinary committee, arbitration panel, oversight panel or governing board of a security-based swap execution facility if such person is subject to any of the conditions listed in paragraphs (i)(1)(i) through (vi) of this section.

(3) A security-based swap execution facility shall submit to the Commission a schedule listing all those rule violations which constitute disciplinary offenses and, to the extent necessary to reflect revisions, shall submit an amended schedule within 30 days of the end of each calendar year. A security-based swap execution facility shall maintain and keep current the schedule required by this section, and post the schedule on the security-based swap execution facility's website so that it is in a public place designed to provide notice to members and otherwise ensure its availability to the general public.

(4) A security-based swap execution facility shall submit to the Commission within 30 days of the end of each calendar year a certified list of any persons who have been removed from its disciplinary committees, arbitration panels, oversight panels, or governing board pursuant to the requirements of this section during the prior year.

(5) Whenever a security-based swap execution facility finds by final decision that a person has committed a disciplinary offense and such finding makes such person ineligible to serve on that security-based swap execution facility's disciplinary committees, arbitration panels, oversight panels, or governing board, the security-based swap execution facility shall inform the Commission of that finding and the length of the ineligibility in a form and manner specified by the Commission.

(6) For purposes of this paragraph:

(i) *Arbitration panel* means any person or panel empowered by a security-based swap execution facility to arbitrate disputes involving the security-based swap execution facility's members or their customers.

(ii) *Disciplinary offense* means:

(A) Any violation of the rules of a security-based swap execution facility, except a violation resulting in fines aggregating to less than $5000 within a calendar year involving:

(*1*) Decorum or attire;

(*2*) Financial requirements; or

(*3*) Reporting or recordkeeping;

(B) Any rule violation which involves fraud, deceit, or conversion or results in a suspension or expulsion;

(C) Any violation of the Act or the Commission's rules thereunder; or

(D) Any failure to exercise supervisory responsibility when such failure is itself a violation of either the rules of the security-based swap execution facility, the Act, or the Commission's rules thereunder.

(E) A disciplinary offense must arise out of a proceeding or action which is brought by a security-based swap execution facility, the Commission, any Federal or State agency, or other governmental body.

(iii) *Final decision* means:

(A) A decision of a security-based swap execution facility which cannot be further appealed within the security-based swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction; or

(B) Any decision by an administrative law judge, a court of competent jurisdiction, or the Commission which has not been stayed or reversed.

(j) *Notification of final disciplinary action involving financial harm to a customer.* (1) Upon any final disciplinary action in which a security-based swap execution facility finds that a member has committed a rule violation that involved a transaction for a customer, whether executed or not, and that resulted in financial harm to the customer:

(i) The security-based swap execution facility shall promptly provide written notice of the disciplinary action to the member; and

(ii) The security-based swap execution facility shall have established a rule pursuant to § 242.806 or 242.807 that requires a member that receives such a notice to promptly provide written notice of the disciplinary action to the customer, as disclosed on the member's books and records.

(2) A written notice required by paragraph (j)(1) of this section must include the principal facts of the disciplinary action and a statement that the security-based swap execution facility has found that the member has committed a rule violation that involved a transaction for the customer, whether executed or not, and that resulted in financial harm to the customer.

(3) Solely for purposes of this paragraph (j):

(i) *Customer* means a person that utilizes an agent in connection with trading on a security-based swap execution facility.

(ii) *Final disciplinary action* means any decision by or settlement with a security-based swap execution facility in a disciplinary matter which cannot be further appealed at the security-based swap execution facility, is not subject to the stay of the Commission or a court of competent jurisdiction, and has not been reversed by the Commission or any court of competent jurisdiction.

(k) *Designation of agent for non-U.S. member.* (1) A security-based swap execution facility that admits a non-U.S. person as a member shall be deemed to be the agent of the non-U.S. member with respect to any security-based swaps executed by the non-U.S. member. Service or delivery of any communication issued by or on behalf of the Commission to the security-based swap execution facility shall constitute valid and effective service upon the non-U.S. member. The security-based swap execution facility which has been served with, or to which there has been delivered, a communication issued by or on behalf of the Commission to a non-U.S. member shall transmit the communication promptly and in a manner which is reasonable under the circumstances, or in a manner specified by the Commission in the communication, to the non-U.S. member.

(2) It shall be unlawful for a security-based swap execution facility to permit a non-U.S. member to execute security-based swaps on the facility unless the security-based swap execution facility prior thereto informs the non-U.S. member in writing of the requirements of this section.

(3) The requirements of paragraphs (k)(1) and (2) of this section shall not apply if the non-U.S. member has duly executed and maintains in effect a written agency agreement in compliance with this paragraph with a person domiciled in the United States and has provided a copy of the agreement to the security-based swap execution facility prior to effecting any transaction on the security-based swap execution facility. This agreement must authorize the person domiciled in the United States to serve as the agent of the non-U.S. member for purposes of accepting delivery and service of all communications issued by or on behalf of the Commission to the non-U.S. member and must provide an address in the United States where the agent will accept delivery and service of

communications from the Commission. This agreement must be filed with the Commission by the security-based swap execution facility prior to permitting the non-U.S. member to effect any transactions in security-based swaps. Such agreements shall be filed in a manner specified by the Commission.

(4) A non-U.S. member shall notify the Commission immediately if the written agency agreement is terminated, revoked, or is otherwise no longer in effect. If the security-based swap execution facility knows or should know that the agreement has expired, been terminated, or is no longer in effect, the security-based swap execution facility shall notify the Commission immediately.

§ 242.820 Core Principle 3—Security-based swaps not readily susceptible to manipulation.

The security-based swap execution facility shall permit trading only in security-based swaps that are not readily susceptible to manipulation.

§ 242.821 Core Principle 4—Monitoring of trading and trade processing.

(a) *General.* The security-based swap execution facility shall:

(1) Establish and enforce rules or terms and conditions defining, or specifications detailing:

(i) Trading procedures to be used in entering and executing orders traded on or through the facilities of the security-based swap execution facility; and

(ii) Procedures for trade processing of security-based swaps on or through the facilities of the security-based swap execution facility; and

(2) Monitor trading in security-based swaps to prevent manipulation, price distortion, and disruptions of the delivery or cash settlement process through surveillance, compliance, and disciplinary practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

(b) *Market oversight obligations.* A security-based swap execution facility shall:

(1) Collect and evaluate data on its members' market activity on an ongoing basis in order to detect and prevent manipulation, price distortions, and, where possible, disruptions of the physical-delivery or cash-settlement process;

(2) Monitor and evaluate general market data in order to detect and prevent manipulative activity that would result in the failure of the market price to reflect the normal forces of supply and demand;

(3) Demonstrate an effective program for conducting real-time monitoring of trading for the purpose of detecting and resolving abnormalities. A security-based swap execution facility shall employ automated alerts to detect abnormal price movements and unusual trading volumes in real time and instances or threats of manipulation, price distortion, and disruptions on at least a T+1 basis. The T+1 detection and analysis should incorporate any additional data that becomes available on a T+1 basis, including the trade reconstruction data;

(4) Demonstrate the ability to comprehensively and accurately reconstruct daily trading activity for the purpose of detecting instances or threats of manipulation, price distortion, and disruptions; and

(5) Have rules in place that allow it to intervene to prevent or reduce market disruptions. Once a threatened or actual disruption is detected, the security-based swap execution facility shall take steps to prevent the market disruption or reduce its severity.

(c) *Monitoring of physical-delivery security-based swaps.* For physical-delivery security-based swaps, the security-based swap execution facility shall demonstrate that it:

(1) Monitors a security-based swap's terms and conditions as they relate to the underlying asset market; and

(2) Monitors the availability of the supply of the asset specified by the delivery requirements of the security-based swap.

(d) *Additional requirements for cash-settled security-based swaps.* (1) For cash-settled security-based swaps, the security-based swap execution facility shall demonstrate that it monitors the pricing of the reference price used to determine cash flows or settlement.

(2) For cash-settled security-based swaps listed on the security-based swap execution facility where the reference price is formulated and computed by the security-based swap execution facility, the security-based swap execution facility shall demonstrate that it monitors the continued appropriateness of its methodology for deriving that price and shall promptly amend any methodologies that result, or are likely to result, in manipulation, price distortions, or market disruptions, or impose new methodologies to resolve the threat of disruptions or distortions.

(3) For cash-settled security-based swaps listed on the security-based swap execution facility where the reference price relies on a third-party index or instrument, including an index or instrument traded on another venue, the security-based swap execution facility shall demonstrate that it monitors for pricing abnormalities in the index or instrument used to calculate the reference price and shall conduct due diligence to ensure that the reference price is not susceptible to manipulation.

(e) *Ability to obtain information.* (1) A security-based swap execution facility shall demonstrate that it has access to sufficient information to assess whether trading in security-based swaps listed on its market, in the index or instrument used as a reference price, or in the underlying asset for its listed security-based swaps is being used to affect prices on its market. The security-based swap execution facility shall demonstrate that it can obtain position and trading information directly from members that conduct substantial trading on its facility or through an information-sharing agreement with other venues or a third-party regulatory service provider. If the position and trading information is not available directly from its members but is available through information-sharing agreements with other trading venues or a third-party regulatory service provider, the security-based swap execution facility should cooperate in such information-sharing agreements.

(2) A security-based swap execution facility shall have rules that require its members to keep records of their trading, including records of their activity in the underlying asset, and related derivatives markets, and make such records available, upon request, to the security-based swap execution facility or, if applicable, to its regulatory service provider and the Commission. The security-based swap execution facility may limit the application of this requirement to only those members that conduct substantial trading on its facility.

(f) *Risk controls for trading.* A security-based swap execution facility shall establish and maintain risk control mechanisms to prevent and reduce the potential risk of market disruptions, including, but not limited to, market restrictions that pause or halt trading under market conditions prescribed by the security-based swap execution facility. Such risk control mechanisms shall be designed to avoid market disruptions without unduly interfering with that market's price discovery function. The security-based swap execution facility may choose from among controls that include: Pre-trade limits on order size, price collars or bands around the current price, message throttles, daily price limits, and intraday position limits related to financial risk to the clearing member, or design other types of controls, as well as clear error-

trade and order-cancellation policies. Within the specific array of controls that are selected, the security-based swap execution facility shall set the parameters for those controls, so that the specific parameters are reasonably likely to serve the purpose of preventing market disruptions and price distortions.

(g) *Trade reconstruction.* A security-based swap execution facility shall have the ability to comprehensively and accurately reconstruct all trading on its facility. All audit-trail data and reconstructions shall be made available to the Commission in a form, manner, and time that is acceptable to the Commission.

(h) *Regulatory service provider.* A security-based swap execution facility shall comply with the rules in this section through a dedicated regulatory department or by contracting with a regulatory service provider pursuant to § 242.819(e).

§ 242.822 Core Principle 5—Ability to obtain information.

(a) *General.* The security-based swap execution facility shall:

(1) Establish and enforce rules that will allow the facility to obtain any necessary information to perform any of the functions described in section 3D of the Act;

(2) Provide the information to the Commission on request; and

(3) Have the capacity to carry out such international information-sharing agreements as the Commission may require.

(b) *Establish and enforce rules.* A security-based swap execution facility shall establish and enforce rules that will allow the security-based swap execution facility to have the ability and authority to obtain sufficient information to allow it to fully perform its operational, risk management, governance, and regulatory functions and any requirements under this section, including the capacity to carry out international information-sharing agreements as the Commission may require.

(c) *Collection of information.* A security-based swap execution facility shall have rules that allow it to collect information on a routine basis, allow for the collection of non-routine data from its members, and allow for its examination of books and records kept by members on its facility.

(d) *Provide information to the Commission.* A security-based swap execution facility shall provide information in its possession to the Commission upon request, in a form and manner specified by the Commission.

