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Presidential Documents

Title 3—

The President

Proclamation 10494 of November 10, 2022

American Education Week, 2022

By the President of the United States of America

A Proclamation

During American Education Week, we celebrate the power of public education and thank the educators and staff who do so much to make our public schools the cornerstone of our democracy, prosperity, and strength.

America is founded on the beliefs that all people are created equal and that with talent and hard work anyone can get ahead. Our public schools make that possible. For over a century since America made 12 years of education universal, public schools have given us the best-prepared workforce on the planet, the most innovative industries, the most creative ideas, and the strongest economy. A quality education has been a ticket to the middle class, and our public schools have been the centers of our communities—places to listen and learn from each other, united around our shared American ideals.

In the wake of the pandemic, though, it is clearer than ever that our schools and kids need more support. Students have lost months of learning, and the latest Nation's Report Card showed serious declines in math and reading, even as heroic educators have sacrificed so much to help students catch up. There are bright spots across the country, but the truth is that even before COVID–19, the United States had already dropped behind other nations in early education and overall attainment. The pandemic just made things worse.

That is why my Administration fought so hard to pass the American Rescue Plan, which provided a historic $130 billion to help schools across the country reopen safely, tackle learning loss, boost teacher pay, increase mental health services, and expand afterschool and summer programs. Since I took office, schools have hired 328,000 new educators and staff and increased the number of social workers, counselors, and school nurses on hand to support students. Meanwhile, the Bipartisan Infrastructure Law is investing historic amounts in our Nation's roads, bridges, and communities. It will replace America's lead pipes so children can turn on the faucet at home or school and drink clean water. It will deliver affordable, high-speed internet to every family so no child has to sit in a fast-food parking lot to get Wi-Fi for their homework. It will upgrade schools' ventilation systems, saving energy. It will phase in thousands of electric school buses, protecting our kids from today's diesel bus fumes. At the same time, we are working to keep our kids nourished and safe, making it easier to concentrate in class. My Administration released a national strategy to combat hunger in America, which outlines a pathway to free, healthy school meals for all children, millions of whom are food insecure. Last summer, we passed the Nation's first major gun safety bill in nearly 30 years, funding mental health supports in schools, anti-violence programs, and red-flag laws and expanding background checks to help make sure every American school is safe.

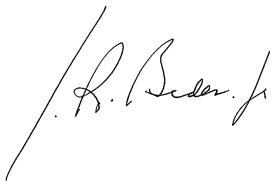
As we boost support for K–12 education, we also acknowledge that 12 years of school is no longer enough to compete in the 21st century—so my Administration is taking historic steps to expand access to education beyond high school, too. We are working with unions, employers, and

community groups to expand quality apprenticeship programs. We have increased the maximum Pell Grant, helping millions of low-income students cover more of their college costs. We have invested billions of dollars in Historically Black Colleges and Universities, Tribal Colleges and Universities, and Minority-Serving Institutions, such as Hispanic-Serving Institutions. As working families continue to recover from the strains associated with the COVID–19 pandemic, we are easing the burden of student debt by forgiving up to $20,000 in eligible Federal student loans for anyone who earns less than $125,000 a year and forgiving the entire loan balance for public school teachers and other public servants who have made payments for at least 10 years. Borrowers can apply for one-time debt relief in a matter of minutes at studentaid.gov. Borrowers who work in public service can apply for the Public Service Loan Forgiveness at studentaid.gov/pslf.

At the same time, we have much more to do to provide free, high-quality preschool for every three- and four-year-old, to boost resources for high-poverty Title I schools, and to make affordable childcare available to all working families. Our children are the kite strings that hold our national ambitions aloft, and our public education system gives them the tools they need to take flight. This week, we honor all the educators, counselors, nurses, cafeteria workers, bus drivers, custodians, and other school staff who make such a difference in our children's lives; and we recommit to getting them the support needed to guarantee that every child in America can reach their potential.

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 November 13 through November 19, 2022, as American Education Week. I invite all Americans to celebrate with appropriate activities, events, and programs, and with gratitude for all those who have made education their calling, and who help learners of all ages and backgrounds reach their full potential.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, 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-seventh.



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Presidential Documents

Proclamation 10495 of November 10, 2022

National Apprenticeship Week, 2022

By the President of the United States of America

A Proclamation

During National Apprenticeship Week, we celebrate the workers of America—the best in the world—and lift up the importance of apprenticeship programs run by unions, employers, and other organizations. These programs train workers to hone a skill and craft that is going to rebuild America for the 21st century.

For many workers, especially those without college degrees, apprenticeships create a critical pathway to good-paying jobs. Registered apprentices earn while they learn. These programs, particularly through local unions, ensure that our Nation is producing the best-trained, best-prepared, and best-skilled workers for industries now and of the future—from health care and information technology to clean energy. Supporting Registered Apprenticeships is a key part of my economic vision to build an economy from the bottom up and the middle out: an economy that works for everyone.

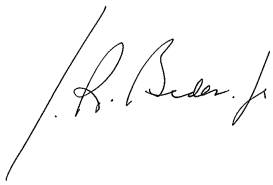
That is why hundreds of millions of dollars from my American Rescue Plan and Bipartisan Infrastructure Law are dedicated to helping States, employers, labor organizations, and workforce intermediaries design, develop, and expand Registered Apprenticeships and pre-apprenticeship programs. That means jobs for electrical workers, pipefitters, carpenters, and more. I began an Apprenticeship Ambassador Initiative, which assembled a national network of businesses and labor organizations and secured from them a collective commitment to hire over 10,000 new apprentices in the next year alone. Our Administration's 90-Day Trucking Apprenticeship Challenge and 120-day Cybersecurity Apprenticeship Sprint bolstered this progress, garnering hundreds of private sector commitments for new apprenticeship programs in these critical sectors. With these efforts, our Nation hit record-setting employment in the trucking industry earlier this year. Additionally, nearly 150 public and private sector employers, unions, and community-based organizations have made training and apprenticeship commitments in the broadband, construction, and electrification sectors to promote equitable workforce development as part of my Talent Pipeline Challenge.

At the same time, we have cut red tape so companies can also more easily establish Registered Apprenticeship programs in just a matter of days. To ensure the American worker can ably compete in the global marketplace, I revoked an Executive Order that promoted less rigorous apprenticeships. I am also making sure that, as our economy grows and apprenticeship opportunities become more widely available, every community in America experiences these benefits. That means creating clean energy apprenticeships and jobs in frontline and fence-line communities that have suffered from the legacy of pollution. It also means continuing our support for initiatives like the Department of Labor's Women in Apprenticeship and Nontraditional Occupations grant program, which has trained women to enter the skilled trades and other occupations where they have been historically underrepresented. Diversifying pre-apprenticeship programs also plays a valuable role in expanding the pool of workers ready to take on a Registered Apprenticeship.

I have always believed that the middle class built America and that unions built the middle class. Registered Apprenticeships are a testament to the power of unions to deliver good-paying jobs that offer dignity and respect. They also reflect American workers' dedication and commitment to excellence. During National Apprenticeship Week, let us celebrate the apprentices of America, give our thanks to the mentors who train them, and remind ourselves of our ongoing responsibility to invest in the best workforce on the planet.

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 November 13 through November 19, 2022, as National Apprenticeship Week. I urge the Congress, State and local governments, educational institutions, industry and labor leaders, apprentices, and all Americans to support Registered Apprenticeship programs in the United States of America and to raise awareness of their importance in building a diverse and robust workforce to strengthen our national economy.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, 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-seventh.



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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 875

RIN 3206–AO21

Enhancing Stability and Flexibility for the Federal Long Term Care Insurance Program (FLTCIP)—Abbreviated Underwriting, Applications for FLTCIP Coverage, and Technical Corrections

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a final regulation to support enhancing stability and flexibility in FLTCIP by amending when abbreviated underwriting will be offered to prospective enrollees and finalizing rules for the suspension of applications for coverage and the requirements around any such suspension periods. OPM is also finalizing technical corrections for the sake of clarity and to remove redundancies. This final rule adopts the proposed regulations with one technical change correcting the provision related to the Federal appeals board that is delegated the authority to resolve contract disputes between the Carrier and OPM. Finally, OPM may effectuate a suspension period after publication of this final rule with a separate document in the **Federal Register**.

DATES: Effective on November 16, 2022. OPM will publish a separate document announcing the effective date of a suspension period in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dyan Dyttmer, Senior Policy Analyst, *dyan.dyttmer@opm.gov,* (202) 936–0152.

SUPPLEMENTARY INFORMATION: On June 3, 2022, OPM published proposed regulations (87 FR 33653), which proposed amendments to 5 CFR part 875 to support FLTCIP stability and flexibility by amending when abbreviated underwriting will be offered to prospective enrollees and proposing rules for the suspension of applications for coverage and the requirements around any such suspension periods. OPM also proposed technical corrections for the sake of clarity and to remove redundancies. Finally, with the publication of the proposed rule, OPM provided notice of an anticipated suspension period.

The comment period for the proposed rule closed on July 5, 2022. OPM received three comments from individuals on the proposed rule, and a Federal appeals board contacted us regarding OPM's delegation of authority to resolve contract disputes in 5 CFR 875.109. A summary of the comments OPM received follows, along with our responses to the comments and a technical change OPM is making to the final rule in response to the comments.

Responses to Comments on the Proposed Rule

One commenter questioned OPM's authority to authorize a suspension period and to change the 60-day abbreviated underwriting period allowed to newly eligible active workforce members and spouses. The commenter asserted that OPM lacked authority to suspend applications based on the statutory language in 5 U.S.C. 9002(a) which states that OPM shall establish and administer the FLTCIP for which eligible individuals may obtain long term care insurance coverage. The commenter stated that the statutory construct should be interpreted to mean that OPM *must* offer eligible individuals an opportunity to enroll in the FLTCIP. Another commenter questioned OPM's authority to suspend applications for a period, as this would reduce premiums received from enrollees prevented from enrolling and therefore increase premiums for those already enrolled.

OPM disagrees with these comments and concludes that it has the authority to institute these changes to FLTCIP. OPM's authority to establish and administer the Program brings with it the obligation to oversee the Program's functioning and to protect both current and prospective enrollees, as well as the health of the Program as a whole. OPM has authority under 5 U.S.C. 9008 to prescribe regulations to effectuate this authority, including to create through regulation the ability to suspend applications for coverage, with notice and for a reasonable period of time, when necessary for the proper administration of the Program. It is also within OPM's authority to alter through regulation the circumstances under which abbreviated underwriting may be offered. As OPM explained in the preamble of the proposed rule, the purpose of creating through regulation the ability to suspend applications is to protect eligible individuals from applying to enroll when OPM has determined that underwriting processes may need revisions or when the current premium rates offered to new applicants may not reasonably and equitably reflect the cost of the benefits as required under 5 U.S.C. 9003(b)(2). Finally, OPM acknowledges that if FLTCIP is suspended for a period this would prevent currently eligible and newly eligible individuals from applying for coverage during the suspension, and individuals may have to wait to apply after the suspension period or seek alternative coverage. As explained in the preamble of the proposed rule, the number of potential new enrollees would be small. OPM will only suspend applications when it is in the best interest of the Program, as required by this final rule.

One commenter stated that the proposed rule is arbitrary and capricious under the Administrative Procedure Act because OPM stated in the preamble that it considered the Notice of Proposed rulemaking to serve as the notice required under the proposed 5 CFR 875.110(b), which is being finalized in this final rule. OPM is clarifying that the proposed rule served as notice to the public that OPM intends to suspend FLTCIP applications and establishes the process for suspension, amends abbreviated underwriting rules, and modifies the regulations. OPM is clarifying that these actions, including the process for suspension as proposed in 5 CFR 875.110, will be effectuated after publication of the final rule, not after the proposed rule as the commenter stated.

One commenter questioned whether OPM consulted with the Secretaries of the uniformed services before promulgating the rule as required by 5 U.S.C. 9008(c). OPM fulfilled the

requirement of consultation through the inter-agency review process before it published the proposed rule.

All three of the commenters expressed general concerns about the manner in which OPM administers FLTCIP. They suggested that OPM should act in a fashion similar to state insurance regulators, such as by adopting standards set by the National Association of Insurance Commissioners (NAIC) for long term care insurance rate increases, conducting public rate hearings, and taking expert and enrollee testimony. They also suggested that OPM should be more transparent in its operation of the Program, such as by making public its communications with the FLTCIP Carrier. Finally, one commenter suggested that OPM should require the FLTCIP Carrier and administrator to be more transparent regarding their operations, such as by publishing quarterly reports with information about pay-outs, expenses, reserves, and investment mix.

OPM acknowledges the importance of transparency and consumer protections for FLTCIP enrollees. OPM complies with consumer protections in the FLTCIP statute and the Health Insurance Portability and Accountability Act of 1996, including by providing a contingent benefit upon lapse, inflation protection options, portability, and guaranteed renewability (except when enrollees fail to pay their premiums). As part of contracting, OPM and the FLTCIP Carrier agree to specific requirements for the insurer to follow, including certain NAIC model standards. While OPM will consider these comments in its future administration of the Program, the comments are outside the scope of this rule and require no further response.

The Armed Services Board of Contract Appeals (ASBCA) also contacted OPM seeking clarification regarding the appropriate board of contract appeals to resolve contract disputes between OPM and the FLTCIP Carrier. The ASBCA correctly noted that although OPM's regulations currently identified the ASBCA as the board of contract appeals with jurisdiction, the National Defense Authorization Act for Fiscal Year 2006 created the Civilian Board of Contract Appeals (CBCA) and specified the jurisdiction of the ASBCA and CBCA. As an executive agency, OPM contract disputes are within the jurisdiction of the CBCA pursuant to 41 U.S.C. 7105(b). OPM is making a technical correction that updates our regulations to reflect that the CBCA, not the ASBCA, will resolve contract disputes related to FLTCIP.

Notice of Suspension Period

OPM will issue a separate **Federal Register** document announcing the beginning date and anticipated length of any suspension period at least 30 days before the suspension period starts.

Changes From Proposed Rule

OPM has made a change to the final rule to clarify 5 CFR 875.110. The proposed rule included the process for suspending applications for FLTCIP coverage after publication of a document in the **Federal Register**. The proposed rule also included a process for extending such a suspension. The final rule clarifies that each extension to the suspension period is limited to 24 months. Each extension will be based on current information supporting OPM's conclusion that continuing the suspension is in the best interest of the Program, and each extension will require publication in the **Federal Register**.

OPM has made one technical correction to this final rule. This final rule clarifies in 5 CFR 875.109 that the Civilian Board of Contract Appeals has jurisdiction to resolve contract disputes related to FLTCIP. Except for the change above and this technical correction, OPM is issuing this final rule with no other changes.

Expected Impact of the Final Rule

The changes in this final rule, including underwriting changes and any future suspensions of applications for FLTCIP coverage, will not affect current FLTCIP enrollees. Individuals already enrolled in FLTCIP will retain their coverage as long as they continue to pay premiums. The changes impact new enrollment and are expected to impose no more than de minimus administrative costs to Federal agencies since FLTCIP is an enrollee-pay-all program, and there is no Government contribution toward enrollee premiums.

OPM expects that the rule will not result in a significant impact on the eligible or newly eligible population. Approximately 6,000 eligible individuals enroll in FLTCIP annually, which is less than 0.1% of 11 million eligible federal and military actives and annuitants (not including spouses and other qualified relatives who are also eligible). This low percentage mirrors the low uptake for purchasing long term care insurance (LTCI) in the broader LTC market. According to a Treasury Report of the Federal Interagency Task Force on Long-Term Care Insurance, sales of new LTCI policies have declined since the early 2000s, as numerous insurers decided to exit the market due to the poor financial performance of the product line; and low take-up rates for LTCI appear to stem in part from low demand for these products.[1] The report identifies factors influencing demand including: substitutes for private LTCI such as Medicaid; unpaid care or the ability to receive informal care from family; a desire to leave assets to heirs can suppress demand because people may be motivated to postpone consumption and save money; lack of information and awareness about LTC costs and the ways to finance those costs; lack of trust in insurers; and premiums, costs, and loads.[2]

Since less than 0.1% of the eligible population annually enroll in FLTCIP, based on this trend and market trends, it is unlikely that newly eligible individuals would have a high demand for LTCI during a suspension of applications. Further, there are other options for eligible individuals to plan for LTC needs. Some other options to plan for LTC needs during a suspension period include the following: saving for future needs by setting aside funds to invest in a 401(k), an IRA, or a non-retirement investment account; investing in a long-term care annuity; purchasing a ''combination'' or ''hybrid'' product that combines a life insurance policy with a LTC rider; or purchasing a short-term care insurance policy.

Indirect Effects on Other Parties

OPM does not believe this regulation will have a large impact on the broader LTCI market. Approximately 6,000 eligible individuals enroll in FLTCIP annually, which is less than 0.1% of the eligible population. At an average premium of $125 per month or $1,500 per year, the forgone annual premium for new enrollees would total less than $10 million per year during any FLTCIP enrollment suspension. As discussed above, affected individuals would likely pursue substitute savings and insurance products during a suspension period. OPM estimates that the magnitude of the forgone $10 million on other parties, such as LTC insurers in the LTCI market, would be quite small compared to the larger LTCI market.

[1] U.S. Department of the Treasury, ''Long-Term Care Insurance: Recommendations for Improvement of Regulation.'' Report of the Federal Interagency Task Force on Long-Term Care Insurance, August 2020, *https://home.treasury.gov/system/files/136/Report-Federal-Interagency-Task-Force-Long-TermCare-Insurance.pdf.*

[2] See footnote 1.

Benefits of the Final Rule

This final rule establishes provisions for OPM to suspend applications to FLTCIP when it is in the best interest of the program; for example, in order to allow for adjustment to underwriting processes or to reprice premium rates after a review of actuarial assumptions. The rule aims to protect eligible individuals from applying to enroll when it has been determined that underwriting processes may need revisions or when the current premium rates may not reflect the cost of the benefits provided due to market volatility and changes to projections about future costs. This allows OPM and the FLTCIP carrier to agree on underwriting changes or new premium rates that reasonably and equitably reflect the cost of the benefits provided as required by the FLTCIP statute.

Executive Orders 12866 and 13563

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

Congressional Review Act

This rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801–808), also known as the Congressional Review Act or CRA, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the **Federal Register**.

Paperwork Reduction Act

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.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 875

Administration and general provisions, Eligibility, Cost, and Coverage.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM amends 5 CFR part 875 as follows:

PART 875—FEDERAL LONG TERM CARE INSURANCE PROGRAM

■ 1. The authority citation for part 875 continues to read as follows:

Authority: 5 U.S.C. 9008; Pub. L. 116–92, 133 Stat. 1198 (5 U.S.C. 8956 note).

Subpart A—Administration and General Provisions

■ 2. Amend § 875.101 by revising the definitions of ''Carrier'', ''Eligible individual'', and ''Free look'' and adding in alphabetical order a definition for ''Special application period'' to read as follows:

§ 875.101 Definitions.

* * * * *

Carrier means a ''qualified carrier'' as defined in section 9001 of title 5, United States Code, with which OPM has contracted to provide long term care insurance coverage under this section. A Carrier may designate one or more administrators to perform some of its obligations.

* * * * *

Eligible individual means an employee, annuitant, member of the uniformed services, retired member of the uniformed services or qualified relative, as defined in section 9001 of title 5, United States Code.

* * * * *

Free look means that within 30 days after you are approved for coverage and receive the Benefit Booklet, you may cancel that coverage if you are not satisfied with it and receive a refund of any premium you paid for that coverage. It will be as if the coverage was never issued.

* * * * *

Special application period is a period in which active workforce members and their spouses may apply based on abbreviated underwriting. Such application periods will be provided for pursuant to OPM's authority in section 9008 of title 5, United States Code.

* * * * *

■ 3. Revise § 875.102 to read as follows:

§ 875.102 Where do I send benefit claims?

You must submit your benefit claims to the FLTCIP Carrier.

■ 4. Amend § 875.107 by removing ''and'' at the end of paragraph (b), removing the semicolon and adding a period at the end of paragraph (c) and adding a semicolon in its place, and adding paragraphs (d) and (e).

The additions read as follows:

§ 875.107 What are OPM's responsibilities as regulator under this Program?

* * * * *

(d) Suspending applications for FLTCIP coverage, including coverage increases as specified in § 875.110; and

(e) Holding special application periods as specified in § 875.402.

■ 5. Revise § 875.109 to read as follows:

§ 875.109 Which board of contract appeals has jurisdiction for resolving contract disputes between OPM and the Carrier?

For purposes of applying chapter 71 of title 41 to disputes arising between OPM and the Carrier, the Civilian Board of Contract Appeals has jurisdiction to decide an appeal relative to such a dispute.

■ 6. Add § 875.110 to read as follows:

§ 875.110 May OPM suspend applications for FLTCIP coverage?

(a) OPM may suspend applications for FLTCIP coverage, including coverage increases, when OPM determines that a suspension is in the best interest of the Program.

(b) OPM will issue a document in the **Federal Register** with the effective date of the suspension period, during which no applications for FLTCIP coverage will be accepted. The effective date will be determined at the discretion of the Director and will be at least 30 days after the publication date of the document.

(c) The duration of the suspension period, as determined at the discretion of the Director and not to exceed 24 months unless subsequently extended, will be announced in a document published in the **Federal Register**.

(d) At least 30 days before the end of the suspension period, OPM may issue a document in the **Federal Register** announcing an extension of the suspension period when OPM determines that such extension is in the best interest of the Program. The duration of any extension to the suspension period will not exceed 24 months, unless subsequently extended by additional periods of suspension, each not to exceed 24 months.

Subpart B—Eligibility

■ 7. Revise § 875.203 to read as follows:

§ 875.203 Am I eligible if I separated under the FERS MRA+10 provision?

If you have separated from service under the FERS Minimum Retirement Age and 10 years of service (MRA+10) provision of 5 U.S.C. 8412(g), and have postponed receiving an annuity under that provision, you are eligible to apply for coverage as an annuitant under this part.

■ 8. Amend § 875.204 by revising paragraph (c) to read as follows:

§ 875.204 Am I eligible as a member of the uniformed services?

* * * * *

(c) You are not eligible to apply for coverage solely because you belong to the Individual Ready Reserve. The Individual Ready Reserves includes Reservists who are assigned to a Voluntary Training Unit in the Naval Reserve and Category E in the Air Force Reserve.

§ 875.206 [Removed and Reserved]

■ 9. Remove and reserve § 875.206.

■ 10. Revise § 875.207 to read as follows:

§ 875.207 What happens if I am in nonpay status during a special application period?

(a) If you return to pay status from nonpay status during a special application period, you have 60 days from the date of your return, or until the end of the special application period, whichever gives you more time, to apply for coverage pursuant to the rules of that special application period.