(e) *Information-sharing agreements.* A security-based swap execution facility shall share information with other regulatory organizations, data repositories, and third-party data reporting services as required by the Commission or as otherwise necessary and appropriate to fulfill its regulatory and reporting responsibilities. Appropriate information-sharing agreements can be established with such entities, or the Commission can act in conjunction with the security-based swap execution facility to carry out such information sharing.

§ 242.823 Core Principle 6—Financial integrity of transactions.

(a) *General.* The security-based swap execution facility shall establish and enforce rules and procedures for ensuring the financial integrity of security-based swaps entered on or through the facilities of the security-based swap execution facility, including the clearance and settlement of security-based swaps pursuant to section 3C(a)(1) of the Act.

(b) *Required clearing.* Transactions executed on or through the security-based swap execution facility that are required to be cleared under section 3C(a)(1) of the Act or are voluntarily cleared by the counterparties shall be cleared through a registered clearing agency or a clearing agency that has obtained an exemption from clearing agency registration to provide central counterparty services for security based swaps.

(c) *General financial integrity.* A security-based swap execution facility shall provide for the financial integrity of its transactions:

(1) By establishing minimum financial standards for its members, which shall, at a minimum, require that each member qualify as an eligible contract participant;

(2) For transactions cleared by a registered clearing agency:

(i) By ensuring that the security-based swap execution facility has the capacity to route transactions to the registered clearing agency in a manner acceptable to the clearing agency for purposes of clearing; and

(ii) By coordinating with each registered clearing agency to which it submits transactions for clearing, in the development of rules and procedures to facilitate prompt and efficient transaction processing.

(d) *Monitoring for financial soundness.* A security-based swap execution facility shall monitor its members to ensure that they continue to qualify as eligible contract participants.

§ 242.824 Core Principle 7—Emergency authority.

(a) The security-based swap execution facility shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, as is necessary and appropriate, including the authority to liquidate or transfer open positions in any security-based swap or to suspend or curtail trading in a security-based swap.

(b) To comply with this core principle, a security-based swap execution facility shall adopt rules that are reasonably designed to:

(1) Allow the security-based swap execution facility to intervene as necessary to maintain markets with fair and orderly trading and to prevent or address manipulation or disruptive trading practices, whether the need for intervention arises exclusively from the security-based swap execution facility's market or as part of a coordinated, cross-market intervention;

(2) Have the flexibility and independence to address market emergencies in an effective and timely manner consistent with the nature of the emergency, as long as all such actions taken by the security-based swap execution facility are made in good faith to protect the integrity of the markets;

(3) Take market actions as may be directed by the Commission, including, in situations where a security-based swap is traded on more than one platform, emergency action to liquidate or transfer open interest as directed, or agreed to, by the Commission or the Commission's staff.

(4) Include procedures and guidelines for decision-making and implementation of emergency intervention that avoid conflicts of interest;

(5) Include alternate lines of communication and approval procedures to address emergencies associated with real-time events;

(6) Allow the security-based swap execution facility, to address perceived market threats, to impose or modify position limits, impose or modify price limits, impose or modify intraday market restrictions, impose special margin requirements, order the liquidation or transfer of open positions in any contract, order the fixing of a settlement price, extend or shorten the expiration date or the trading hours, suspend or curtail trading in any contract, transfer customer contracts and the margin, or alter any contract's settlement terms or conditions, or, if

applicable, provide for the carrying out of such actions through its agreements with its third-party provider of clearing or regulatory services.

(c) A security-based swap execution facility shall promptly notify the Commission of its exercise of emergency action, explaining its decision-making process, the reasons for using its emergency authority, and how conflicts of interest were minimized, including the extent to which the security-based swap execution facility considered the effect of its emergency action on the underlying markets and on markets that are linked or referenced to the contracts traded on its facility, including similar markets on other trading venues. Information on all regulatory actions carried out pursuant to a security-based swap execution facility's emergency authority shall be included in a timely submission of a certified rule pursuant to § 242.807.

§ 242.825 Core Principle 8—Timely publication of trading information.

(a)(1) The security-based swap execution facility shall make public timely information on price, trading volume, and other trading data on security-based swaps to the extent prescribed by the Commission.

(2) The security-based swap execution facility shall be required to have the capacity to electronically capture and transmit and disseminate trade information with respect to transactions executed on or through the facility.

(b) A security-based swap execution facility shall report security-based swap transaction data as required by Regulation SBSR.

(c) A security-based swap execution facility shall make available a ''Daily Market Data Report'' containing the information required in paragraphs (c)(1) and (2) of this section in a manner and timeframe required by this section.

(1) *Contents.* The Daily Market Data Report of a security-based swap execution facility for a business day shall contain the following information for each tenor of each security-based swap traded on that security-based swap execution facility during that business day:

(i) The trade count (including block trades but excluding error trades, correcting trades, and offsetting trades);

(ii) The total notional amount traded (including block trades but excluding error trades, correcting trades, and offsetting trades);

(iii) The number of block trades;

(iv) The total notional amount of block trades;

(v) The opening and closing price;

(vi) The price that is used for settlement purposes, if different from the closing price; and

(vii) The lowest price of a sale or offer, whichever is lower, and the highest price of a sale or bid, whichever is higher, that the security-based swap execution facility reasonably determines accurately reflects market conditions. Bids and offers vacated or withdrawn shall not be used in making this determination. A bid is vacated if followed by a higher bid or price and an offer is vacated if followed by a lower offer or price.

(2) *Additional information.* A security-based swap execution facility must record the following information with respect to security-based swaps on that reporting market:

(i) The method used by the security-based swap execution facility in determining nominal prices and settlement prices; and

(ii) If discretion is used by the security-based swap execution facility in determining the opening and/or closing ranges or the settlement prices, an explanation that certain discretion may be employed by the security-based swap execution facility and a description of the manner in which that discretion may be employed. Discretionary authority must be noted explicitly in each case in which it is applied (for example, by use of an asterisk or footnote).

(3) *Form of publication.* A security-based swap execution facility shall publicly post the Daily Market Data Report on its website:

(i) In a downloadable and machine-readable format using the most recent versions of the associated XML schema and PDF renderer as published on the Commission's website;

(ii) Without fees or other charges;

(iii) Without any encumbrances on access or usage restrictions; and

(iv) Without requiring a user to agree to any terms before being allowed to view or download the Daily Market Data Report, such as by waiving any requirements of this paragraph (c)(3). Any such waiver agreed to by a user shall be null and void.

(4) *Timing of publication.* A security-based swap execution facility shall publish the Daily Market Data Report on its website no later than the security-based swap execution facility's commencement of trading on the next business day after the day to which the information pertains.

(5) *Duration.* A security-based swap execution facility shall keep each Daily Market Data Report available on its website in the same location as all other Daily Market Data Reports for no less than one year after the date of first publication.

§ 242.826 Core Principle 9—Recordkeeping and reporting.

(a) *In general.* (1) A security-based swap execution facility shall:

(i) Maintain records of all activities relating to the business of the facility, including a complete audit trail, in a form and manner acceptable to the Commission for a period of five years; and

(ii) Report to the Commission, in a form and manner acceptable to the Commission, such information as the Commission determines to be necessary or appropriate for the Commission to perform the duties of the Commission under the Act.

(2) The Commission shall adopt data collection and reporting requirements for security-based swap execution facilities that are comparable to corresponding requirements for clearing agencies and security-based swap data repositories.

(b) *Required records.* A security-based swap execution facility shall keep full, complete, and systematic records, together with all pertinent data and memoranda, of all activities relating to its business with respect to security-based swaps. Such records shall include, without limitation, the audit trail information required under § 242.819(f) and all other records that a security-based swap execution facility is required to create or obtain under Regulation SE.

(c) *Duration of retention.* (1) A security-based swap execution facility shall keep records of any security-based swap from the date of execution until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction, and for a period of not less than five years, the first two years in an easily accessible place, after such date.

(2) A security-based swap execution facility shall keep each record other than the records described in paragraph (c)(1) of this section for a period of not less than five years, the first two years in an easily accessible place, from the date on which the record was created.

(d) *Record retention*—(1) A security-based swap execution facility shall retain all records in a form and manner that ensures the authenticity and reliability of such records in accordance with the Act and the Commission's rules thereunder.

(2) A security-based swap execution facility shall, upon request of any representative of the Commission, promptly furnish to the representative legible, true, complete, and current

copies of any records required to be kept and preserved pursuant to this section.

(3) (i) An electronic record shall be retained in a form and manner that allows for prompt production at the request of any representative of the Commission.

(ii) A security-based swap execution facility maintaining electronic records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic records, including, without limitation:

(A) Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic records and to monitor compliance with the Act and the Commission's rules thereunder;

(B) Systems that ensure that the security-based swap execution facility is able to produce electronic records in accordance with this section, and ensure the availability of such electronic records in the event of an emergency or other disruption of the security-based swap execution facility's electronic record retention systems; and

(C) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic records.

(e) *Record examination.* All records required to be kept by a security-based swap execution facility pursuant to this section are subject to examination by any representative of the Commission pursuant to section 17(b) of the Act (15 U.S.C. 78q).

(f) *Records of non-U.S. members.* A security-based swap execution facility shall keep a record in permanent form, which shall show the true name, address, and principal occupation or business of any non-U.S. member that executes transactions on the facility. Upon request, the security-based swap execution facility shall provide to the Commission information regarding the name of any person guaranteeing such transactions or exercising any control over the trading of such non-U.S. member.

§ 242.827 Core Principle 10—Antitrust considerations.

Unless necessary or appropriate to achieve the purposes of the Act, the security-based swap execution facility shall not:

(a) Adopt any rules or take any actions that result in any unreasonable restraint of trade; or

(b) Impose any material anticompetitive burden on trading or clearing.

§ 242.828 Core Principle 11—Conflicts of interest.

(a) The security-based swap execution facility shall:

(1) Establish and enforce rules to minimize conflicts of interest in its decision-making process; and

(2) Establish a process for resolving the conflicts of interest.

(b) A security-based swap execution facility shall comply with the requirements of § 242.834.

§ 242.829 Core Principle 12—Financial resources.

(a)*In general.* (1) The security-based swap execution facility shall have adequate financial, operational, and managerial resources to discharge each responsibility of the security-based swap execution facility, as determined by the Commission.

(2) The financial resources of a security-based swap execution facility shall be considered to be adequate if the value of the financial resources:

(i) Enables the organization to meet its financial obligations to its members notwithstanding a default by a member creating the largest financial exposure for that organization in extreme but plausible market conditions; and

(ii) Exceeds the total amount that would enable the security-based swap execution facility to cover the operating costs of the security-based swap execution facility for a one-year period, as calculated on a rolling basis.

(b) *General requirements.* A security-based swap execution facility shall maintain financial resources on an ongoing basis that are adequate to enable it to comply with the core principles set forth in section 3D of the Act and any applicable Commission rules. Financial resources shall be considered adequate if their value exceeds the total amount that would enable the security-based swap execution facility to cover its projected operating costs necessary for the security-based swap execution facility to comply with section 3D of the Act and applicable Commission rules for a one-year period, as calculated on a rolling basis pursuant to paragraph (e) of this section.

(c) *Types of financial resources.* Financial resources available to satisfy the requirements of this section may include:

(1) The security-based swap execution facility's own capital, meaning its assets minus its liabilities calculated in accordance with generally accepted accounting principles in the United States; and

(2) Any other financial resource deemed acceptable by the Commission.

(d) *Liquidity of financial resources.* The financial resources allocated by a security-based swap execution facility to meet the ongoing requirements of paragraph (b) of this section shall include unencumbered, liquid financial assets (*i.e.,* cash and/or highly liquid securities) equal to at least the greater of three months of projected operating costs, as calculated on a rolling basis, or the projected costs needed to wind down the security-based swap execution facility's operations, in each case as determined under paragraph (e) of this section. If a security-based swap execution facility lacks sufficient unencumbered, liquid financial assets to satisfy its obligations under this section, the security-based swap execution facility may satisfy this requirement by obtaining a committed line of credit or similar facility in an amount at least equal to such deficiency.