(b) If you return to pay status from nonpay status within 180 days after the end of the special application period, you have 60 days from the date of your return to apply for coverage pursuant to the rules of that special application period.

(c) Paragraphs (a) and (b) of this section apply only when you have been in nonpay status for more than one-half of a special application period, unless you went into nonpay status for a reason beyond your control.

■ 11. Amend § 875.209 by revising paragraph (a) to read as follows:

§ 875.209 How do I demonstrate that I am eligible to apply for coverage?

(a) When you submit your application for coverage, you must make known your status as a member of an eligible group. If you are a qualified relative, you need to provide identifying information about the workforce member who makes you an eligible individual.

* * * * *

■ 12. Amend § 875.210 by revising paragraph (b)(1) to read as follows:

§ 875.210 What happens if I become ineligible after I submit an application?

* * * * *

(b) * * *

(1) When you are involuntarily separated from Federal civilian service (except for misconduct) or from the uniformed services (except for a dishonorable discharge); or, when you are the qualified relative of a workforce member who has been involuntarily separated from Federal civilian service (except for misconduct) or from the uniformed services (except for a dishonorable discharge).

* * * * *

■ 13. Revise § 875.211 to read as follows:

§ 875.211 What happens if my eligibility status changes after I submit my application?

(a) If you applied as an active workforce member, and you retire or separate from service after you submit an application for coverage, but before your coverage becomes effective, you must notify the Carrier of this change.

(b) If you applied with abbreviated underwriting during a special application period as an active workforce member or the spouse of an active workforce member, and the active workforce member retires or separates from service before your coverage becomes effective, you must reapply based on your new eligibility status.

■ 14. Revise § 875.213 to read as follows:

§ 875.213 May I apply as a qualified relative if I am the domestic partner of an employee or annuitant?

You may apply for coverage as a qualified relative if you are a domestic partner, as described in § 875.101. As prescribed by OPM, you will be required to provide documentation to demonstrate that you meet these requirements, and you must submit to full underwriting requirements. However, as explained in § 875.210, if you lose your status as a domestic partner, and therefore status as a qualified relative, before your coverage goes into effect, you are no longer eligible for FLTCIP coverage.

Subpart D—Coverage

■ 15. Revise § 875.401 to read as follows:

§ 875.401 How do I apply for coverage?

To apply for coverage, you must complete the application in a form appropriate for your eligibility status as prescribed by the Carrier and approved by OPM.

■ 16. Revise § 875.402 to read as follows:

§ 875.402 When will open seasons be held?

(a) There are no regularly scheduled open seasons for long term care insurance. OPM may have special application periods in which active workforce members and their spouses may apply based on abbreviated underwriting.

(b) In situations where OPM determines that it is appropriate to have a special application period, OPM will announce any such period via publication of a document in the **Federal Register**. The document will include the requirements for eligible applicants during the special application period.

■ 17. Revise § 875.403 to read as follows:

§ 875.403 When may I apply for coverage?

If you are an eligible individual, you may apply at any time outside of a suspension period described in § 875.110. You will be subject to full underwriting requirements. The only exceptions to the full underwriting requirements are described in § 875.402. You may apply as a qualified relative of a workforce member even if the workforce member does not apply for coverage.

■ 18. Revise § 875.404 to read as follows:

§ 875.404 What is the effective date of coverage?

(a)(1) The effective dates of coverage under special application period enrollments will be announced in a document published in the **Federal Register** that announces special application period dates.

(2) If you are an active workforce member or the spouse of an active workforce member and you are applying for coverage during a special application period, the workforce member must be

actively at work at least 1 day during the calendar week immediately before the week which contains your coverage effective date for your coverage to become effective. You must inform the Carrier if you do not meet this requirement. In the event you do not meet this requirement, the Carrier will issue you a revised effective date, which will be the 1st day of the next month. The workforce member also must meet the actively at work requirement for any revised effective date for coverage to become effective, or you will be issued another revised effective date in the same manner.

(b) If you enroll at any time outside of a special application period, your coverage effective date is the 1st day of the month after the date your application is approved.

■ 19. Revise § 875.405 to read as follows:

§ 875.405 May a spouse, domestic partner, or other qualified relative of a workforce member apply for coverage?

A spouse, domestic partner, or other qualified relative of a workforce member may apply for coverage with full underwriting at any time following the marriage or commencing date of the domestic partnership, outside of a suspension period as described in § 875.110.

■ 20. Amend § 875.406 by revising paragraph (a)(1) to read as follows:

§ 875.406 May I change my coverage?

(a) * * *

(1) At any time outside of a suspension period described in § 875.110, you may apply to increase your coverage with full underwriting.

* * * * *

■ 21. Revise § 875.410 to read as follows:

§ 875.410 May I continue my coverage when I leave Federal or military service?

If you are an active workforce member, your coverage will automatically continue when you leave active service, as long as the Carrier continues to receive the required premium when due.

■ 22. Revise § 875.413 to read as follows:

§ 875.413 Is it possible to have coverage reinstated?

(a) Under certain circumstances, your coverage can be reinstated. The Carrier will reinstate your coverage if it receives proof satisfactory to it, within 6 months from the date of the written notice of termination, that you suffered from a cognitive impairment or loss of functional capacity, before the grace period ended, that caused you to miss making premium payments. In that event, you will not be required to submit to underwriting. Your coverage will be reinstated retroactively to the termination date but you must pay back premiums for that period. The premium will be the same as it was prior to termination.

(b) If your coverage has terminated because you did not pay premiums or because you requested cancellation, the Carrier may reinstate your coverage within 12 months from the date of the written notice of termination at your request. You will be required to reapply based on full underwriting, and the Carrier will determine whether you are still insurable. If you are insurable, your coverage will be reinstated retroactively to the termination date and you must pay back premiums for that period. The premium will be the same as it was prior to termination.

[FR Doc. 2022–24849 Filed 11–14–22; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Office of the Secretary

6 CFR Part 5

[Docket No. DHS–2021–0020]

RIN 1601–AB04

Privacy Act of 1974

AGENCY: Office of the Secretary, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: The Department of Homeland Security (DHS or Department) is amending its regulations under the Privacy Act of 1974. DHS is updating and streamlining the language of several provisions. In addition, DHS is making minor, technical edits to its Freedom of Information Act regulations.

DATES: This final rule is effective December 16, 2022.

FOR FURTHER INFORMATION CONTACT: Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528, (202) 343–1717, *Privacy@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Homeland Security has authority under 5 U.S.C. 301, 552, and 552a, and 6 U.S.C. 112(e) to issue Privacy Act regulations. That authority has been delegated to the Chief Privacy Officer of the Department pursuant to 6 U.S.C. 142 and DHS Del. No. 13001, Rev. 01 (June 2, 2020).

On January 27, 2003, DHS published an interim rule in the **Federal Register** (68 FR 4056) that established DHS procedures implementing the Privacy Act, 5 U.S.C. 552a. DHS has since issued minor procedural amendments to the interim rule, *see* 85 FR 11829 (Feb. 28, 2020), but DHS has not issued a more comprehensive update since 2003.

On November 22, 2016, DHS issued a final rule amending the Department's regulations under the Freedom of Information Act (FOIA), 6 CFR part 5, subpart A, in order to update and streamline the language of several procedural provisions, to incorporate changes brought by the amendments to the FOIA under the Open Government Act of 2007 and FOIA Improvement Act of 2016, and to reflect developments in the case law. *See* 81 FR 83625.

On October 6, 2021, DHS published a proposed rule to amend existing regulations under the Privacy Act at 6 CFR part 5, subpart B, and make minor, technical edits to 6 CFR part 5, subpart A, for the limited purpose of replacing references to appendix I to subpart A with references to appendix A to part 5. *See* 86 FR 55528.[1] DHS accepted comments on the proposed rule through December 6, 2021. DHS is now finalizing the rule with minor clarifying changes, the more prominent of which are discussed below.

II. Discussion of Final Rule

A. Response to Comments

In total, DHS received 6 public submissions to its proposed rule, of which only one provided a specific recommendation. The commenter stated that DHS should add language to the proposed regulation to address the ability of the public to seek corrections to records maintained about them or organizations they are associated with. The comment stated that when federal agencies maintain records that are inaccurate it can expose individuals to risk, and such individuals should have redress to correct such errors. DHS interprets the comment to refer to content that is already included in proposed 6 CFR 5.26, *Requests for Amendment or Correction of Records.* After review and consideration, DHS has decided to not make additional changes to this section. This section clearly explains how an individual can

[1] Except as explicitly stated below, DHS incorporates by reference the section-by-section analysis contained in the preamble to the proposed rule.

ask DHS to amend or correct agency records about them.

B. Clarifying and Procedural Changes

Upon further review of the proposed rule, DHS has made a number of clarifying and procedural changes as compared to the proposed rule, as follows:

- DHS is removing Appendix I to subpart A, consistent with the proposed rule.[2]
- DHS is eliminating gendered language.
- DHS is removing existing § 5.20(e), a provision relating to interim retention of authorities, because the Department is now issuing a Privacy Act final rule and has updated its existing systems of records notices since the Department first issued this provision. The paragraph stated that the interim provision would remain operative ''until this regulation is promulgated as a final rule, or the Department revises all systems of records notices.'' Because both of these conditions have been satisfied, and the provision is no longer operative in any event, DHS is removing this provision.
- DHS is modifying § 5.22(d)(1) to remove the last sentence of that paragraph, which was redundant to § 5.22(d)(2).
- DHS is modifying § 5.22(d)(2) to make clear that the component FOIA Office, rather than the component medical practitioner or other qualified designee, is responsible for making any disclosure to the individual's representative or the individual. In addition, in light of the purpose of the procedures contained in this provision, DHS has opted to retain authority to withhold medical records if the individual does not designate a representative.[3] Such a decision would be appealable pursuant to the general appeal procedures in 6 CFR 5.25. However, consistent with the proposed rule,[4] if an individual does designate a representative, § 5.22(d)(2) makes clear that the representative does not have discretion to withhold the records from the individual.
- Consistent with the preamble to the proposed rule,[5] DHS is adding a § 5.22(d)(3) to clarify that Coast Guard medical records held by another agency (such as military medical records held by the Department of Defense) are not subject to § 5.22(d)(2).
- DHS is modifying § 5.25(a) by removing the reference to filing appeals directly with the Office of the General Counsel and making other procedural and nonsubstantive changes. These changes will make this paragraph consistent with the parallel provision in 6 CFR 5.8(a), which addresses administrative appeals under the FOIA. DHS is not modifying § 5.25(b), under which the Office of the General Counsel, or its designee (*e.g.,* Component Appeals Officer) is the authorized appeals authority for DHS.
- DHS is modifying § 5.27(a) by removing the words ''to the extent covered by the [Judicial Redress Act (JRA)]'' and adding ''or for records covered by the JRA'' at the end of § 5.27(b)(1). The purpose of this change is to clarify that accounting of disclosures is not required by the JRA and not provided for by the Department.
- DHS is modifying appendix A to part 5 to specify where persons should send their FOIA and Privacy Act requests for each Headquarters Office and Component of the Department. Although individuals may request records as they deem fit, the Department strongly encourages persons to submit their requests electronically through a designated DHS FOIA electronic portal, if applicable and available.

III. Regulatory Analyses

Executive Orders 12866 and 13563—Regulatory Review

Executive Orders 13563 and 12866 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action,'' under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

DHS has considered the costs and benefits of this rule. This rule will not introduce new regulatory mandates. In the proposed rule we stated this rule would not result in additional costs on the public or the government. Further, we stated this rule does not collect any additional fee revenues compared to current practices or otherwise introduce new regulatory mandates. The rule's benefits include additional clarity for the public and DHS personnel with respect to DHS's implementation of the Privacy Act and JRA. No public comments were submitted on the analysis presented in the proposed rule.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no written statement was deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, and section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601 note, agencies must consider the impact of their rulemakings on ''small entities'' (small businesses, small organizations, and local governments). 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. DHS has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. As stated in the proposed rule, DHS does not believe this rule imposes any additional direct costs on small entities. No public comments were submitted on the analysis presented in the proposed rule.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (as amended), 5 U.S.C. 804(2). The Office of Management and Budget's Office of Information and Regulatory Affairs has not found that this rule is likely to result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

National Environmental Policy Act

DHS reviews proposed actions to determine whether the National Environmental Policy Act (NEPA) applies to them and, if so, what degree of analysis is required. DHS Directive

[2] 86 FR at 55528.

[3] *Compare, e.g.,* 20 CFR 401.55(b)(1)(ii).

[4] *See* 86 FR at 55534.

[5] *See* 86 FR at 55529.

023–01 Rev. 01 (Directive) and Instruction Manual 023–01–001–01 Rev. 01 (Instruction Manual) establish the procedures that DHS and its components use to comply with NEPA and the Council on Environmental Quality (CEQ) regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

The CEQ regulations allow federal agencies to establish, with CEQ review and concurrence, categories of actions (''categorical exclusions'') which experience has shown do not individually or cumulatively have a significant effect on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). 40 CFR 1507.3(b)(2)(ii), 1508.4. For an action to be categorically excluded, it must satisfy each of the following three conditions: (1) the entire action clearly fits within one or more of the categorical exclusions; (2) the action is not a piece of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect. Instruction Manual section V.B(2)(a)–(c).

This rule fits within categorical exclusion A3(a) ''Promulgation of rules . . . of a strictly administrative or procedural nature.'' Instruction Manual, Appendix A, Table 1. Furthermore, the rule is not part of a larger action and presents no extraordinary circumstances creating the potential for significant environmental impacts. Therefore, the rule is categorically excluded from further NEPA review.

List of Subjects in 6 CFR Part 5

Classified information, Courts, Freedom of information, Government employees, Privacy.

For the reasons stated in the preamble, DHS amends 6 CFR part 5 as follows:

PART 5—DISCLOSURE OF RECORDS AND INFORMATION

■ 1. The authority citation for Part 5 is revised to read as follows:

Authority: 6 U.S.C. 101 *et seq.;* Pub. L. 107–296, 116 Stat. 2135; 5 U.S.C. 301; 6 U.S.C. 142; DHS Del. No. 13001, Rev. 01 (June 2, 2020).

Subpart A also issued under 5 U.S.C. 552.

Subpart B also issued under 5 U.S.C. 552a and 552 note.

§ 5.2 [Amended]

■ 2. In § 5.2, remove the text ''appendix I to this subpart'' and add in its place the text ''appendix A to this part''.

§ 5.3 [Amended]

■ 3. In § 5.3:

■ a. In paragraph (a)(1), remove the text ''appendix I of this subpart'' and add in its place the text ''appendix A to this part''; and

■ b. In paragraph (b), remove the text ''appendix I of this subpart'' and add in its place the text ''appendix A to this part''.

§ 5.5 [Amended]

■ 4. In § 5.5:

■ a. In paragraph (a), in the first sentence, remove the text ''Appendix I to this subpart'' and add in its place the text ''appendix A to this part'' and in the last sentence, remove the text ''appendix I of this subpart'' and add in its place ''appendix A to this part''; and

■ b. In paragraph (e)(2), remove the text ''appendix I'' and ''appendix I of this subpart'' and add in their places the text ''appendix A to part 5''.

§ 5.8 [Amended]

■ 5. In § 5.8, in paragraph (a)(1), remove the text ''appendix I to this subpart,'' and add in its place the text ''appendix A to this part,''.

Appendix I to Subpart A of Part 5—[Removed]

■ 6. Remove appendix I to subpart A of part 5.

■ 7. Revise subpart B to read as follows:

Subpart B—Privacy Act

Sec.

5.20 General provisions.
5.21 Requests for access to records.
5.22 Responsibility for responding to requests for access to records.
5.23 Responses to requests for access to records.
5.24 Classified information.
5.25 Administrative appeals for access requests.
5.26 Requests for amendment or correction of records.
5.27 Requests for an accounting of record disclosures.
5.28 Preservation of records.
5.29 Fees.
5.30 Notice of court-ordered and emergency Ddsclosures.
5.31 Security of systems of records.
5.32 Contracts for the operation of systems of records.
5.33 Use and collection of Social Security numbers.
5.34 Standards of conduct for administration of the Privacy Act.
5.35 Sanctions and penalties.
5.36 Other rights and services.

Subpart B—Privacy Act

§ 5.20 General provisions.

(a) *Purpose and scope.* (1) This subpart contains the rules that the Department of Homeland Security (Department or DHS) follows in processing records under the Privacy Act of 1974 (Privacy Act) (5 U.S.C. 552a) and under the Judicial Redress Act of 2015 (JRA) (5 U.S.C. 552a note).

(2) The rules in this subpart should be read in conjunction with the text of the Privacy Act and the JRA, 5 U.S.C. 552a and 5 U.S.C. 552a note, respectively (which provide additional information abo ut records maintained on individuals and covered persons), and JRA designations issued in the **Federal Register**. The rules in this subpart apply to all records in systems of records maintained by the Department. These rules also apply to all records containing Social Security Numbers regardless of whether such records are covered by an applicable system of records maintained by the Department. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures by Department personnel and contractors. In addition, the Department processes all Privacy Act and JRA requests for access to records under the Freedom of Information Act (FOIA) (5 U.S.C. 552), following the rules contained in subpart A of this part, which gives requesters the benefit of both statutes.

(3) The provisions established by this subpart apply to all Department Components, as defined in paragraph (b)(1) of this section.

(4) DHS has a decentralized system for processing requests, with each component handling requests for its records.

(b) *Definitions.* As used in this subpart:

(1) *Component* means the office that processes Privacy Act and JRA requests for each separate organizational entity within DHS that reports directly to the Office of the Secretary.

(2) *Request for access to a record* means a request made under Privacy Act subsection (d)(1).

(3) *Request for amendment or correction of a record* means a request made under Privacy Act subsection (d)(2).

(4) *Request for an accounting* means a request made under Privacy Act subsection (c)(3).

(5) *Requester* means an individual who makes a request for access, a request for amendment or correction, or a request for an accounting under the Privacy Act.

(6) *Individual* means, as defined by the Privacy Act, 5 U.S.C. 552a(a)(2), a citizen of the United States or an alien lawfully admitted for permanent residence. Also, an individual, for

purposes of this subpart, but limited to the exclusive rights and civil remedies provided in the JRA, includes covered persons, as defined by the JRA, as a natural person (other than an individual) who is a citizen of a covered country, as designated by the Attorney General, with the concurrence of the Secretary of State, the Secretary of the Treasury, and the Secretary of Homeland Security.

(7) *Record* has the same meaning as contained in the Privacy Act, 5 U.S.C. 552a(a)(4), except that in cases covered by the JRA, the term ''record'' has the same meaning as ''covered record'' in the JRA, 5 U.S.C. 552a note.

(c) *Authority to request records for a law enforcement purpose.* The head of a component or designee thereof is authorized to make written requests under subsection 552a(b)(7) of the Privacy Act for records maintained by other agencies that are necessary to carry out an authorized law enforcement activity.

(d) *Notice on Departmental use of (b)(1) exception.* As a general matter, when applying the Privacy Act (b)(1) exception for authorized disclosures within an agency on a need to know basis, the Department will consider itself a single entity, meaning that information may be disclosed between components of the Department under the (b)(1) exception.

§ 5.21 Requests for access to records.

(a) *How made and addressed.* (1) DHS has a decentralized system for responding to Privacy Act and JRA requests, with each component designating an office to process records from that component.

(2) An individual may make a request for access to a Department of Homeland Security record about that individual covered by a DHS or Component system of records notice (SORN) by writing directly to the Department component that maintains the record at the address listed in appendix A to this part or via the internet at *http://www.dhs.gov/dhs-foia-request-submission-form.* A description of all DHS-wide and component SORNs may be found here: *https://www.dhs.gov/system-records-notices-sorns.*

(3) In most cases, a component's central FOIA office, as indicated in appendix A to this part, is the place to send a Privacy Act request. For records held by a field office of U.S. Customs and Border Protection, the U.S. Coast Guard, or other Department components with field offices other than the U.S. Secret Service and Transportation Security Administration, the requester must write directly to that U.S. Customs and Border Protection, Coast Guard, or other field office address, which can be found by calling the component's central FOIA office. Requests for U.S. Secret Service records should be sent only to the U.S. Secret Service central FOIA office, and requests for Transportation Security Administration records should be sent only to the Transportation Security Administration central FOIA office.

(4) Requests for records held by the Cybersecurity and Infrastructure Security Agency (CISA) should be sent to the DHS Privacy Office.

(5) DHS's FOIA website refers the reader to descriptions of the functions of each component and provides other information that is helpful in determining where to make a request. Each component's FOIA office and any additional requirements for submitting a request to a given component are listed in appendix A to this part. These references can all be used by requesters to determine where to send their requests within DHS.

(6) An individual may also send a request to the Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington DC 20528–0655, or via the internet at *http://www.dhs.gov/dhs-foia-request-submission-form,* or via fax to (202) 343–4011. The Privacy Office will forward the request to the component(s) that it determines to be most likely to maintain the records that are sought. For the quickest possible handling, the requester should mark both the request letter and the envelope ''Privacy Act Request'' or ''Judicial Redress Act Request.''

(b) *Government-wide SORNs.* A government-wide system of records is a system of records where one agency has regulatory authority over records in the custody of multiple agencies, and the agency with regulatory authority publishes a SORN that applies to all of the records regardless of their custodial location. If records are sought that are covered by a Government-wide SORN and requested of DHS, DHS will consult or refer such request, only as applicable and necessary, to the corresponding agency having authority over such records for further processing. DHS will acknowledge to the requester that it is referring the request to another agency or consulting with that agency when processing the request.

(c) *Description of records sought.* A requester must describe the records sought in sufficient detail to enable Department personnel to locate the system of records covering them with a reasonable amount of effort. Whenever possible, the request should describe the records sought, the time periods in which the requester believes they were compiled, the office or location in which the requester believes the records are kept, and the name or identifying number of each system of records in which the requester believes they are kept. The Department publishes notices in the **Federal Register** that describe its components' systems of records. These notices can be found on the Department's website here: *https://www.dhs.gov/system-records-notices-sorns.* If a request does not adequately describe the records sought, DHS may at its discretion either administratively close the request or seek additional information from the requester. Requests for clarification or more information will be made in writing (either via U.S. mail or electronic mail whenever possible). Requesters may respond by U.S. Mail or by electronic mail regardless of the method used by DHS to transmit the request for additional information. To be considered timely, responses to requests for additional information must be postmarked or received by electronic mail within 30 working days of the postmark date or date of the electronic mail request for additional information. If the requester does not respond timely, the request may be administratively closed at DHS's discretion. This administrative closure does not prejudice the requester's ability to submit a new request for further consideration with additional information.