(e) *Computation of costs to meet financial resources requirement.* (1) A security-based swap execution facility shall, each fiscal quarter, make a reasonable calculation of its projected operating costs and wind-down costs in order to determine its applicable obligations under this section. The security-based swap execution facility shall have reasonable discretion in determining the methodologies used to compute such amounts.

(i) *Calculation of projected operating costs.* A security-based swap execution facility's calculation of its projected operating costs shall be deemed reasonable if it includes all expenses necessary for the security-based swap execution facility to comply with the core principles set forth in section 3D of the Act and any applicable Commission rules, and if the calculation is based on the security-based swap execution facility's current level of business and business model, taking into account any projected modification to its business model (*e.g.,* the addition or subtraction of business lines or operations or other changes), and any projected increase or decrease in its level of business over the next 12 months. A security-based swap execution facility may exclude the following expenses (''excludable expenses'') from its projected operating cost calculations:

(A) Costs attributable solely to sales, marketing, business development, product development, or recruitment and any related travel, entertainment, event, or conference costs;

(B) Compensation and related taxes and benefits for personnel who are not necessary to ensure that the security-based swap execution facility is able to comply with the core principles set

forth in section 3D of the Act and any applicable Commission rules;

(C) Costs for acquiring and defending patents and trademarks for security-based swap execution facility products and related intellectual property;

(D) Magazine, newspaper, and online periodical subscription fees;

(E) Tax preparation and audit fees;

(F) The variable commissions that a voice-based security-based swap execution facility may pay to its trading specialists, calculated as a percentage of transaction revenue generated by the voice-based security-based swap execution facility; and

(G) Any non-cash costs, including depreciation and amortization.

(ii) *Prorated expenses.* A security-based swap execution facility's calculation of its projected operating costs shall be deemed reasonable if an expense is prorated and the security-based swap execution facility:

(A) Maintains sufficient documentation that reasonably shows the extent to which an expense is partially attributable to an excludable expense;

(B) Identifies any prorated expense in the financial reports that it submits to the Commission pursuant to paragraph (g) of this section; and

(C) Sufficiently explains why it prorated any expense. Common allocation methodologies that may be used include actual use, headcount, or square footage. A security-based swap execution facility may provide documentation, such as copies of service agreements, other legal documents, firm policies, audit statements, or allocation methodologies to support its determination to prorate an expense.

(iii) *Expenses allocated among affiliates.* A security-based swap execution facility's calculation of its projected operating costs shall be deemed reasonable if it prorates any shared expense that the security-based swap execution facility pays for, but only to the extent that such shared expense is attributable to an affiliate and for which the security-based swap execution facility is reimbursed. To prorate a shared expense, the security-based swap execution facility shall:

(A) Maintain sufficient documentation that reasonably shows the extent to which the shared expense is attributable to and paid for by the security-based swap execution facility and/or affiliated entity. The security-based swap execution facility may provide documentation, such as copies of service agreements, other legal documents, firm policies, audit statements, or allocation methodologies, that reasonably shows how expenses are attributable to, and paid for by, the security-based swap execution facility and/or its affiliated entities to support its determination to prorate an expense;

(B) Identify any shared expense in the financial reports that it submits to the Commission pursuant to paragraph (h) of this section; and

(C) Sufficiently explain why it prorated the shared expense.

(2) Notwithstanding any provision of paragraph (e)(1) of this section, the Commission may review the methodologies and require changes as appropriate.

(f) *Valuation of financial resources.* No less than each fiscal quarter, a security-based swap execution facility shall compute the current market value of each financial resource used to meet its obligations under this section. Reductions in value to reflect market and credit risk (''haircuts'') shall be applied as appropriate.

(g) *Reporting to the Commission.* (1) Each fiscal quarter, or at any time upon Commission request, a security-based swap execution facility shall provide a report to the Commission that includes:

(i) The amount of financial resources necessary to meet the requirements of this section, computed in accordance with the requirements of paragraph (e) of this section, and the market value of each available financial resource, computed in accordance with the requirements of paragraph (f) of this section; and

(ii) Financial statements, including the balance sheet, income statement, and statement of cash flows of the security-based swap execution facility.

(A) The financial statements shall be prepared in accordance with generally accepted accounting principles in the United States, prepared in English, and denominated in U.S. dollars.

(B) The financial statements of a security-based swap execution facility that is not domiciled in the United States, and is not otherwise required to prepare financial statements in accordance with generally accepted accounting principles in the United States, may satisfy the requirement in paragraph (g)(1)(ii)(A) of this section if such financial statements are prepared in accordance with either International Financial Reporting Standards issued by the International Accounting Standards Board, or a comparable international standard as the Commission may otherwise accept in its discretion.

(2) The calculations required by this paragraph (g) shall be made as of the last business day of the security-based swap execution facility's applicable fiscal quarter.

(3) With each report required under paragraph (g) of this section, the security-based swap execution facility shall also provide the Commission with sufficient documentation explaining the methodology used to compute its financial requirements under this section. Such documentation shall:

(i) Allow the Commission to reliably determine, without additional requests for information, that the security-based swap execution facility has made reasonable calculations pursuant to paragraph (e) of this section; and

(ii) Include, at a minimum:

(A) A total list of all expenses, without any exclusion;

(B) All expenses and the corresponding amounts, if any, that the security-based swap execution facility excluded or prorated when determining its operating costs, calculated on a rolling basis, required under this section, and the basis for any determination to exclude or prorate any such expenses;

(C) Documentation demonstrating the existence of any committed line of credit or similar facility relied upon for the purpose of meeting the requirements of this section (*e.g.,* copies of agreements establishing or amending a credit facility or similar facility); and

(D) All costs that a security-based swap execution facility would incur to wind down its operations, the projected amount of time for any such wind-down period, and the basis of its determination for the estimation of its costs and timing.

(4) The reports and supporting documentation required by this section shall be filed not later than 40 calendar days after the end of the security-based swap execution facility's first three fiscal quarters, and not later than 90 calendar days after the end of the security-based swap execution facility's fourth fiscal quarter, or at such later time as the Commission may permit, in its discretion, upon request by the security-based swap execution facility.

(5) A security-based swap execution facility shall provide notice to the Commission no later than 48 hours after it knows or reasonably should know that it no longer meets its obligations under paragraph (b) and (d) of this section.

(6) A security-based swap execution facility shall provide the report and documentation required by this section to the Commission electronically using the EDGAR system as an Interactive Data File in accordance with § 232.405.

§ 242.830 Core Principle 13—System safeguards.

(a) *In general.* The security-based swap execution facility shall:

(1) Establish and maintain a program of risk analysis and oversight to identify and minimize sources of operational risk, through the development of appropriate controls and procedures, and automated systems, that:

(i) Are reliable and secure; and

(ii) Have adequate scalable capacity;

(2) Establish and maintain emergency procedures, backup facilities, and a plan for disaster recovery that allow for:

(i) The timely recovery and resumption of operations; and

(ii) The fulfillment of the responsibilities and obligations of the security-based swap execution facility; and

(3) Periodically conduct tests to verify that the backup resources of the security-based swap execution facility are sufficient to ensure continued:

(i) Order processing and trade matching;

(ii) Price reporting;

(iii) Market surveillance; and

(iv) Maintenance of a comprehensive and accurate audit trail.

(b) *Requirements.* (1) A security-based swap execution facility's program of risk analysis and oversight with respect to its operations and automated systems shall address each of the following categories of risk analysis and oversight:

(i) *Enterprise risk management and governance.* This category includes, but is not limited to: Assessment, mitigation, and monitoring of security and technology risk; security and technology capital planning and investment; governing board and management oversight of technology and security; information technology audit and controls assessments; remediation of deficiencies; and any other elements of enterprise risk management and governance included in generally accepted best practices.

(ii) *Information security.* This category includes, but is not limited to, controls relating to: Access to systems and data (including least privilege, separation of duties, account monitoring, and control); user and device identification and authentication; security awareness training; audit log maintenance, monitoring, and analysis; media protection; personnel security and screening; automated system and communications protection (including network port control, boundary defenses, and encryption); system and information integrity (including malware defenses and software integrity monitoring); vulnerability management; penetration testing; security incident response and management; and any other elements of information security included in generally accepted best practices.

(iii) *Business continuity-disaster recovery planning and resources.* This category includes, but is not limited to: Regular, periodic testing and review of business continuity-disaster recovery capabilities; the controls and capabilities described in paragraphs (b)(3) and (10) of this section; and any other elements of business continuity-disaster recovery planning and resources included in generally accepted best practices.

(iv) *Capacity and performance planning.* This category includes, but is not limited to: Controls for monitoring the security-based swap execution facility's systems to ensure adequate scalable capacity (including testing, monitoring, and analysis of current and projected future capacity and performance, and of possible capacity degradation due to planned automated system changes); and any other elements of capacity and performance planning included in generally accepted best practices.

(v) *Systems operations.* This category includes, but is not limited to: System maintenance; configuration management (including baseline configuration, configuration change and patch management, least functionality, and inventory of authorized and unauthorized devices and software); event and problem response and management; and any other elements of system operations included in generally accepted best practices.

(vi) *Systems development and quality assurance.* This category includes, but is not limited to: Requirements development; pre-production and regression testing; change management procedures and approvals; outsourcing and vendor management; training in secure coding practices; and any other elements of systems development and quality assurance included in generally accepted best practices.

(vii) *Physical security and environmental controls.* This category includes, but is not limited to: Physical access and monitoring; power, telecommunication, and environmental controls; fire protection; and any other elements of physical security and environmental controls included in generally accepted best practices.

(2) In addressing the categories of risk analysis and oversight required under paragraph (b)(1) of this section, a security-based swap execution facility shall follow generally accepted standards and best practices with respect to the development, operation, reliability, security, and capacity of automated systems.

(3) A security-based swap execution facility shall maintain a business continuity-disaster recovery plan and business continuity-disaster recovery resources, emergency procedures, and back-up facilities sufficient to enable timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a security-based swap execution facility following any disruption of its operations. Such responsibilities and obligations include, without limitation: Order processing and trade matching; transmission of matched orders to a registered clearing agency for clearing, where appropriate; price reporting; market surveillance; and maintenance of a comprehensive audit trail. A security-based swap execution facility's business continuity-disaster recovery plan and resources generally should enable resumption of trading and clearing of security-based swaps executed on or pursuant to the rules of the security-based swap execution facility during the next business day following the disruption. A security-based swap execution facility shall update its business continuity-disaster recovery plan and emergency procedures at a frequency determined by an appropriate risk analysis, but at a minimum no less frequently than annually.

(4) A security-based swap execution facility satisfies the requirement to be able to resume its operations and resume its ongoing fulfillment of its responsibilities and obligations during the next business day following any disruption of its operations by maintaining either:

(i) Infrastructure and personnel resources of its own that are sufficient to ensure timely recovery and resumption of its operations and resumption of its ongoing fulfillment of its responsibilities and obligations as a security-based swap execution facility following any disruption of its operations; or

(ii) Contractual arrangements with other security-based swap execution facilities or disaster recovery service providers, as appropriate, that are sufficient to ensure continued trading and clearing of security-based swaps executed on the security-based swap execution facility, and ongoing fulfillment of all of the security-based swap execution facility's responsibilities and obligations with respect to such security-based swaps, in the event that a disruption renders the security-based swap execution facility

temporarily or permanently unable to satisfy this requirement on its own behalf.

(5) A security-based swap execution facility shall notify Commission staff promptly of all:

(i) Electronic trading halts and material system malfunctions;

(ii) Cyber-security incidents or targeted threats that actually or potentially jeopardize automated system operation, reliability, security, or capacity; and

(iii) Activations of the security-based swap execution facility's business continuity-disaster recovery plan.