(d) *Agreement to pay fees.* DHS and components shall charge for processing requests under the Privacy Act or JRA. DHS and components will ordinarily use the most efficient and least expensive method for processing requested records. DHS may contact a requester for additional information in order to resolve any fee issues that arise under this section. DHS ordinarily will collect all applicable fees before sending copies of records to a requester. If one makes a Privacy Act or JRA request for access to records, it will be considered a firm commitment to pay all applicable fees charged under § 5.29, up to $25.00. The component responsible for responding to a request ordinarily will confirm this agreement in an acknowledgement letter. When making a request, an individual may specify a willingness to pay a greater or lesser amount. Requesters must pay fees by check or money order made payable to the Treasury of the United States.

(e) *Verification of identity.* When an individual makes a request for access to their own records, their identity must be verified. The individual must provide

their full name, current address, date and place of birth, and country of citizenship or residency. The individual must sign the request and provide a signature that must either be notarized or submitted by the requester under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury, as a substitute for notarization. An individual may obtain more information about this process at *http://www.dhs.gov/foia* or 1–866–431–0486. In order to help the identification and location of requested records, an individual may also voluntarily include other identifying information that are relevant to the request (*e.g.,* passport number, Alien Registration Number (A-Number)).

(f) *Verification of guardianship.* When making a request as the parent or guardian of a minor or as the guardian of someone determined by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, for access to records about that individual, the individual submitting a request must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and country of citizenship or residency of the individual;

(2) The submitting individual's own identity, in the same manner as required in paragraph (e) of this section;

(3) That the submitting individual is the parent or guardian of the subject of the record, which may be proven by providing a copy of the subject of the record's birth certificate showing parentage or by providing a court order establishing guardianship; and

(4) That the submitting individual is acting on behalf of that individual that is the subject of the record.

(g) *Verification in the case of third-party information requests.* Outside of requests made pursuant to paragraph (f) of this section, if a third party requests records about a subject individual, the third party requester must provide verification of the subject individual's identity in the manner provided in paragraph (e) of this section along with the subject individual's written consent authorizing disclosure of the records to the third party requester, or by submitting proof by the requester that the subject individual is deceased (*e.g.,* a copy of a death certificate or an obituary). As an exercise of its administrative discretion, each component can require a third-party requester to supply additional information to verify that the subject individual has consented to disclosure or is deceased.

§ 5.22 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section, the component that first receives a request for access to a record, and has possession of that record, is the component responsible for responding to the request. In determining which records are responsive to a request, a component ordinarily will include only those records in its possession as of the date the component begins its search for them. If any other date is used, the component will inform the requester of that date.

(b) *Authority to grant or deny requests.* The head of a component, or the component head's designee, is authorized to grant or deny any request for access or amendment to a record of that component.

(c) *Consultations, coordination, and referrals.* All consultations, coordination, and referrals for requests of records subject to the Privacy Act or JRA will follow the same process and procedures as described in § 5.4(d), including how to handle those requests that pertain to law enforcement information, as specified in § 5.4(d)(2), and classified information, as specified in § 5.4(d)(2) and (e). Further, whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another component or agency under any relevant executive order concerning the classification of records, the receiving component will refer to § 5.24 for processing.

(d) *Release of medical records.* (1) Generally, an individual has the right to access their medical records maintained by the Department. Special procedures for requests from an individual requesting medical records that include psychological records for which direct release may cause harm to the individual requesting access are set forth in paragraph (d)(2) of this section.

(2) If a request is made for access to medical records that include psychological records, and a component medical practitioner or qualified designee determines that direct release is likely to adversely affect the individual who is requesting access, the component will request the individual to provide the name and contact information of a representative who is capable of ameliorating the potential adverse effect. The representative may be a physician or other health professional who will be willing to review the record and inform the requester of its contents. Once provided, the component FOIA office or designated component official will send the medical records to the individual's designated representative. The component will inform the subject individual in writing (either via U.S. mail or electronic mail whenever possible) that the record has been sent to that individual's chosen representative. The representative does not have the discretion to withhold any part of the individual's record. If the subject individual does not comply with the procedural requirement to designate a representative, the component may decline to release the requested information.

(3) Paragraph (d)(2) of this section does not apply to Coast Guard records held by another agency.

(e) *Notice of referral.* Whenever a component refers all or any part of the responsibility for responding to a request to another component or agency, it ordinarily will notify the requester of the referral and inform the requester of the name of each component or agency to which the request has been referred and of the part of the request that has been referred.

(f) *Timing of responses to consultations and referrals.* All consultations and referrals received by DHS will be handled according to the date the Privacy Act or JRA access request was initially received by the first component or agency, not any later date.

(g) *Agreements regarding consultations and referrals.* Components may establish agreements with other components or agencies to eliminate the need for consultations or referrals with respect to types of records.

§ 5.23 Responses to requests for access to records.

(a) *In general.* Components should, to the extent practicable, communicate with requesters having access to the internet using electronic means, such as email or web portal.

(b) *Acknowledgements of requests.* Consistent with the procedures in subpart A of this part, a component will acknowledge the request and assign it an individualized tracking number if it will take longer than ten (10) working days to process. Components will include in the acknowledgement letter a brief description of the records sought to allow requesters to more easily keep track of their requests. Further, in the acknowledgment letter, the component will confirm the requester's agreement to pay fees under §§ 5.21(d) and 5.29.

(c) *Grants of requests for access.* Consistent with the procedures in subpart A to this part, a component will have twenty (20) working days from when a request is received to determine

whether to grant or deny the request unless there are unusual or exceptional circumstances as defined by the FOIA and set out in § 5.5(c). Once a component decides to grant a request for access to record(s) in whole or in part, it will notify the requester in writing. The component will inform the requester in the notice of any fee charged under §§ 5.21(d) and 5.29 and will disclose records to the requester promptly upon payment of any applicable fee. The component will inform the requester of the availability of its FOIA Liaison to offer assistance.

(d) *Adverse determinations of requests for access.* A component making an adverse determination denying a request for access in any respect will notify the requester of that determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the requested record does not exist or cannot be located; or the record requested is not subject to the Privacy Act or JRA. Further, adverse determinations also include disputes regarding fees, or denials of a request for expedited processing. The denial letter will be signed by the head of the component, or the component head's designee, and will include:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reason(s) for the denial, including any Privacy Act exemption(s) applied by the component in denying the request; and

(3) A statement that the denial may be appealed under § 5.25(a) and a description of the requirements of § 5.25(a).

(e) *JRA access requests.* For purposes of responding to a JRA access request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to under section 552a of title 5, United States Code, when pursuing access to records. The implementing regulations and reasons provided for exemptions can be found in appendix C to this part.

§ 5.24 Classified information.

On receipt of any request involving classified information, the component will determine whether information is currently and properly classified and take appropriate action to ensure compliance with 6 CFR part 7. Whenever a request is made for access to a record that is covered by a system of records containing information that has been classified by or may be appropriate for classification by another component or agency under any applicable executive order, the receiving component will consult the component or agency that classified the information. Whenever a record contains information that has been derivatively classified by a component or agency because it contains information classified by another component or agency, the component will consult the component or agency that classified the underlying information. Information determined to no longer require classification will not be withheld from a requester based on exemption (k)(1) of the Privacy Act. On receipt of any appeal involving classified information, the DHS Office of the General Counsel, or its designee, shall take appropriate action to ensure compliance with 6 CFR part 7.

§ 5.25 Administrative appeals for access requests.

(a) *Requirements for filing an appeal.* An individual may appeal an adverse determination denying the individual's request for access in any respect to the appropriate Appeals Officer. For the address of the appropriate component Appeals Officer, an individual may contact the applicable component FOIA Liaison using the information in appendix A to this part, visit *www.dhs.gov/foia,* or call 1–866–431–0486. An appeal must be in writing, and to be considered timely it must be postmarked or, in the case of electronic submissions, transmitted to the Appeals Officer within 90 working days, consistent with the procedures in subpart A to this part, after the date of the component's response. An electronically filed appeal will be considered timely if transmitted to the Appeals Officer by 11:59:59 p.m. EST or EDT on the 90th working day. The appeal should clearly identify the component determination (including the assigned request number if the requester knows it) that is being appealed and should contain the reasons the requester believes the determination was erroneous. For the quickest possible handling, an individual should mark both the appeal letter and the envelope ''Privacy Act Appeal'' or ''Judicial Redress Act Appeal.''

(b) *Adjudication of appeals.* The DHS Office of the General Counsel, or its designee, (*e.g.,* Component Appeals Officer) is the authorized appeals authority for DHS. On receipt of any appeal involving classified information, the Appeals Officer will consult with the Chief Security Officer and take appropriate action to ensure compliance with 6 CFR part 7. If the appeal becomes the subject of a lawsuit, the Appeals Officer is not required to act further on the appeal.

(c) *Appeal decisions.* Consistent with the procedures in subpart A to this part, the decision on an appeal will be made in writing generally twenty (20) working days after receipt. However, consistent with the procedures in subpart A to this part, the time limit for responding to an appeal may be extended provided the circumstances set forth in 5 U.S.C. 552(a)(6)(B)(i) are met. A decision affirming an adverse determination in whole or in part will include a brief statement of the reason(s) for the affirmance, including any Privacy Act exemption applied, and will inform the requester of the Privacy Act provisions for court review of the decision. If the adverse determination is reversed or modified on appeal in whole or in part, the requester will be notified in a written decision and the request will be reprocessed in accordance with that appeal decision. An adverse determination by the DHS Office of the General Counsel or its designee or Component Appeals Officer will be the final action of the Department.

(d) *Appeal necessary before seeking court review.* If an individual wishes to seek review by a court of any adverse determination or denial of a request by DHS within the allotted 20 working days to respond unless there are unusual or exceptional circumstances, that individual must first appeal it under this subpart. An appeal will not be acted on if the request becomes a matter of litigation.

§ 5.26 Requests for amendment or correction of records.

(a) *How made and addressed.* Unless the record is not subject to amendment or correction as stated in paragraph (f) of this section, an individual may make a request for amendment or correction of a record of the Department about that individual by writing directly to the component that maintains the record, following the procedures in § 5.21. The request should identify each record in question, state the amendment or correction requested, and state the reason why the requester believes that the record is not accurate, relevant, timely, or complete. The requester may submit any documentation that the requester thinks would support the request. If the individual believes that the same record is in more than one system of records, the requester should state that and address the request to each component that maintains a system of records containing the record.

(b) *Component responses.* Within ten working days of receiving a request for amendment or correction of records, a

component will send the requester a written acknowledgment of its receipt of the request, and it will promptly notify the requester whether the request is granted or denied. If the component grants the request in whole or in part, it will describe the amendment or correction made and will advise the requester of the right to obtain a copy of the corrected or amended record, in disclosable form. If the component denies the request in whole or in part, it will send the requester a letter signed by the head of the component, or the component head's designee, that will state:

(1) The reason(s) for the denial; and

(2) The procedure for appeal of the denial under paragraph (c) of this section, including the name and business address of the official who will act on the appeal.

(c) *Appeals.* Within 90 working days after the date of the component's response, the requester may appeal a denial of a request for amendment or correction to the Component Appeals Officer or the DHS Office of the General Counsel or its designee. The Component Appeals Officer or the DHS Office of the General Counsel or its designee must complete its review and make a final determination on the requester's appeal no later than 30 days (excluding Saturdays, Sundays, and legal public holidays) from the date on which the individual requests such review unless good cause is shown, and communicated to the individual, for which the 30-day period may be extended for an additional 30 days. If the appeal is denied, the requester will be advised of the right to file a Statement of Disagreement as described in paragraph (d) of this section and of the right under the Privacy Act, 5 U.S.C. 552a(d)(3), for court review of the decision. If an individual wishes to seek review by a court of any adverse determination or denial of a request, that individual must first appeal it under this subpart. For purposes of responding to a JRA amendment request, a covered person is subject to the same limitations, including exemptions and exceptions, as an individual is subject to under section 552a of title 5, United States Code, when pursuing amendment to records. The implementing regulations and reasons provided for exemptions can be found in appendix C to this part, titled DHS Systems of Records Exempt from the Privacy Act.

(d) *Statements of Disagreement.* If an individual's appeal under this section is denied in whole or in part, that individual has the right to file a Statement of Disagreement, unless exempt, that states the individual's reason(s) for disagreeing with the Department's denial of the request for amendment or correction. Statements of Disagreement must be concise, must clearly identify each part of any record that is disputed, and should be no longer than one typed page for each fact disputed. The individual's Statement of Disagreement must be sent to the component involved, which will place it in the system of records in which the disputed record is maintained and will mark the disputed record to indicate that a Statement of Disagreement has been filed and where in the system of records it may be found.

(e) *Notification of amendment/correction or disagreement.* Within 30 working days of the amendment or correction of a record, the component that maintains the record will, unless exempt, notify all persons, organizations, or agencies to which it previously disclosed the record, if an accounting of that disclosure was made or should have been made, that the record has been amended or corrected. If an individual has filed a Statement of Disagreement, the component will append a copy of it to the disputed record whenever the record is disclosed and may also append a concise statement of its reason(s) for denying the request to amend or correct the record.

(f) *Records not subject to amendment or correction.* The following records are not subject to amendment or correction:

(1) Transcripts of testimony given under oath or written statements made under oath;

(2) Transcripts of grand jury proceedings, judicial proceedings, or quasi-judicial proceedings, which are the official record of those proceedings;

(3) Presentence records that originated with the courts; and

(4) Records in systems of records that have been exempted from amendment and correction under the Privacy Act (5 U.S.C. 552a(j) or (k)) pursuant to a final rule published in the **Federal Register**.

§ 5.27 Requests for an accounting of record disclosures.

(a) *How made and addressed.* Except where accountings of disclosures are not required to be kept (as stated in paragraph (b)(1) of this section), an individual may make a request for an accounting of any disclosure that has been made by the Department to another person, organization, or agency of any record about the requester. This accounting contains the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or agency to which the disclosure was made. A request for an accounting should identify each record in question and should be made by writing directly to the Department component that maintains the record, following the procedures in § 5.21.

(b) *Where accountings are not required.* Components are not required to provide accountings to the requester where they relate to:

(1) Disclosures for which accountings are, by statute (5 U.S.C. 552a(c)(1)), not required to be kept, such as disclosures that are made to officers and employees within the agency and disclosures that are required to be made under the FOIA, or for records covered by the JRA;

(2) Disclosures made to law enforcement agencies for authorized law enforcement activities in response to written requests from those law enforcement agencies specifying the law enforcement activities for which the disclosures are sought; or

(3) Disclosures made from systems of records that have been exempted from accounting requirements by a rulemaking pursuant to 5 U.S.C. 552a(j) or (k).

(c) *Appeals.* A requester may appeal a denial of a request for an accounting to the Component Appeals Officer or the DHS Office of the General Counsel or its designee in the same manner as a denial of a request for access to records (*see* § 5.25) and the same procedures will be followed.

§ 5.28 Preservation of records.

Each component will preserve all correspondence pertaining to the requests that it receives under this subpart, as well as copies of all requested records, until disposition or destruction is authorized by title 44 of the United States Code or the National Archives and Records Administration's General Records Schedule 4.2. Records will not be disposed of while they are the subject of a pending request, appeal, lawsuit, or litigation or audit hold under the Act.

§ 5.29 Fees.

(a) Fees for access requests granted in full under the Privacy Act are limited to duplication fees, which are chargeable to the same extent that fees are chargeable under subpart A of this part. An access request not granted in full under the Privacy Act will be processed under the FOIA and will be subject to all fees chargeable under the applicable FOIA regulations. Fees are not charged for processing amendment and accounting requests.

(b) DHS will not process a request under the Privacy Act or JRA from persons with an unpaid fee from any previous Privacy Act or JRA request to

any Federal agency until that outstanding fee has been paid in full to the agency.

§ 5.30 Notice of court-ordered and emergency disclosures.

(a) *Court-ordered disclosures.* When the component discloses an individual's information covered by a system of records pursuant to an order from a court of competent jurisdiction, and the order is a matter of public record, the Privacy Act requires the component to send a notice of the disclosure to the last known address of the person whose record was disclosed. Notice will be given within a reasonable time after the component's receipt of the order, except that in a case in which the order is not a matter of public record, the notice will be given only after the order becomes public. This notice will be mailed to the individual's last known address and will contain a copy of the order and a description of the information disclosed. Notice will not be given if disclosure is made from a criminal law enforcement system of records that has been exempted from the notice requirement.

(b) *Court.* For purposes of this section, a court is an institution of the judicial branch of the U.S. Federal Government consisting of one or more judges who seek to adjudicate disputes and administer justice. Entities not in the judicial branch of the Federal Government are not courts for purposes of this section.

(c) *Court order.* For purposes of this section, a court order is any legal process which satisfies all the following conditions:

(1) It is issued under the authority of a Federal court;

(2) A judge or a magistrate judge of that court signs it;

(3) It commands or permits DHS to disclose the Privacy Act protected information at issue; and

(4) The court is a court of competent jurisdiction.

(d) *Court of competent jurisdiction.* It is the view of DHS that under the Privacy Act the Federal Government has not waived sovereign immunity, which precludes state court jurisdiction over a Federal agency or official. Therefore, DHS will not honor state court orders as a basis for disclosure, unless DHS does so under its own discretion.

(e) *Conditions for disclosure under a court order of competent jurisdiction.* The component may disclose information in compliance with an order of a court of competent jurisdiction if—

(1) Another section of this part specifically allows such disclosure, or

(2) DHS, the Secretary, or any officer or employee of DHS in their official capacity is properly a party in the proceeding, or

(3) Disclosure of the information is necessary to ensure that an individual who is accused of criminal activity receives due process of law in a criminal proceeding under the jurisdiction of the judicial branch of the Federal Government.

(f) *In other circumstances.* DHS may disclose information to a court of competent jurisdiction in circumstances other than those stated in paragraph (e) of this section. DHS will make its decision regarding disclosure by balancing the needs of a court while preserving the confidentiality of information. For example, DHS may disclose information under a court order that restricts the use and redisclosure of the information by the participants in the proceeding; DHS may offer the information for inspection by the court *in camera* and under seal; or DHS may arrange for the court to exclude information identifying individuals from that portion of the record of the proceedings that is available to the public.

(g) *Emergency disclosures.* Upon disclosing a record pertaining to an individual made under compelling circumstances affecting the health or safety of an individual, the component will notify the individual to whom the record pertains of the disclosure. This notice will be mailed to the individual's last known address and will state the nature of the information disclosed; the person, organization, or agency to which it was disclosed; the date of disclosure; and the compelling circumstances justifying the disclosure.

(h) *Other regulations on disclosure of information in litigation.* See subpart C to this part for additional rules covering disclosure of information and records governed by this part and requested in connection with legal proceedings.

§ 5.31 Security of systems of records.

(a) *In general.* Each component will establish administrative and physical controls to prevent unauthorized access to its systems of records, to prevent unauthorized disclosure of records, and to prevent physical damage to or destruction of records. The stringency of these controls will correspond to the sensitivity of the records that the controls protect. At a minimum, each component's administrative and physical controls will ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Procedures required.* Each component will have procedures that restrict access to records to only those individuals within the Department who must have access to those records to perform their duties and that prevent inadvertent disclosure of records.

§ 5.32 Contracts for the operation of systems of records.

As required by 5 U.S.C. 552a(m), any approved contract for the operation of a system of records to accomplish an agency function will contain the standard contract requirements issued by the General Services Administration to ensure compliance with the requirements of the Privacy Act for that system. The contracting component will be responsible for ensuring that the contractor complies with these contract requirements.

§ 5.33 Use and collection of Social Security numbers.

Each component will ensure that employees authorized to collect information are aware:

(a) That individuals may not be denied any right, benefit, or privilege because of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) That individuals requested to provide their Social Security numbers must be informed of:

(1) Whether providing Social Security numbers is mandatory or voluntary;

(2) Any statutory or regulatory authority that authorizes the collection of Social Security numbers; and

(3) The uses that will be made of the numbers.

(c) Including Social Security numbers of an individual on any document sent by mail is not permitted unless the Secretary determines that the inclusion of the number on the document is necessary.

§ 5.34 Standards of conduct for administration of the Privacy Act.

Each component will inform its employees of the provisions of the Privacy Act, including the Act's civil liability and criminal penalty provisions referenced in § 5.35. Unless otherwise permitted by law, the Department will:

(a) Maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the Component or the Department that is required to be accomplished by statute or by Executive order of the President;

(b) Collect information about an individual directly from that individual whenever practicable and when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which the Department intends to use the information;

(3) The routine uses the Department may make of the information; and

(4) The effects on the individual, if any, of not providing the information;

(d) Ensure that the component maintains no system of records without public notice and that it notifies appropriate Department officials of the existence or development of any system of records that is not the subject of a current or planned public notice;

(e) Maintain all records that are used by the Department in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination;

(f) Except as to disclosures made to an agency or made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete;

(g) Maintain no record describing how an individual exercises their First Amendment rights, unless it is expressly authorized by statute or by the individual about whom the record is maintained, or is pertinent to and within the scope of an authorized law enforcement activity;

(h) When required by the Act, maintain an accounting in the specified form of all disclosures of records by the Department to persons, organizations, or agencies;

(i) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone; and

(j) Disclose Privacy Act or JRA records only as permitted by 5 U.S.C. 552a(b).

§ 5.35 Sanctions and penalties.

Each component will inform its employees and contractors of the Privacy Act's civil liability provisions (5 U.S.C. 552a(g)) and criminal penalty provisions (5 U.S.C. 552a(i)) as they apply to Privacy Act and JRA complaints.

§ 5.36 Other rights and services.

Nothing in this subpart will be construed to entitle any person, as of right, to any service or to the disclosure of any record to which such person is not entitled under the Privacy Act or JRA.

■ 8. Revise appendix A to part 5 to read as follows:

Appendix A to Part 5—FOIA/Privacy Act Offices of the Department of Homeland Security

I. For the following Headquarters Offices of the Department of Homeland Security, FOIA and Privacy Act requests should either be mailed to the Department's Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, or Email: *foia@hq.dhs.gov.* The Public Liaison may also be contacted using this information.