(6) A security-based swap execution facility shall provide Commission staff timely advance notice of all material:

(i) Planned changes to automated systems that may impact the reliability, security, or adequate scalable capacity of such systems; and

(ii) Planned changes to the security-based swap execution facility's program of risk analysis and oversight.

(7) As part of a security-based swap execution facility's obligation to produce books and records in accordance with Core Principle 9 and § 242.826, the security-based swap execution facility shall provide to the Commission the following system-safeguards-related books and records, promptly upon the request of any Commission representative:

(i) Current copies of its business continuity-disaster recovery plans and other emergency procedures;

(ii) All assessments of its operational risks or system safeguards-related controls;

(iii) All reports concerning system safeguards testing and assessment required by this chapter, whether performed by independent contractors or by employees of the security-based swap execution facility; and

(iv) All other books and records requested by Commission staff in connection with Commission oversight of system safeguards pursuant to the Act or Commission rules, or in connection with Commission maintenance of a current profile of the security-based swap execution facility's automated systems.

(v) Nothing in paragraph (b)(7) of this section shall be interpreted as reducing or limiting in any way a security-based swap execution facility's obligation to comply with Core Principle 9 and § 242.826.

(8) A security-based swap execution facility shall conduct regular, periodic, objective testing and review of its automated systems to ensure that they are reliable, secure, and have adequate scalable capacity. A security-based swap execution facility shall also conduct regular, periodic testing and review of its business continuity-disaster recovery capabilities. Such testing and review shall include, without limitation, all of the types of testing set forth in this paragraph (b)(8).

(i) *Definitions.* As used in this paragraph (b)(8):

Controls means the safeguards or countermeasures employed by the security-based swap execution facility to protect the reliability, security, or capacity of its automated systems or the confidentiality, integrity, and availability of its data and information, and to enable the security-based swap execution facility to fulfill its statutory and regulatory responsibilities.

Controls testing means assessment of the security-based swap execution facility's controls to determine whether such controls are implemented correctly, are operating as intended, and are enabling the security-based swap execution facility to meet the requirements of this section.

Enterprise technology risk assessment means a written assessment that includes, but is not limited to, an analysis of threats and vulnerabilities in the context of mitigating controls. An enterprise technology risk assessment identifies, estimates, and prioritizes risks to security-based swap execution facility operations or assets, or to market participants, individuals, or other entities, resulting from impairment of the confidentiality, integrity, and availability of data and information or the reliability, security, or capacity of automated systems.

External penetration testing means attempts to penetrate the security-based swap execution facility's automated systems from outside the systems' boundaries to identify and exploit vulnerabilities. Methods of conducting external penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Internal penetration testing means attempts to penetrate the security-based swap execution facility's automated systems from inside the systems' boundaries, to identify and exploit vulnerabilities. Methods of conducting internal penetration testing include, but are not limited to, methods for circumventing the security features of an automated system.

Security incident means a cybersecurity or physical security event that actually jeopardizes or has a significant likelihood of jeopardizing automated system operation, reliability, security, or capacity, or the availability, confidentiality or integrity of data.

Security incident response plan means a written plan documenting the security-based swap execution facility's policies, controls, procedures, and resources for identifying, responding to, mitigating, and recovering from security incidents, and the roles and responsibilities of its management, staff, and independent contractors in responding to security incidents. A security incident response plan may be a separate document or a business continuity-disaster recovery plan section or appendix dedicated to security incident response.

Security incident response plan testing means testing of a security-based swap execution facility's security incident response plan to determine the plan's effectiveness, identify its potential weaknesses or deficiencies, enable regular plan updating and improvement, and maintain organizational preparedness and resiliency with respect to security incidents. Methods of conducting security incident response plan testing may include, but are not limited to, checklist completion, walk-through or table-top exercises, simulations, and comprehensive exercises.

Vulnerability testing means testing of a security-based swap execution facility's automated systems to determine what information may be discoverable through a reconnaissance analysis of those systems and what vulnerabilities may be present on those systems.

(ii) *Vulnerability testing.* A security-based swap execution facility shall conduct vulnerability testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such vulnerability testing at a frequency determined by an appropriate risk analysis.

(B) Such vulnerability testing shall include automated vulnerability scanning, which shall follow generally accepted best practices.

(C) A security-based swap execution facility shall conduct vulnerability testing by engaging independent contractors or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(iii) *External penetration testing.* A security-based swap execution facility shall conduct external penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such external penetration testing at a frequency

determined by an appropriate risk analysis.

(B) A security-based swap execution facility shall conduct external penetration testing by engaging independent contractors or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(iv) *Internal penetration testing.* A security-based swap execution facility shall conduct internal penetration testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such internal penetration testing at a frequency determined by an appropriate risk analysis.

(B) A security-based swap execution facility shall conduct internal penetration testing by engaging independent contractors, or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(v) *Controls testing.* A security-based swap execution facility shall conduct controls testing of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct controls testing, which includes testing of each control included in its program of risk analysis and oversight, at a frequency determined by an appropriate risk analysis. Such testing may be conducted on a rolling basis.

(B) A security-based swap execution facility shall conduct controls testing by engaging independent contractors or by using employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being tested.

(vi) *Security incident response plan testing.* A security-based swap execution facility shall conduct security incident response plan testing sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct such security incident response plan testing at a frequency determined by an appropriate risk analysis.

(B) A security-based swap execution facility's security incident response plan shall include, without limitation, the security-based swap execution facility's definition and classification of security incidents, its policies and procedures for reporting security incidents and for internal and external communication and information sharing regarding security incidents, and the hand-off and escalation points in its security incident response process.

(C) A security-based swap execution facility may coordinate its security incident response plan testing with other testing required by this section or with testing of its other business continuity-disaster recovery and crisis management plans.

(D) A security-based swap execution facility may conduct security incident response plan testing by engaging independent contractors or by using employees of the security-based swap execution facility.

(vii) *Enterprise technology risk assessment.* A security-based swap execution facility shall conduct enterprise technology risk assessment of a scope sufficient to satisfy the requirements set forth in paragraph (b)(10) of this section.

(A) A security-based swap execution facility shall conduct enterprise technology risk assessment at a frequency determined by an appropriate risk analysis. A security-based swap execution facility that has conducted an enterprise technology risk assessment that complies with this section may conduct subsequent assessments by updating the previous assessment.

(B) A security-based swap execution facility may conduct enterprise technology risk assessments by using independent contractors or employees of the security-based swap execution facility who are not responsible for development or operation of the systems or capabilities being assessed.

(9) To the extent practicable, a security-based swap execution facility shall:

(i) Coordinate its business continuity-disaster recovery plan with those of its members that it depends upon to provide liquidity, in a manner adequate to enable effective resumption of activity in its markets following a disruption causing activation of the security-based swap execution facility's business continuity-disaster recovery plan;

(ii) Initiate and coordinate periodic, synchronized testing of its business continuity-disaster recovery plan with those of members that it depends upon to provide liquidity; and

(iii) Ensure that its business continuity-disaster recovery plan takes into account the business continuity-disaster recovery plans of its telecommunications, power, water, and other essential service providers.

(10) The scope for all system safeguards testing and assessment required by this section shall be broad enough to include the testing of automated systems and controls that the security-based swap execution facility's required program of risk analysis and oversight and its current cybersecurity threat analysis indicate is necessary to identify risks and vulnerabilities that could enable an intruder or unauthorized user or insider to:

(i) Interfere with the security-based swap execution facility's operations or with fulfillment of its statutory and regulatory responsibilities;

(ii) Impair or degrade the reliability, security, or adequate scalable capacity of the security-based swap execution facility's automated systems;

(iii) Add to, delete, modify, exfiltrate, or compromise the integrity of any data related to the security-based swap execution facility's regulated activities; or

(iv) Undertake any other unauthorized action affecting the security-based swap execution facility's regulated activities or the hardware or software used in connection with those activities.

(11) Both the senior management and the governing board of a security-based swap execution facility shall receive and review reports setting forth the results of the testing and assessment required by this section. A security-based swap execution facility shall establish and follow appropriate procedures for the remediation of issues identified through such review, as provided in paragraph (b)(12) of this section, and for evaluation of the effectiveness of testing and assessment protocols.

(12) A security-based swap execution facility shall identify and document the vulnerabilities and deficiencies in its systems revealed by the testing and assessment required by this section. The security-based swap execution facility shall conduct and document an appropriate analysis of the risks presented by such vulnerabilities and deficiencies, to determine and document whether to remediate or accept the associated risk. When the security-based swap execution facility determines to remediate a vulnerability or deficiency, it must remediate in a timely manner given the nature and magnitude of the associated risk.

§ 242.831 Core Principle 14—Designation of chief compliance officer.

(a)(1) *In general.* Each security-based swap execution facility shall designate an individual to serve as a chief compliance officer.

(2) *Duties.* The chief compliance officer shall:

(i) Report directly to the board or to the senior officer of the facility;

(ii) Review compliance with the core principles in this subsection;

(iii) In consultation with the board of the facility, a body performing a function similar to that of a board, or the senior officer of the facility, resolve any conflicts of interest that may arise;

(iv) Be responsible for establishing and administering the policies and procedures required to be established pursuant to this section;

(v) Ensure compliance with the Act and the rules and regulations issued under the Act, including rules prescribed by the Commission pursuant to section 3D of the Act; and

(vi) Establish procedures for the remediation of noncompliance issues found during compliance office reviews, look backs, internal or external audit findings, self-reported errors, or through validated complaints; and

(vii) Establish and follow appropriate procedures for the handling, management response, remediation, retesting, and closing of noncompliance issues.

(3) *Annual reports*—(i) *In general.* In accordance with rules prescribed by the Commission, the chief compliance officer shall annually prepare and sign a report that contains a description of:

(A) The compliance of the security-based swap execution facility with the Act; and

(B) The policies and procedures, including the code of ethics and conflict of interest policies, of the security-based swap execution facility.

(ii) [Reserved]

(4) *Requirements.* The chief compliance officer shall:

(i) Submit each report described in paragraph (a)(3) of this section with the appropriate financial report of the security-based swap execution facility that is required to be submitted to the Commission pursuant to this section; and

(ii) Include in the report a certification that, under penalty of law, the report is accurate and complete.

(b) *Authority of chief compliance officer.* (1) The position of chief compliance officer shall carry with it the authority and resources to develop, in consultation with the governing board or senior officer, the policies and procedures of the security-based swap execution facility and enforce such policies and procedures to fulfill the duties set forth for chief compliance officers in the Act and the Commission's rules thereunder.

(2) The chief compliance officer shall have supervisory authority over all staff acting at the direction of the chief compliance officer.

(c) *Qualifications of chief compliance officer.* (1) The individual designated to serve as chief compliance officer shall have the background and skills appropriate for fulfilling the responsibilities of the position.

(2) No individual that would be disqualified from serving on a security-based swap execution facility's governing board or committees pursuant to the criteria set forth in § 242.819(i) may serve as a chief compliance officer.

(3) In determining whether the background and skills of a potential chief compliance officer are appropriate for fulfilling the responsibilities of the role of the chief compliance officer, a security-based swap execution facility has the discretion to base its determination on the totality of the qualifications of the potential chief compliance officer, including, but not limited to, compliance experience, related career experience, training, potential conflicts of interest, and any other relevant factors to the position.

(d) *Appointment and removal of chief compliance officer.* (1) Only the governing board or the senior officer may appoint or remove the chief compliance officer.

(2) The security-based swap execution facility shall notify the Commission within two business days of the appointment or removal, whether interim or permanent, of a chief compliance officer.

(e) *Compensation of the chief compliance officer.* The governing board or the senior officer shall approve the compensation of the chief compliance officer.