The Headquarters Offices are:

Office of the Secretary
Office of the Deputy Secretary
Office of the General Counsel (OGC)
Office of the Executive Secretary (ESEC)
Office of Intelligence and Analysis (I&A)
Office of Legislative Affairs (OLA)
Office of Operations Coordination (OPS)
Office of Partnership and Engagement (OPE)
Office of Public Affairs (OPA)
Office of Strategy, Policy, and Plans (PLCY)
Citizenship and Immigration Services Ombudsman (CISOMB)
Civil Rights and Civil Liberties (CRCL)
Countering Weapons of Mass Destruction Office (CWMD)
Federal Protective Service (FPS)
Management Directorate (MGMT), including the Office of Biometric Identity Management (OBIM)
Military Advisor's Office (MIL)
Privacy Office (PRIV)
Science and Technology Directorate (S&T)

II. For the following components and offices of the Department of Homeland Security, FOIA and Privacy Act requests should be sent to the component's FOIA Office, unless otherwise noted below. For each component, the Public Liaison may also be contacted using the information below. The components are:

Cybersecurity and Infrastructure Security Agency (CISA)

All requests should be either be mailed to the Department's Privacy Office, Mail Stop 0655, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0655, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–343–1743 or 866–431–0486, Fax: 202–343–4011, or Email: *CISAFOIA@hq.dhs.gov.*

U.S. Customs and Border Protection (CBP)

All requests should be mailed to U.S. Customs and Border Protection, Office of Privacy and Diversity Office, 90 K Street NE, Mail Stop 1181, 9th Floor, or submitted electronically at *https://foiaonline.gov/foiaonline/action/public/home* or *cbpfoiapublicliaison@cbp.dhs.gov.* Electronic requests should be made to *https://foiarequest.dhs.gov/* once CBP is no longer listed as an agency on *https://foiaonline.gov/foiaonline/action/public/home.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–325–0150.

Federal Emergency Management Agency (FEMA)

All requests should be mailed to FOIA Officer, 500 C Street SW, Room 840, Washington, DC 20472, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–646–3323, Fax: 202–646–3347, or Email: *fema-foia@fema.dhs.gov.*

Federal Law Enforcement Training Center (FLETC)

All requests should be mailed to Freedom of Information Act Officer, Building #681, Suite B187, 1131 Chapel Crossing Road, Glico, GA 31524, or submitted electronically to *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you

to submit your request electronically. Additional contact information for questions: Phone: 912–267–3103, Fax: 912–267–3113, or Email: *fletc-foia@dhs.gov.*

Immigration and Customs Enforcement (ICE)

All requests should be mailed to Freedom of Information Act Office, 500 12th Street SW, Stop 5009, Washington, DC 20536–5009, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 866–633–1182, Fax: 202–732–4265, or Email: *ice-foia@ice.dhs.gov.*

Office of Inspector General

All requests should be mailed to the OIG Office of Counsel, 245 Murray Lane SW, Mail Stop—0305, Washington, DC 20528–0305, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–981–6100, Fax: 202–245–5217, or Email: *foia.oig@oig.dhs.gov.*

Transportation Security Administration (TSA)

All requests should be mailed to Freedom of Information Act Branch, 6595 Springfield Center Drive, Springfield, VA 20598–6020, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 1–866–FOIA–TSA or 571–227–2300, Fax: 571–227–1406, or Email: *foia@tsa.dhs.gov.*

U.S. Citizenship and Immigration Services (USCIS)

All requests should be mailed to National Records Center, FOIA/PA Office, P. O. Box 648010, Lee's Summit, MO. 64064–8010 or submitted electronically through the USCIS FOIA Portal: *https://first.uscis.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 1–800–375–5283, USCIS Contact Center, or Email: *FOIAPAQuestions@uscis.dhs.gov.*

U.S. Coast Guard (USCG)

All requests should be mailed to Commandant (CG–6P), 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593–7710, or submitted electronically through *https://foiarequest.dhs.gov/.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–475–3522, Fax: 202–372–8413, or Email: *efoia@uscg.mil.*

U.S. Secret Service (USSS)

All requests should be mailed to Freedom of Information Act and Privacy Act Branch, 245 Murray Lane SW, Building T–5, Washington, DC 20223, or submitted electronically to *FOIA@usss.dhs.gov.* To respond to your FOIA or Privacy Act request as quickly as possible, we strongly encourage you to submit your request electronically. Additional contact information for questions: Phone: 202–406–6370, Fax: 202–406–5586, or Email: *FOIA@usss.dhs.gov.*

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2022–24871 Filed 11–15–22; 8:45 am]

BILLING CODE 4410–9B–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0887; Project Identifier MCAI–2022–00051–T; Amendment 39–22215; AD 2022–21–16]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace LP Model Gulfstream G150 airplanes. This AD was prompted by reports that wing flap fairing debonding and corrosion were discovered at certain areas of the lower skin on both wings. This AD requires an inspection for corrosion in certain areas of the wing skin fairings, additional inspections if necessary, resealing the fairings with new fillet seal, and applicable corrective actions, as specified in a Civil Aviation Authority of Israel (CAAI) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 21, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0887; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference (IBR) in this AD, contact Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this material on the CAAI website at *caa.gov.il.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–0887.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Gulfstream Aerospace LP Model Gulfstream G150 airplanes. The NPRM published in the **Federal Register** on July 21, 2022 (87 FR 43459). The NPRM was prompted by AD ISR I–57–2021–12–3, dated January 1, 2022, issued by CAAI, which is the aviation authority for Israel (referred to after this

as the MCAI). There were reports that wing flap fairing debonding and corrosion were discovered at the lower skin of rib 3 and rib 11 on both wings. The MCAI states that the reason for the AD is to prevent the possibility of flap fairing debonding, moisture intrusion and wing lower skin corrosion at rib 3 and rib 11.

In the NPRM, the FAA proposed to require an inspection for corrosion in certain areas of the wing skin fairings, additional inspections if corrosion is found and a measurement of the thickness of the remaining wing skin if necessary, resealing the fairings with new fillet seal, and applicable corrective actions. The FAA is issuing this AD to address flap fairing debonding and moisture intrusion that might lead to lower wing skin corrosion and cracking on both wings, and reduced structural integrity of the wings.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0887.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

CAAI AD ISR I–57–2021–12–3, dated January 1, 2022, specifies procedures for an inspection for corrosion in the area of the wing skin (or doubler if installed) under the rib 3 and rib 11 fairings, a penetration or eddy current inspection for cracks if corrosion was found, a measurement of the thickness of remaining wing skin (or doubler) if no cracks were found, resealing of rib 3 and rib 11 fairings with new fillet seal, and applicable corrective actions. Corrective actions include cleaning and removing corrosion, crack repair, and repair of fairing installation locations with a certain thickness reduction.

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

Costs of Compliance

The FAA estimates that this AD affects 87 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
29 work-hours × $85 per hour = $2,465	Minimal	$2,465	$214,455

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS *

Labor cost	Parts cost	Cost per product
Up to 10 work-hours × $85 per hour = $850	$0	Up to $850.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–16 Gulfstream Aerospace LP (Type Certificate Previously Held by Israel Aircraft Industries, Ltd.): Amendment 39–22215; Docket No. FAA–2022–0887; Project Identifier MCAI–2022–00051–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace LP Model Gulfstream G150 airplanes, certificated in any category, as identified in The Civil Aviation Authority of Israel (CAAI) AD ISR I–57–2021–12–3, dated January 1, 2022 (CAAI AD ISR I–57–2021–12–3).

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by reports that wing flap fairing debonding and corrosion were discovered at lower skin of rib 3 and rib 11 on both wings. The FAA is issuing this AD to address flap fairing debonding and moisture intrusion that might lead to lower wing skin corrosion and cracking on both wings, and reduced structural integrity of the wings.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, CAAI AD ISR I–57–2021–12–3.

(h) Exceptions to Service Information Specifications

(1) Where CAAI AD ISR I–57–2021–12–3 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where the Compliance paragraph of CAAI AD ISR I–57–2021–12–3 requires compliance at a certain time, replace the text ''at the next suitable planned maintenance inspection within the next 24 months from the effective date of this AD'' with ''within 24 months after the effective date of this AD.''

(3) Where the Action paragraph of CAAI AD ISR I–57–2021–12–3 refers to certain service information, replace the text ''Gulfstream Service Bulletin No.150–57–197, dated January 01, 2022, or later approved revision,'' with ''Gulfstream Service Bulletin No. 150–57–197, Revision 1, dated June 16, 2022, or later approved revision.''

(4) Where the service information specified in CAAI AD ISR I–57–2021–12–3 specifies to report to Gulfstream if ''cracks were discovered'' and ''for any fairing installation location with one or more grid squares with thickness reduction of greater than 10%,'' for this AD, cracks and fairing installation locations with one or more grid squares with thickness reduction of greater than 10% must be repaired before further flight using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or CAAI; or CAAI's authorized Designee. If approved by the authorized Designee, the approval must include the Designee's authorized signature.

(i) No Reporting Requirement

Although the service information referenced in CAAI AD ISR I–57–2021–12–3 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or the Civil Aviation Authority of Israel (CAAI); or the CAAI's authorized Designee. If approved by the CAAI Designee, the approval must include the Designee's authorized signature.

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) Civil Aviation Authority of Israel (CAAI) AD ISR I–57–2021–12–3, dated January 1, 2022.

(ii) [Reserved]

(3) For CAAI AD ISR I–57–2021–12–3, contact Civil Aviation Authority of Israel (CAAI), P.O. Box 1101, Golan Street, Airport City, 70100, Israel; telephone 972–3–9774665; fax 972–3–9774592; email *aip@mot.gov.il.* You may find this CAAI AD on the CAAI website at *caa.gov.il.*

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

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

Issued on October 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–24910 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0885; Project Identifier MCAI–2021–01429–T; Amendment 39–22209; AD 2022–21–10]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by reports that the landing gear age of certain airplanes was higher than expected for gear overhaul, which could increase the risk of corrosion. This AD requires verifying the calendar age of the nose landing gear (NLG) and main

landing gear (MLG) by way of component maintenance documents, and performing corrective actions if necessary. This AD also prohibits installing certain components. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 21, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0885; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2022–0885.

FOR FURTHER INFORMATION CONTACT: Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all MHI RJ Aviation ULC Model CL–600–2C10 (Regional Jet Series 700, 701 & 702); CL–600–2C11 (Regional Jet Series 550); CL–600–2D15 (Regional Jet Series 705); CL–600–2D24 (Regional Jet Series 900); and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on July 21, 2022 (87 FR 43450). The NPRM was prompted by AD CF–2021–49, dated December 20, 2021, issued by Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that the landing gear age of certain airplanes was higher than expected for gear overhaul. The MCAI notes that undetected corrosion could lead to MLG and/or NLG collapse, and consequent damage to the airplane and injury to the occupants.

In the NPRM, the FAA proposed to require verifying the calendar age of the NLG and MLG by way of component maintenance documents, and performing corrective actions if necessary. The NPRM also proposed to prohibit installing certain components. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0885.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

MHI RJ has issued Service Bulletin 670BA–32–062, dated December 2, 2021. This service information describes procedures for, among other actions, verifying the calendar age of the NLG and MLG by way of component maintenance documents and for removing affected landing gear components and replacing them with serviceable components. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 624 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$0	$340	$212,160

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 32 work-hours × $85 per hour = Up to $2,720	Up to $340,000	Up to $342,720.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–10 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22209; Docket No. FAA–2022–0885; Project Identifier MCAI–2021–01429–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all MHI RJ Aviation ULC airplanes identified in paragraphs (c)(1) through (5) of this AD, certificated in any category.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701, & 702).

(2) Model CL–600–2C11 (Regional Jet Series 550).

(3) Model CL–600–2D15 (Regional Jet Series 705).

(4) Model CL–600–2D24 (Regional Jet Series 900).

(5) Model CL–600–2E25 (Regional Jet Series 1000) airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports that the landing gear age of certain airplanes was higher than expected for gear overhaul. The FAA is issuing this AD to address the possibility of undetected corrosion due to landing gear age that could lead to main landing gear (MLG) and/or nose landing gear (NLG) collapse, and consequent damage to the airplane and injury to the occupants.