(f) *Annual meeting with the chief compliance officer.* The chief compliance officer shall meet with the governing board or senior officer of the security-based swap execution facility at least annually.

(g) *Information requested of the chief compliance officer.* The chief compliance officer shall provide any information regarding the regulatory program of the security-based swap execution facility as requested by the governing board or the senior officer.

(h) *Duties of chief compliance officer.* The duties of the chief compliance officer shall include, but are not limited to, the following:

(1) Overseeing and reviewing compliance of the security-based swap execution facility with section 3D of the Act and the Commission rules thereunder;

(2) Taking reasonable steps, in consultation with the governing board or the senior officer of the security-based swap execution facility, to resolve any material conflicts of interest that may arise, including, but not limited to:

(i) Conflicts between business considerations and compliance requirements;

(ii) Conflicts between business considerations and the requirement that the security-based swap execution facility provide fair, open, and impartial access as set forth in § 242.819(c); and

(iii) Conflicts between a security-based swap execution facility's management and members of the governing board;

(3) Establishing and administering written policies and procedures reasonably designed to prevent violations of the Act and the rules of the Commission;

(4) Taking reasonable steps to ensure compliance with the Act and the rules of the Commission;

(5) Establishing procedures reasonably designed to handle, respond, remediate, retest, and resolve noncompliance issues identified by the chief compliance officer through any means, including any compliance office review, look-back, internal or external audit finding, self-reported error, or validated complaint;

(6) Establishing and administering a compliance manual designed to promote compliance with the applicable laws, rules, and regulations and a written code of ethics for the security-based swap execution facility designed to prevent ethical violations and to promote honesty and ethical conduct by personnel of the security-based swap execution facility;

(7) Supervising the regulatory program of the security-based swap execution facility with respect to trade practice surveillance; market surveillance; real-time market monitoring; compliance with audit trail requirements; enforcement and disciplinary proceedings; audits, examinations, and other regulatory responsibilities (including taking reasonable steps to ensure compliance with, if applicable, financial integrity, financial reporting, sales practice, recordkeeping, and other requirements); and

(8) Supervising the effectiveness and sufficiency of any regulatory services provided to the security-based swap execution facility by a regulatory service provider in accordance with § 242.819(e).

(i) *Preparation of annual compliance report.* The chief compliance officer shall, not less than annually, prepare and sign an annual compliance report that covers the prior fiscal year. The report shall, at a minimum, contain:

(1) A description and self-assessment of the effectiveness of the written policies and procedures of the security-based swap execution facility, including the code of ethics and conflict of interest policies, to reasonably ensure compliance with the Act and applicable Commission rules;

(2) Any material changes made to compliance policies and procedures during the coverage period for the report and any areas of improvement or recommended changes to the compliance program;

(3) A description of the financial, managerial, and operational resources set aside for compliance with the Act and applicable Commission rules;

(4) Any material non-compliance matters identified and an explanation of the corresponding action taken to resolve such non-compliance matters; and

(5) A certification by the chief compliance officer that, to the best of their knowledge and reasonable belief, and under penalty of law, the annual compliance report is accurate and complete in all material respects.

(j) *Submission of annual compliance report and related matters*—(1) *Furnishing the annual compliance report prior to submission to the Commission.* Prior to submission to the Commission, the chief compliance officer shall provide the annual compliance report for review to the governing board or, in the absence of a governing board, to the senior officer. Members of the governing board and the senior officer shall not require the chief compliance officer to make any changes to the report.

(2) *Submission of annual compliance report to the Commission.* The annual compliance report shall be submitted electronically to the Commission using the EDGAR system as an Interactive Data File in accordance with § 232.405 not later than 90 calendar days after the end of the security-based swap execution facility's fiscal year. The security-based swap execution facility shall concurrently file the annual compliance report with the fourth-quarter financial report pursuant to § 242.829(g).

(3) *Amendments to annual compliance report.* (i) Promptly upon discovery of any material error or omission made in a previously filed annual compliance report, the chief compliance officer shall file an amendment with the Commission to correct the material error or omission. The chief compliance officer shall submit the amended annual compliance report to the governing board, or in the absence of a governing board, to the senior officer, pursuant to paragraph (j)(1) of this section.

(ii) An amendment shall contain the certification required under paragraph (i)(5) of this section.

(4) *Request for extension.* A security-based swap execution facility may request an extension of time to file its annual compliance report from the Commission. Reasonable and valid requests for extensions of the filing deadline may be granted at the discretion of the Commission.

(k) *Recordkeeping.* A security-based swap execution facility shall maintain all records demonstrating compliance with the duties of the chief compliance officer and the preparation and submission of annual compliance reports consistent with Core Principle 9 and § 242.826.

§ 242.832 Application of the trade execution requirement to cross-border security-based swap transactions.

(a) The trade execution requirement set forth in section 3C(h) of the Act shall not apply in connection with a security-based swap unless at least one counterparty to the security-based swap is a ''covered person'' as defined below in paragraph (b) of this rule.

(b) A ''covered person'' means, with respect to a particular security-based swap, any person that is:

(1) A U.S. person;

(2) A non-U.S. person whose performance under a security-based swap is guaranteed by a U.S. person; or

(3) A non-U.S. person who, in connection with its security-based swap dealing activity, uses U.S. personnel located in a U.S. branch or office, or personnel of an agent of such non-U.S. person located in a U.S. branch or office, to arrange, negotiate, or execute a transaction.

§ 242.833 Cross-border exemptions.

(a) *Exemptions for foreign trading venues for security-based swaps.* An application for an order for exemptive relief under section 36(a)(1) of the Act (15 U.S.C. 78mm(a)(1)) relating to the registration status under the Act of a foreign trading venue for security-based swaps that has one or more members who are covered persons, as defined in § 242.832, with respect to security-based swaps transacted on that venue may state that the application also is submitted pursuant to this paragraph (a). In such case, the Commission will consider the submission as an application to exempt the foreign trading venue, with respect to its providing a market place for security-based swaps, from:

(1) The definition of ''exchange'' in section 3(a)(1) of the Act (15 U.S.C. 78c(a)(1));

(2) The definition of ''security-based swap execution facility'' in section 3(a)(77) of the Act (15 U.S.C. 78c(a)(77));

(3) The definition of ''broker'' in section 3(a)(4) of the Act (15 U.S.C. 78c(a)(4)); and

(4) Section 3D(a)(1) of the Act (15 U.S.C. 78c–4(a)(1)).

(b) *Exemptions relating to the trade execution requirement.* (1) An application for an order for exemptive relief under section 36(a)(1) of the Act (15 U.S.C. 78mm(a)(1)) relating to the application of the trade execution requirement in section 3C(h) of the Act (15 U.S.C. 78c–3(h)) to security-based swaps executed on a foreign trading venue, may state that the application also is submitted pursuant to this paragraph (b).

(2) When considering an application under section 36 of the Act (15 U.S.C. 78mm) and this paragraph (b), the Commission may consider:

(i) The extent to which the security-based swaps traded in the foreign jurisdiction covered by the request are subject to a trade execution requirement comparable to that in section 3C(h) of the Act (15 U.S.C. 78c–3(h)) and the Commission's rules thereunder;

(ii) The extent to which trading venues in the foreign jurisdiction covered by the request are subject to regulation and supervision comparable to that under the Act, including section 3D of the Act (15 U.S.C. 78c–4), and the Commission's rules thereunder;

(iii) Whether the foreign trading venue or venues where covered persons, as defined in § 242.832, intend to trade security-based swaps have received an exemption order contemplated by paragraph (a) of this section; and

(iv) Any other factor that the Commission believes is relevant for assessing whether the exemption is in the public interest and consistent with the protection of investors.

§ 242.834 Mitigation of conflicts of interest of security-based swap execution facilities and certain exchanges.

(a) For purposes of this section:

Family relationship of a person means the person's spouse, former spouse, parent, step-parent, child, step-child, sibling, step-brother, step-sister, grandparent, grandchild, uncle, aunt, nephew, niece, or in-law.

Major disciplinary committee means a committee of persons who are authorized by a security-based swap execution facility to conduct disciplinary hearings, to settle disciplinary charges, to impose

disciplinary sanctions, or to hear appeals thereof in cases involving any violation of the rules of the security-based swap execution facility except those which:

(i) Are related to decorum or attire, financial requirements, or reporting or recordkeeping; and

(ii) Do not involve fraud, deceit, or conversion.

Member's affiliated firm is a firm in which the member is a principal or an employee.

Named party in interest means a person or entity that is identified by name as a subject of any matter being considered by a governing board, disciplinary committee, or oversight panel.

Significant action includes any of the following types of actions or rule changes by a security-based swap execution facility or SBS exchange that can be implemented without the Commission's prior approval:

(i) Any actions or rule changes which address an emergency; and

(ii) Any changes in margin levels that are designed to respond to extraordinary market conditions such as an actual or attempted corner, squeeze, congestion, or undue concentration of positions, or that otherwise are likely to have a substantial effect on prices in any contract traded or cleared at such security-based swap execution facility or SBS exchange; but does not include any rule not submitted for prior Commission approval because such rule is unrelated to the terms and conditions of any security-based swap traded at such security-based swap execution facility or SBS exchange.

(b) Each security-based swap execution facility and SBS exchange shall not permit any of its members, either alone or together with any officer, principal, or employee of the member, to:

(1) Own, directly or indirectly, 20 percent or more of any class of voting securities or of other voting interest in the security-based swap execution facility or SBS exchange; or

(2) Directly or indirectly vote, cause the voting of, or give any consent or proxy with respect to the voting of, any interest that exceeds 20 percent of the voting power of any class of securities or of other ownership interest in the security-based swap execution facility or SBS exchange.

(c) The rules of each security-based swap execution facility and SBS exchange must be reasonably designed, and have an effective mechanism, to:

(1) Deny effect to the portion of any voting interest held by a member in excess of the limitations in paragraph (b) of this section;

(2) Compel a member who possesses a voting interest in excess of the limitations in paragraph (a) of this section to divest enough of that voting interest to come within those limitations; and

(3) Obtain information relating to its ownership and voting interests owned or controlled, directly or indirectly, by its members.

(d) Each security-based swap execution facility and SBS exchange shall ensure that its disciplinary processes preclude any member, or group or class of its members, from dominating or exercising disproportionate influence on the disciplinary process. Each major disciplinary committee or hearing panel thereof shall include sufficient different groups or classes of its members so as to ensure fairness and to prevent special treatment or preference for any person or member in the conduct of the responsibilities of the committee or panel.

(e) Each security-based swap execution facility and SBS exchange shall ensure that:

(1) 20 percent or more of the persons who are eligible to vote routinely on matters being considered by the governing board (excluding those members who are eligible to vote only in the case of a tie vote by the governing board) are:

(i) Knowledgeable of security-based swap trading or financial regulation, or otherwise capable of contributing to governing board deliberations;

(ii) Not members of the security-based swap execution facility or SBS exchange;

(iii) Not salaried employees of the security-based swap execution facility or SBS exchange;

(iv) Not primarily performing services for the security-based swap execution facility or SBS exchange in a capacity other than as a member of the governing board; and

(v) Not officers, principals, or employees of a firm which holds a membership at the security-based swap execution facility or SBS exchange, either in its own name or through an employee on behalf of the firm; and

(2) The membership of the governing board includes a diversity of groups or classes of its members. The security-based swap execution facility or SBS exchange must be able to demonstrate that the board membership fairly represents the diversity of interests at such security-based swap execution facility or SBS exchange and is otherwise consistent with the composition requirements of this section.

(f) *Providing information about the board to the Commission.* Each security-based swap execution facility and SBS exchange shall submit to the Commission, within 30 days after each governing board election, a list of the governing board's members, the groups or classes of its members that they represent, and how the composition of the governing board otherwise meets the requirements of this section.

(g) *Voting by interested members of governing boards and various committees of security-based swap execution facilities and SBS exchanges*—(1) *Rules required.* Each security-based swap execution facility and SBS exchange shall maintain in effect rules to address the avoidance of conflicts of interest in the execution of its regulatory functions. Such rules must provide for the following:

(i) *Relationship with named party in interest*—(A) *Nature of relationship.* A member of a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must abstain from such body's deliberations and voting on any matter involving a named party in interest where such member:

(*1*) Is a named party in interest;

(*2*) Is an employer, employee, or fellow employee of a named party in interest;

(*3*) Has any other significant, ongoing business relationship with a named party in interest, not including relationships limited to executing security-based swaps opposite of each other or to clearing security-based swaps through the same clearing member; or

(*4*) Has a family relationship with a named party in interest.

(B) *Disclosure of relationship.* Prior to the consideration of any matter involving a named party in interest, each member of a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must disclose to the appropriate staff of the security-based swap execution facility or SBS exchange whether they have one of the relationships listed in paragraph (g)(1)(i)(A) of this section with a named party in interest.

(C) *Procedure for determination.* Each security-based swap execution facility and SBS exchange must establish procedures for determining whether any member of its governing board, disciplinary committees, or oversight committees is subject to a conflicts restriction in any matter involving a

named party in interest. Taking into consideration the exigency of the committee action, such determinations should be based upon:

(*1*) Information provided by the member pursuant to paragraph (g)(1)(i)(B) of this section; and

(*2*) Any other source of information that is held by and reasonably available to the security-based swap execution facility or SBS exchange.

(ii) *Financial interest in a significant action*—(A) *Nature of interest.* A member of the governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must abstain from such body's deliberations and voting on any significant action if the member knowingly has a direct and substantial financial interest in the result of the vote based upon either exchange or non-exchange positions that could reasonably be expected to be affected by the action.

(B) *Disclosure of interest.* Prior to the consideration of any significant action, each member of a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange must disclose to the appropriate staff of the security-based swap execution facility or SBS exchange the position information referred to in paragraph (g)(1)(ii)(C) of this section that is known to them. This requirement does not apply to members who choose to abstain from deliberations and voting on the subject significant action.

(C) *Procedure for determination.* Each security-based swap execution facility and SBS exchange must establish procedures for determining whether any member of its governing board, disciplinary committees, or oversight committees is subject to a conflicts restriction under this section in any significant action. Such determination must include a review of any positions, whether maintained at that security-based swap execution facility, SBS exchange, or elsewhere, held in the member's personal accounts or the proprietary accounts of the member's affiliated firm that the security-based swap execution facility or SBS exchange reasonably expects could be affected by the significant action.

(D) *Bases for determination.* Taking into consideration the exigency of the significant action, such determinations should be based upon:

(*1*) Information provided by the member with respect to positions pursuant to paragraph (f)(2)(ii)(B) of this section; and

(*2*) Any other source of information that is held by and reasonably available to the security-based swap execution facility or SBS exchange.

(iii) *Participation in deliberations.* (A) Under the rules required by this section, a governing board, disciplinary committee, or oversight panel of a security-based swap execution facility or SBS exchange may permit a member to participate in deliberations prior to a vote on a significant action for which they otherwise would be required to abstain, pursuant to paragraph (g)(1)(ii) of this section, if such participation would be consistent with the public interest and the member recuses from voting on such action.

(B) In making a determination as to whether to permit a member to participate in deliberations on a significant action for which they otherwise would be required to abstain, the deliberating body shall consider the following factors:

(*1*) Whether the member's participation in deliberations is necessary for the deliberating body to achieve a quorum in the matter; and

(*2*) Whether the member has unique or special expertise, knowledge, or experience in the matter under consideration.

(C) Prior to any determination pursuant to paragraph (g)(1)(iii)(A) of this section, the deliberating body must fully consider the position information which is the basis for the member's direct and substantial financial interest in the result of a vote on a significant action pursuant to paragraph (g)(1)(ii) of this section.

(iv) *Documentation of determination.* The governing boards, disciplinary committees, and oversight panels of each security-based swap execution facility and SBS exchange must reflect in their minutes or otherwise document that the conflicts determination procedures required by this section have been followed. Such records also must include:

(A) The names of all members who attended the meeting in person or who otherwise were present by electronic means;

(B) The name of any members who voluntarily recused themselves or were required to abstain from deliberations and/or voting on a matter and the reason for the recusal or abstention, if stated; and

(C) Information on the position information that was reviewed for each member.

(h) *Rules required.* (1) A security-based swap execution facility shall maintain in effect rules to comply with this section that have been submitted to the Commission pursuant to § 242.806 or § 242.807.

(2) An SBS exchange shall maintain in effect rules to comply with this section that have been submitted to the Commission pursuant to § 240.19b–4 of this chapter.

§ 242.835 Notice to Commission by security-based swap execution facility of final disciplinary action or denial or limitation of access.

(a) If a security-based swap execution facility issues a final disciplinary action against a member, or takes final action with respect to a denial or conditioning membership, or takes final action with respect to a denial or limitation of access of a person to any services offered by the security-based swap execution facility, the security-based swap execution facility shall file a notice of such action with the Commission within 30 days and serve a copy on the affected person.

(b) For purposes of paragraph (a) of this section:

(1) A disciplinary action shall not be considered ''final'' unless:

(i) The affected person has sought an adjudication or hearing with respect to the matter, or otherwise exhausted their administrative remedies at the security-based swap execution facility; and

(ii) The disciplinary action is not a summary action permitted under § 242.819(g)(13)(ii).

(2) A disposition of a matter with respect to a *denial or conditioning of membership,* or a *denial or limitation of access* shall not be considered ''final'' unless such person has sought an adjudication or hearing, or otherwise exhausted their administrative remedies at the security-based swap execution facility with respect to such matter.

(c) A notice required by paragraph (a) of this section shall provide the following information:

(1) The name of the member and its last known address, as reflected in the security-based swap execution facility's records;

(2) The name of the person, committee, or other organizational unit of the security-based swap execution facility that initiated the disciplinary action or access restriction;

(3) In the case of a final disciplinary action:

(i) A description of the acts or practices, or omissions to act, upon which the sanction is based, including, as appropriate, the specific rules that the security-based swap execution facility has found to have been violated;

(ii) A statement describing the respondent's answer to the charges; and

(iii) A statement of the sanction imposed and the reasons therefor;

(4) In the case of a final action with respect to a denial or conditioning of

membership, or a denial or limitation of access:

(i) The financial or operating difficulty of the member or prospective member (as the case may be) upon which the security-based swap execution facility determined that the member or prospective member could not be permitted to do, or continue to do, business with safety to investors, creditors, other members, or the security-based swap execution facility;

(ii) The pertinent failure to meet qualification requirements or other prerequisites for membership or access and the basis upon which the security-based swap execution facility determined that the person concerned could not be permitted to have membership or access with safety to investors, creditors, other members, or the security-based swap execution facility; or

(iii) The default of any delivery of funds or securities to a clearing agency by the member;

(5) The effective date of the final disciplinary action, or final action with respect to a denial or conditioning of membership, or a denial or limitation of access; and

(6) Any other information that the security-based swap execution facility may deem relevant.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 18. The general authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* 18 U.S.C. 1350; Sec. 953(b), Pub. L. 111–203, 124 Stat. 1904; Sec. 102(a)(3), Pub. L. 112–106, 126 Stat. 309 (2012); Sec. 107, Pub. L. 112–106, 126 Stat. 313 (2012), Sec. 72001, Pub. L. 114–94, 129 Stat. 1312 (2015), and secs. 2 and 3, Pub. L. 116–222, 134 Stat. 1063 (2020), unless otherwise noted.

* * * * *

■ 19. Add § 249.2001 to read as follows:

§ 249.2001 Form SBSEF, for application for registration as a security-based swap execution facility or to amend such application or registration.

This form shall be used for application for registration as a security-based swap execution facility, pursuant to section 3D of the Securities Exchange Act of 1934 (15 U.S.C. 78c–4) and § 242.803 of this chapter, or to amend such application or registration.

By the Commission.

Dated: April 6, 2022.

Vanessa A. Countryman,

Secretary.

Appendix A

Note: Form SBSEF will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

FORM SBSEF

SECURITY-BASED SWAP EXECUTION FACILITY APPLICATION FOR REGISTRATION (and AMENDMENT TO APPLICATION)

REGISTRATION INSTRUCTIONS

Intentional misstatements or omissions of material fact may constitute Federal criminal violations or grounds for disqualification from registration.

DEFINITIONS

All terms used in this Form SBSEF—which includes instructions, a Cover Sheet, and required Exhibits—shall have the same meaning as in Regulation SE (17 CFR 242.800 *et seq.*) promulgated under section 3D of the Securities Exchange Act (the "Act") by the Securities and Exchange Commission ("Commission").

The term "Applicant" shall include any person submitting an application for registration as a security-based swap execution facility under section 3D of the Act and Regulation SE thereunder, and any person who is amending a pending application.

GENERAL INSTRUCTIONS

1. This Form SBSEF shall be filed with the Commission by any person applying to register with the Commission as a security-based swap execution facility. Upon the filing of an application for registration in accordance with the instructions provided herein, the Commission will publish notice of the filing and afford interested persons an opportunity to submit written data, views, and arguments concerning such application. No application for registration shall be effective unless the Commission, by order, grants such registration.

2. Individuals' names, except the executing signature, shall be given in full (Last Name, First Name, Middle Name).

3. Signatures on all copies of the Form SBSEF filed with the Commission may be executed electronically. If this Form SBSEF is filed by a corporation, it shall be signed in the name of the corporation by a principal officer duly authorized; if filed by a limited liability company, it shall be signed in the name of the limited liability company by a manager or member duly authorized to sign on the limited liability company's behalf; if filed by a partnership, it shall be signed in the name of the partnership by a general partner duly authorized; if filed by an unincorporated organization or association which is not a partnership, it shall be signed in the

name of such organization or association by the managing agent (*i.e.*, a duly authorized person who directs or manages, or who participates in the directing or managing of, its affairs).

4. If this Form SBSEF is being filed as an application for registration, all applicable items must be answered in full. If any item is inapplicable, indicate by "none," "not applicable," or "N/A," as appropriate. If this Form SBSEF is being filed as an amendment to an application for registration, only the coversheet and the amended exhibits need to be filed in full.

5. Under section 3D of the Act and the Commission's rules thereunder, the Commission is authorized to solicit the information required to be supplied by this Form SBSEF from any Applicant seeking registration as a security-based swap execution facility. Disclosure by the Applicant of the information specified on this Form SBSEF is mandatory prior to the start of the processing of an application for registration as a security-based swap execution facility. The information provided in this Form SBSEF will be used for the principal purpose of determining whether the Commission should grant or deny registration to an Applicant. The Commission may determine that additional information is required from the Applicant in order to process its application. **A Form SBSEF which is not prepared and executed in compliance with applicable requirements and instructions may be returned as not acceptable for filing. Acceptance of this Form SBSEF, however, shall not constitute a finding that the Form SBSEF has been filed as required or that the information submitted is true, current, or complete**.

6. Except in cases where confidential treatment is requested by the Applicant and granted by the Commission, information supplied on this Form SBSEF will be included routinely in the public files of the Commission and will be available for inspection by any interested person.

APPLICATION AMENDMENTS

1. An Applicant may amend a pending application for registration as a security-based swap execution facility to correct, update, or supplement its initial submission.

2. When filing this Form SBSEF for purposes of amending a pending application, an Applicant shall re-file the Cover Sheet, amended if necessary and including an executing signature, and attach thereto revised Exhibits or other materials marked to show changes, as applicable. The submission of an amendment represents that the remaining items and Exhibits that are not amended remain true, current, and complete as previously filed.

MANNER OF FILING

This Form SBSEF must be filed electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system. The disclosures on this Form SBSEF must be provided as an Interactive Data File in accordance with Rule 405 of Regulation S-T (17 CFR 232.405).

SECURITIES EXCHANGE COMMISSION

FORM SBSEF

SECURITY-BASED SWAP EXECUTION FACILITY

APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

COVER SHEET

_____

Exact name of Applicant as specified in charter

_____

Address of principal executive offices

☐ If this is an **APPLICATION** for registration, complete in full and check here.

☐ If this is an **AMENDMENT** to an application, list all items that are amended and check here.

_____

_____

_____

_____

GENERAL INFORMATION

1. Name under which the business of the security-based swap execution facility is or will be conducted, if different from name specified above (include acronyms, if any):

_____

2. If name of security-based swap execution facility is being amended, state previous security-based swap execution facility name:

_____

3. Contact information, including mailing address if different from address specified above:

_____

Number and Street

_____

City State Country Zip Code

_____

Main Phone Number Fax (if applicable)

_____

Website URL Email Address

List of principal office(s) and address(es) where security-based swap execution facility activities are/will be conducted:

Office	**Address**
_____	_____
_____	_____
_____	_____

5. If the Applicant is a successor to a previously registered security-based swap execution facility, please complete the following:

a. Date of succession

_____

b. Full name and address of predecessor registrant

_____
Name

_____
Number and Street

_____
City State Country Zip Code

_____
Main Phone Number Website URL

BUSINESS ORGANIZATION

6. Applicant is a:

☐ Corporation
☐ Partnership
☐ Limited Liability Company
☐ Other form of organization (specify) _____

7. Date of incorporation or formation:_____

8. State of incorporation or jurisdiction of organization:_____

9. The Applicant agrees and consents that the notice of any proceeding before the Commission in connection with this application may be given by sending such notice by certified mail to the person named below at the address given.

_____
Print Name and Title

_____
Name of Applicant

_____
Number and Street

_____
City State Zip Code

SIGNATURES

10. The Applicant has duly caused this application or amendment to be signed on its behalf by the undersigned, hereunto duly authorized, this _____ day of _____, 20_____. The Applicant and the undersigned represent hereby that all information contained herein is true, current, and complete. It is understood that all required items and Exhibits are considered integral parts of this Form SBSEF and that the submission of any amendment represents that all unamended items and Exhibits remain true, current, and complete as previously filed.

_____
Name of Applicant

_____
Signature of Duly Authorized Person

_____
Print Name and Title of Signatory

SECURITIES AND EXCHANGE COMMISSION

FORM SBSEF

SECURITY-BASED SWAP EXECUTION FACILITY APPLICATION OR AMENDMENT TO APPLICATION FOR REGISTRATION

EXHIBITS INSTRUCTIONS

The following Exhibits must be filed with the Commission by an Applicant applying for registration as a security-based swap execution facility, or by a registered security-based swap execution facility amending its registration, pursuant to Section 3D of the Act and the Commission's rules thereunder. The Exhibits must be labeled according to the items specified in this Form SBSEF.

The application must include a Table of Contents listing each Exhibit required by this Form SBSEF and indicating which, if any, Exhibits are inapplicable. For any Exhibit that is inapplicable, next to the Exhibit letter specify "none," "not applicable," or "N/A," as appropriate.

If the Applicant is a newly formed enterprise and does not have the financial statements required pursuant to Items 9 and 10 (Exhibits I and J) of this Form SBSEF, the Applicant should provide *pro forma* financial statements for the most recent six months or since inception, whichever is less.

LIST OF EXHIBITS

EXHIBITS – BUSINESS ORGANIZATION

1. Attach as **Exhibit A,** the name of any person who owns ten percent (10%) or more of the Applicant's stock or who, either directly or indirectly, through agreement or otherwise, in any other manner, may control or direct the management or policies of the Applicant.

   Provide as part of Exhibit A the full name and address of each such person and attach a copy of the agreement or, if there is none written, describe the agreement or basis upon which such person exercises or may exercise such control or direction.

2. Attach as **Exhibit B,** a list of the present officers, directors, governors (and, in the case of an Applicant that is not a corporation, the members of all standing committees, grouped by committee), or persons performing functions similar to any of the foregoing, of the security-based swap execution facility or of any entity that performs the regulatory activities of the Applicant, indicating for each:

   a. Name
   b. Title
   c. Dates of commencement and termination of present term of office or position
   d. Length of time each present officer, director, or governor has held the same office or position

e. Brief account of the business experience of each officer and director over the last five years
f. Any other business affiliations in the derivatives and securities industry
g. For directors, list any committees on which they serve and any compensation received by virtue of their directorship
h. Whether the person has been subject to a disciplinary action of any type noted in § 242.819(i) of Regulation SE and, if so, describe.

3. Attach as **Exhibit C,** a narrative that sets forth the fitness standards for the governing board and its composition.

4. Attach as **Exhibit D,** a narrative or graphic description of the organizational structure of the Applicant. Include a list of all affiliates of the Applicant and indicate the general nature of the affiliation. If the security-based swap execution facility activities of the Applicant are or will be conducted primarily by a division, subdivision, or other separate entity within the Applicant, describe the relationship of such entity within the overall organizational structure and attach as Exhibit D a description only as it applies to the division, subdivision, or separate entity, as applicable. Additionally, state any jurisdictions in which the Applicant or any affiliated entity is doing business, and its registration status in that jurisdiction, including pending registrations (*e.g.*, jurisdiction, regulator, registration category, date of registration). Provide the address for legal service of process for each jurisdiction, which cannot be a post office box.

5. Attach as **Exhibit E,** a description of the personnel qualifications for each category of professional employees employed by the Applicant or the division, subdivision, or other separate entity within the Applicant, as described in Item 4.

6. Attach as **Exhibit F,** an analysis of staffing requirements necessary to carry out the operations of the Applicant as a security-based swap execution facility and the name and qualifications of each key staff person.

7. Attach as **Exhibit G,** a copy of the constitution; articles of incorporation, formation, or association, with all amendments thereto; partnership or limited liability agreements; and existing by-laws, operating agreement, rules, or instruments corresponding thereto, of the Applicant. Include any additional governance fitness information not included in Exhibit C. Provide a certificate of good standing dated within one week of the date of this Form SBSEF.

8. Attach as **Exhibit H,** a brief description of any material pending legal proceeding(s), other than ordinary and routine litigation incidental to the business, to which the Applicant or any of its affiliates is a party or to which any of its or their property is the subject. For each such proceeding, include the name of the court or agency where the proceeding is pending, the date instituted, the principal parties involved, a description of the factual basis alleged to underlie the proceeding, and the relief sought. Include similar information as to any proceeding known to be contemplated by a governmental agency.

EXHIBITS —FINANCIAL INFORMATION

9. Attach as **Exhibit I:**

a. (i) Balance sheet; (ii) Statement of income and expenses; (iii) Statement of cash flows; and (iv) Statement of sources and application of revenues and all notes or schedules thereto, as of the most recent fiscal year of the Applicant, or of its parent company, if applicable. If a balance sheet and any statement(s) certified by an independent public accountant are available, that balance sheet and statement(s) should be submitted as Exhibit I.

b. Provide a narrative of how the value of the financial resources of the Applicant is at least equal to a total amount that would enable the Applicant to cover its operating costs for a period of at least one year, calculated on a rolling basis, and whether such financial resources include unencumbered, liquid financial assets (*i.e.*, cash and/or highly liquid securities) equal to at least six months' operating costs.

c. Attach copies of any agreements establishing or amending a credit facility, insurance coverage, or other arrangement evidencing or otherwise supporting the Applicant's conclusions regarding the liquidity of its financial assets.

d. Representations regarding sources and estimates for future ongoing operational resources.

10. Attach as **Exhibit J,** a balance sheet and an income and expense statement for each affiliate of the security-based swap execution facility that also engages in security-based swap execution facility activities or is a national securities exchange as of the end of the most recent fiscal year of each such affiliate.

11. Attach as **Exhibit K,** the following:

a. A complete list of all dues, fees, and other charges imposed, or to be imposed, by or on behalf of the Applicant for its security-based swap execution facility services that are provided on an exclusive basis and identify the service or services provided for each such due, fee, or other charge.

b. A description of the basis and methods used in determining the level and structure of the dues, fees, and other charges listed in paragraph (a) of this item.

c. If the Applicant differentiates, or proposes to differentiate, among its members in the amount of any dues, fees, or other charges imposed for the same or similar exclusive services, describe and indicate the amount of each differential. In addition, identify and describe any differences in the cost of providing such services and any other factors that account for such differentiations.

EXHIBITS —COMPLIANCE

12. Attach as **Exhibit L,** a narrative and any other form of documentation that may be provided under other Exhibits herein, that describes the manner in which the Applicant is able to comply with each Core Principle. Such documentation must include a regulatory compliance chart setting forth each Core Principle and providing citations to the Applicant's relevant rules, policies, and procedures that address each Core Principle. To the extent that the application raises issues that are novel or for which compliance with a Core Principle is not

self-evident, include an explanation of how that item and the application satisfy the Core Principles.

13. Attach as **Exhibit M,** a copy of the Applicant's rules and any technical manuals, other guides, or instructions for members, including minimum financial standards for members. Include rules on publication of daily trading information with regards to the requirements of Regulation SBSR (§§ 242.900 through 242.909). The Applicant should include an explanation and any other form of documentation that the Applicant thinks will be helpful to its explanation, demonstrating how its rules, technical manuals, other guides, or instructions for members or minimum financial standards for members, as provided in this Exhibit M, help support the security-based swap execution facility's compliance with the Core Principles.

14. Attach as **Exhibit N,** executed or executable copies of any agreements or contracts entered into or to be entered into by the Applicant, including third-party regulatory service provider or member or user agreements that enable or empower the Applicant to comply with applicable Core Principles. Identify: (1) the services that will be provided; and (2) the Core Principles addressed by such agreement.

15. Attach as **Exhibit O,** a copy of any compliance manual and any other document that describes with specificity the manner in which the Applicant will conduct trade practice, market, and financial surveillance.

16. Attach as **Exhibit P,** a description of the Applicant's disciplinary and enforcement protocols, tools, and procedures and, if applicable, the arrangements for alternative dispute resolution.

17. Attach as **Exhibit Q,** an explanation regarding the operation of the Applicant's trading system(s) or platform(s) and the manner in which the system(s) or platform(s) satisfy any Commission rules, interpretations, or guidelines regarding a security-based swap execution facility's execution methods, including the minimum trading functionality requirement in § 242.803 of the Commission's regulations. This explanation should include, as applicable, the following:

    a. For trading systems or platforms that enable members to engage in transactions through an order book:
        (1) How the trading system or platform displays all orders and trades in an electronic or other form, and the timeliness in which the trading system or platform does so;
        (2) How all market participants have the ability to see and have the ability to transact on all bids and offers; and
        (3) An explanation of the trade matching algorithm, if applicable, and examples of how that algorithm works in various trading scenarios involving various types of orders.

    b. For trading systems or platforms that enable members to engage in transactions through a request-for-quote system:
        (1) How a member transmits a request for a quote to buy or sell a specific instrument to no less than three market participants in the trading system or platform, to which all members may respond;

(2) How resting bids or offers from the Applicant's Order Book are communicated to the requester; and
(3) How a requester may transact on resting bids or offers along with the responsive orders.

c. How the timing delay described under § 242.815(b) of Regulation SE is incorporated into the trading system or platform.

18. Attach as **Exhibit R,** a list of rules prohibiting specific trade practices.

19. Attach as **Exhibit S,** a discussion of how trading data will be maintained by the security-based swap execution facility.

20. Attach as **Exhibit T,** a list of the name of the clearing organization(s) that will clear the Applicant's trades, and a representation that clearing members of that organization will be guaranteeing such trades.

21. Attach as **Exhibit U,** any information (described with particularity) included in the application that will be subject to a request for confidential treatment pursuant to Securities Exchange Act Rule 24b-2, 17 CFR 240.24b-2.

Appendix B

■ 19. Add § 249.2002 to read as follows:

§ 249.2002 Submission cover sheet, for rule and product submissions.

This submission cover sheet shall be used by registered security-based swap execution facilities for making submissions pursuant to Rules 804 through 807, 809, and 816 (§ 242.804 through 242.807, 242.809, and 242.816).

Note: The submission cover sheet will not appear in the Code of Federal Regulations.

Section 249.2002–Cover Sheet and Instructions for Rule and Product Submissions

SECURITY-BASED SWAP EXECUTION FACILITY

SUBMISSION COVER SHEET

IMPORTANT: Check box if Confidential Treatment is requested ☐

Name of Security-Based Swap Execution Facility:_____

Platform ID of Security-Based Swap Execution Facility: _____

Filing Date (mm/dd/yy): _____

Filing Description (See Instructions):

_____

SPECIFY FILING TYPE Please note only ONE choice allowed per Submission.

Rules and Rule Amendments (except where relating to product terms and conditions – see below)

☐ Self-Certification Rule 807(a)
☐ Approval Rule 806(a)
☐ Notification Rule 807(d)

Rule Numbers: _____

New Product Please note only ONE product per Submission.
☐ Self-Certification Rule 804(a)
☐ Approval Rule 805(a)

Official Product Name: _____

Please check the following box if you intend to submit a request for a joint interpretation from the Commission and the Commodity Futures Trading Commission regarding whether the new product is a swap, security-based swap, or mixed swap pursuant to Rule 3a68-2 under the Securities Exchange Act: ☐

Product Terms and Conditions (product-related Rules and Rule Amendments)

☐ Certification Rule 807(a)
☐ Certification – Made Available to Trade Determination Rule 816(a)
☐ Delisting (No Open Interest) Rule 807(a)
☐ Approval Rule 806(a)
☐ Approval – Made Available to Trade Determination Rule 816(a)
☐ Notification Rule 807(d)

Official Name(s) of Product(s) Affected: _____

Rule Numbers: _____

Submission Cover Sheet and Instructions for Rule and Product Filings

(a) A properly completed submission cover sheet shall accompany all rule and product submissions submitted electronically to the Commission by a security-based swap execution facility using the EDGAR system as an Interactive Data File in accordance with Rule 405 of Regulation S-T (17 CFR 232.405). A properly completed submission cover sheet shall include all of the following:

(1) *Organization*. The name of the security-based swap execution facility filing the submission.

(2) *Date*. The date of the filing.

(3) *Type of Filing*. An indication as to whether the filing is a new rule, rule amendment, or new product. The security-based swap execution facility should check the appropriate box to indicate the applicable category under that heading.

(4) *Rule Numbers*. For rule filings, the rule number(s) being adopted or modified in the case of rule amendment filings.

(5) *Description*. For rule or rule amendment filings, a description of the new rule or rule amendment, including a discussion of its expected impact on the security-based swap execution facility, its members, and the overall market. The narrative should describe the substance of the submission with enough specificity to characterize all material aspects of the filing.

(b) *Other Requirements*. A submission shall comply with all applicable filing requirements for proposed rules, rule amendments, or products. The filing of the submission cover sheet does not obviate the security-based swap execution facility's responsibility to comply with applicable filing requirements (*e.g.*, rules submitted for Commission approval under Rule 806 must be accompanied by an explanation of the purpose and effect of the proposed rule along with a description of any substantive opposing views).

(c) Checking the box marked "confidential treatment requested" on the submission cover sheet does not obviate the submitter's responsibility to comply with all applicable requirements for requesting confidential treatment in Securities Exchange Act Rule 24b-2, 17 CFR 240.24b-2, and will not substitute for notice or full compliance with such requirements.

[FR Doc. 2022–07850 Filed 5–10–22; 8:45 am]
BILLING CODE 8011–01–C

FEDERAL REGISTER

Vol. 87 Wednesday,

No. 91 May 11, 2022

Part III

The President

Notice of May 9, 2022—Continuation of the National Emergency With Respect to the Central African Republic

Notice of May 9, 2022—Continuation of the National Emergency With Respect to the Stabilization of Iraq

Notice of May 9, 2022—Continuation of the National Emergency With Respect to Yemen

Federal Register
Vol. 87, No. 91
Wednesday, May 11, 2022

Presidential Documents

Title 3—

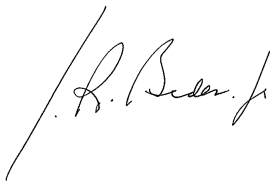
The President

Notice of May 9, 2022

Continuation of the National Emergency With Respect to the Central African Republic

On May 12, 2014, by Executive Order 13667, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the situation in and in relation to the Central African Republic, which has been marked by a breakdown of law and order; intersectarian tension; the pervasive, often forced recruitment and use of child soldiers; and widespread violence and atrocities, including those committed by Kremlin-linked and Yevgeniy Prigozhin-affiliated entities such as the Wagner Group, and which threatens the peace, security, or stability of the Central African Republic and neighboring states.

The situation in and in relation to the Central African Republic continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13667 on May 12, 2014, to deal with that threat must continue in effect beyond May 12, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared with respect to the Central African Republic. This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 9, 2022.

[FR Doc. 2022–10325
Filed 5–10–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

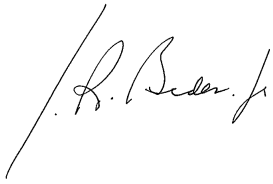
Notice of May 9, 2022

Continuation of the National Emergency With Respect to the Stabilization of Iraq

On May 22, 2003, by Executive Order 13303, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq.

The obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in the country, and the development of political, administrative, and economic institutions in Iraq continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13303, as modified in scope and relied upon for additional steps taken in Executive Order 13290 of March 20, 2003, Executive Order 13315 of August 28, 2003, Executive Order 13350 of July 29, 2004, Executive Order 13364 of November 29, 2004, Executive Order 13438 of July 17, 2007, and Executive Order 13668 of May 27, 2014, must continue in effect beyond May 22, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the stabilization of Iraq declared in Executive Order 13303.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
May 9, 2022.

[FR Doc. 2022–10326
Filed 5–10–22; 11:15 am]
Billing code 3395–F2–P

Presidential Documents

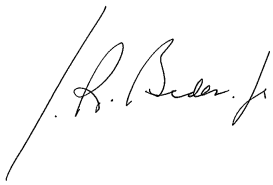
Notice of May 9, 2022

Continuation of the National Emergency With Respect to Yemen

On May 16, 2012, by Executive Order 13611, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Yemen and others that threatened Yemen's peace, security, and stability. These actions include obstructing the political process in Yemen and blocking the implementation of the agreement of November 23, 2011, between the Government of Yemen and those in opposition to it, which provide for a peaceful transition of power that meets the legitimate demands and aspirations of the Yemeni people.

The actions and policies of certain former members of the Government of Yemen and others in threatening Yemen's peace, security, and stability continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared in Executive Order 13611 on May 16, 2012, to deal with that threat must continue in effect beyond May 16, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13611 with respect to Yemen.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

May 9, 2022.

[FR Doc. 2022–10328

Filed 5–10–22; 11:15 am]

Billing code 3395–F2–P

Reader Aids

Federal Register

Vol. 87, No. 91

Wednesday, May 11, 2022

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Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6050**

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FEDERAL REGISTER PAGES AND DATE, MAY

25569–26120 2
26121–26266 3
26267–26652 4
26653–26960 5
26961–27438 6
27439–27916 9
29717–28750 10
28751–29024 11

CFR PARTS AFFECTED DURING MAY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR

12 26267

3 CFR

Proclamations:
10375 25569
10376 26121
10377 26653
10378 26655
10379 26657
10380 26659
10381 26661
10382 26663
10383 26665
10384 26667
10385 26669
10386 26671
10387 26673
10388 26959
10389 27905
10390 27907
10391 27915
10392 28751
10393 28753
Executive Orders:
14073 27909
Administrative Orders:
Notices
Notice of May 9, 2022....28749, 29019, 29021, 29023

5 CFR

1601 27917

7 CFR

1 25571
1728 26961
1755 26961

8 CFR

274a 26614

9 CFR

Proposed Rules:
201 26695
203 26695

10 CFR

430 .....27439, 27461, 28755
Proposed Rules:
20 27025
26 27025
50 27025
51 27025
52 27025
72 27025
73 27025
140 27025
430 .....26303, 26304
431 .....27025, 28782

12 CFR

14 27482
329 27483
611 27483
615 27483
620 27483
621 27483
628 27483
630 27483

13 CFR

107 28756
120 28756
142 28756
146 28756

14 CFR

27 26123
39 .....26964, 26967, 26969, 26972, 27494, 27923
71 .....26974, 26975, 26977, 26978, 26980, 26981, 26983, 26984, 26985, 27506, 27507, 27508, 27509, 27925, 27927
73 .....26987, 27510
91 27928
Proposed Rules:
29 26143
39 .....26699, 26702, 27029, 27032, 27035, 27037, 27533, 27954
71 .....26705, 27537, 27539, 27956

15 CFR

746 28758

17 CFR

Proposed Rules:
201 28872
232 28872
240 28872
242 28872
249 28872

18 CFR

Proposed Rules:
35 26504

20 CFR

220 27512
404 26268
641 26988
Proposed Rules:
641 27041

21 CFR

73 27931
870 26989
876 26991

878 26993
Proposed Rules:
172 26707
1162 ....26311, 26454
1166 ....26311, 26396

23 CFR
650 27396

26 CFR
Proposed Rules:
1 26806
20 26806
25 26806

28 CFR
50 27936
85 27513

30 CFR
917 27938

31 CFR
589 26094

32 CFR
310 28774

33 CFR
100 ....25571, 25572, 26270, 26273, 26996, 27943
165 ....26273, 26675, 26996, 26998, 27943, 27944, 27945, 27947, 28776
Proposed Rules:
100 ....26313, 26315, 27041
117 26145
165 27959
334 25595

37 CFR
Proposed Rules:
1 27043

38 CFR
3 26124

39 CFR
Proposed Rules:
3055 25595

40 CFR
52 ....26677, 26999, 27519, 27521, 27524, 27526, 27528, 27949
62 26680
63 27002
82 26276
180 ....26684, 26687, 26691
194 26126
271 26136
312 25572
Proposed Rules:
2 26146
52 ....26707, 26710, 27048, 27050, 27540, 28783
59 26146
60 26146
80 26146
81 ....26146, 26710, 27540
85 26147
86 26146
87 26146
152 27059
271 26151
600 26146
704 27060
1027 26146
1030 26146
1033 26146
1036 26146
1037 26146
1039 26146
1042 26146
1043 26146
1045 26146
1048 26146
1051 26146
1054 26146
1060 26146
1065 26146
1066 26146
1068 26146
1090 26146

42 CFR
417 27704
422 27704
423 27704
Proposed Rules:
88 27961
412 28108
413 28108
482 28108
485 28108
495 28108

45 CFR
144 27208
147 27208
153 27208
155 27208
156 27208
158 27208
Proposed Rules:
2507 25598

46 CFR
Proposed Rules:
520 27971

47 CFR
20 26139

48 CFR
4 25572

49 CFR
107 28779
190 28779
191 26296
192 26296
214 27530
531 25710
533 25710
536 25710
537 25710
Proposed Rules:
350 27981
393 26317
1146 25609
1249 27549

50 CFR
17 26141
622 25573
635 26299
648 27952
660 27530
665 25590
Proposed Rules:
17 ....26152, 26319
622 26178
660 27557

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The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available at *https://www.govinfo.gov*. Some laws may not yet be available.

S. 3522/P.L. 117–118
Ukraine Democracy Defense Lend-Lease Act of 2022 (May 9, 2022; 136 Stat. 1184)
Last List May 10, 2022

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