(f) Compliance

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

(g) Determination of Component Calendar Age

Within 90 days after the effective date of this AD: Verify the airplane and/or the airplane technical records to determine whether any MLG and NLG components are affected components based on their calendar age, in accordance with Section 2, Part A, of the Accomplishment Instructions of MHI RJ Service Bulletin (SB) 670BA–32–062, Revision A, dated December 2, 2021.

(h) Removal and Replacement of Affected NLG Components

(1) Within the applicable compliance time indicated in figure 1 to paragraph (h) of this AD: Remove the affected NLG components identified in paragraph (g) of this AD in accordance with Section 2, Part B, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(2) Before further flight after removal of the affected components, replace the removed components with serviceable components, in accordance with Section 2, Part D, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

Figure 1 to paragraph (h) – *Compliance time*

Component Calendar Age	Compliance Time
Less than 10 years	Prior to reaching 12 years' component calendar age or within 36 months after the effective date of this AD, whichever occurs later
10 years or more and less than 12 years	Within 36 months after the effective date of this AD or prior to reaching 14 years' component calendar age, whichever occurs first
12 years or more and less than 13 years	Prior to reaching 14 years' component calendar age
13 years or more and less than 14 years	Within 12 months after the effective date of this AD
14 years or more	Within 6 months after the effective date of this AD

(i) Removal and Replacement of Affected MLG Components

(1) Within the applicable compliance time indicated in figure 1 to paragraph (h) of this AD: Remove the affected MLG components identified in paragraph (g) of this AD in accordance with Section 2, Part E or H, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(2) Before further flight after removing the affected components, replace the removed components with serviceable components, in accordance with Section 2, Part G or J, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(j) Parts Installation Limitation

(1) As of the effective date of this AD, no person may install, on any airplane, any MLG or NLG component with a calendar age of 12 years or more unless it has been overhauled in accordance with Section 2, Part C, F, or I, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021.

(2) As of the effective date of this AD, any MLG or NLG component with a calendar age of less than 12 years may be installed on any airplane, provided it is overhauled in accordance with Section 2 Part C, F, or I, as applicable, of the Accomplishment Instructions of MHI RJ SB 670BA–32–062, Revision A, dated December 2, 2021, prior to reaching 12 years' component calendar age.

(k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(l) Additional Information

(1) Refer to TCCA AD CF–2021–49, dated December 20, 2021, for related information. This TCCA AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–0885.

(2) For more information about this AD, contact Jiwan Karunatilake, Aerospace Engineer, Airframe and Propulsion Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) MHI RJ Service Bulletin 670BA–32–062, Revision A, dated December 2, 2021.

(ii) [Reserved]

(3) For service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com;* website *mhirj.com.*

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

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

Issued on October 3, 2022.

Christina Underwood,

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

[FR Doc. 2022–24902 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1052; Project Identifier MCAI–2022–00654–T; Amendment 39–22216; AD 2022–22–01]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 airplanes. This AD was prompted by a report that the path for the grounding wire of the engine fire shut off valve (FSOV) is routed through the wing trailing edge, which is not the shortest path available. This AD requires modifying the wiring between the inboard fixed leading edge in the wing and in the forward cargo compartment on the left- and right-hand sides, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 21, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1052; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu*. You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1052.

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

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on August 15, 2022 (87 FR 50009). The NPRM was prompted by AD 2022–0088, dated May 17, 2022 (EASA AD 2022–0088), issued by EASA, which is the Technical Agent for the Member States of the European Union (referred to after this as the MCAI). The MCAI states that the path for the grounding wire of the engine FSOV is routed through the wing trailing edge, which is not the shortest path available. This condition could increase the possibility of an engine FSOV unavailability in the event of an uncontained engine rotor failure, which could result in an uncontrolled engine fire.

In the NPRM, the FAA proposed to require modifying the wiring between the inboard fixed leading edge in the wing and in the forward cargo compartment on the left- and right-hand sides, as specified in EASA AD 2022–0088. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1052.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0088 specifies procedures for modifying the wiring between the inboard fixed leading edge in the wing and in the forward cargo compartment on the left- and right-hand sides. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD will affect 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
33 work-hours × $85 per hour = $2,805	$1,300	$4,105	$123,150

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–22–01 Airbus SAS: Amendment 39–22216; Docket No. FAA–2022–1052; Project Identifier MCAI–2022–00654–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus SAS Model A350–941 airplanes, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2022–0088, dated May 17, 2022 (EASA AD 2022–0088).

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by a report that the path for the grounding wire of the engine fire shut off valve (FSOV) is routed through the wing trailing edge, which is not the shortest path available. The FAA is issuing this AD to address an increased possibility of an engine FSOV unavailability in the event of an uncontained engine rotor failure, which could result in an uncontrolled engine fire.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2022–0088.

(h) Exceptions to EASA AD 2022–0088

(1) Where EASA AD 2022–0088 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0088 does not apply to this AD.

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS Model's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Additional Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0088, dated May 17, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0088, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on October 12, 2022.

Christina Underwood,

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

[FR Doc. 2022–24909 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0673; Project Identifier MCAI–2021–01282–T; Amendment 39–22213; AD 2022–21–14]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2017–10–17, which applied to certain Airbus SAS Model A330–200; A330–200 Freighter; and A330–300 series airplanes. AD 2017–10–17 required revising the existing maintenance or inspection program, as applicable, to incorporate new fuel airworthiness limitations. This AD was prompted by a determination that new or more restrictive fuel airworthiness limitations and tasks are necessary. This AD continues to require the actions in AD 2017–10–17 and requires revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive fuel airworthiness limitations and tasks, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also expands the applicability to include additional airplane models. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 29, 2017 (82 FR 24017, May 25, 2017).

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0673; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.*
- For Airbus service information identified in this final rule, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* website *airbus.com.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–0673.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2017–10–17, Amendment 39–18891 (82 FR 24017, May 25, 2017) (AD 2017–10–17). AD 2017–10–17 applied to certain Airbus SAS Model A330–223F and –243F airplanes; Model A330–201, –202, –203, –223, and –243 airplanes; Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes. AD 2017–10–17 required revising the existing maintenance or inspection program, as applicable, to include new fuel airworthiness limitations. The FAA issued AD 2017–10–17 to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

The NPRM published in the **Federal Register** on June 10, 2022 (87 FR 35465). The NPRM was prompted by AD 2021–0252, dated November 17, 2021, issued by EASA (referred to after this as the MCAI). The MCAI states that new or more restrictive fuel airworthiness limitations and tasks are necessary.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–0673.

In the NPRM, the FAA proposed to continue to require the actions in AD 2017–10–17. The NPRM also proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate additional new or more restrictive fuel airworthiness limitations and tasks, as specified in EASA AD 2021–0252. In addition, the NPRM proposed to expand the applicability to include additional models. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0252 describes new or more restrictive fuel airworthiness limitations and tasks.

This AD also requires Airbus A330 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations (FAL), Revision 01, dated October 28, 2015, which the Director of the Federal Register approved for incorporation by reference as of June 29, 2017 (82 FR 24017, May 25, 2017).

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

Costs of Compliance

The FAA estimates that this AD affects 138 airplanes of U.S. registry.

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

The FAA estimates the total cost per operator for the retained actions from AD 2017–10–17 to be $7,650 (90 work-hours × $85 per work-hour).

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

The FAA estimates the total cost per operator for the new actions to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive 2017–10–17, Amendment 39–18891 (82 FR 24017, May 25, 2017); and

■ b. Adding the following new airworthiness directive:

2022–21–14 Airbus SAS: Amendment 39–22213; Docket No. FAA–2022–0673; Project Identifier MCAI–2021–01282–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 21, 2022.

(b) Affected ADs

This AD replaces AD 2017–10–17, Amendment 39–18891 (82 FR 24017, May 25, 2017) (AD 2017–10–17).

(c) Applicability

This AD applies to Airbus SAS Model airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 1, 2021.

(1) Model A330–223F and –243F airplanes.

(2) Model A330–201, –202, –203, –223, and –243 airplanes.

(3) Model A330–301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes.

(4) Model A330–841, and –941 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive fuel airworthiness limitations and tasks are necessary. The FAA is issuing this AD to address the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (j) of AD 2017–10–17, with no changes. For airplanes identified in paragraphs (c)(1) through (3) of this AD with an original certificate of airworthiness or original export certificate of airworthiness issued on or before October 28, 2015: Within 3 months after June 29, 2017 (the effective date of AD 2017–10–17), revise the existing maintenance or inspection program, as applicable, to incorporate Airbus A330 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations (FAL), Revision 01, dated October 28, 2015. The compliance times for accomplishing the initial tasks specified in Airbus A330 ALS Part 5—FAL, Revision 01, dated October 28, 2015, are at the times specified in Airbus A330 ALS Part 5—FAL, Revision 01, dated October 28, 2015, or within 3 months after revising the maintenance or inspection program as required by paragraph (g) of this AD, whichever occurs later. Accomplishing the revision of the existing maintenance or inspection program required by paragraph (i) of this AD terminates the requirements of this paragraph.

(h) Retained Restrictions on Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs), With a New Exception

This paragraph restates the requirements of paragraph (k) of AD 2017–10–17, with a new exception. Except as required by paragraph (i) of this AD, after accomplishing the revision required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections), intervals, or CDCCLs may be used unless the actions, intervals, or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

(i) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (j) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0252, dated November 17, 2021 (EASA AD 2021–0252). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(j) Exceptions to EASA AD 2021–0252

(1) Where EASA AD 2021–0252 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2021–0252 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2021–0252 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2021–0252 is at the applicable

''limitations'' and ''intervals'' as incorporated by the requirements of paragraph (3) of EASA AD 2021–0252, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2021–0252 do not apply to this AD.

(6) The ''Remarks'' section of EASA AD 2021–0252 does not apply to this AD.

(k) New Provisions for Alternative Actions, Intervals, and CDCCLs

After the existing maintenance or inspection program has been revised as required by paragraph (i) of this AD, no alternative actions (*e.g.,* inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0252.

(l) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Manager, International Validation Branch, mail it to the address identified in paragraph (m) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Additional Information

For more information about this AD, contact Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *vladimir.ulyanov@faa.gov.*

(n) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on December 21, 2022.

(i) European Union Aviation Safety Agency (EASA) AD 2021–0252, dated November 17, 2021.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 29, 2017 (82 FR 24017, May 25, 2017).

(i) Airbus A330 Airworthiness Limitations Section (ALS) Part 5—Fuel Airworthiness Limitations (FAL), Revision 01, dated October 28, 2015.

(ii) [Reserved]

(5) For EASA AD 2021–0252, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.* For Airbus material, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* website *airbus.com.*

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

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

Issued on October 6, 2022.

Christina Underwood,

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

[FR Doc. 2022–24901 Filed 11–15–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0988; Project Identifier MCAI–2021–00438–R; Amendment 39–22217; AD 2022–22–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters. This AD was prompted by reports of the cockpit doors failing to open after ditching with inflated floats on certain helicopters equipped with an emergency flotation system (EFS). This AD requires revising the existing Rotorcraft Flight Manual (RFM) for your helicopter, installing placards, and depending on your model helicopter, modification of the jettisoning system, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference (IBR). The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 21, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 21, 2022.

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–0988; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available at *regulations.gov* under Docket No. FAA–2022–0988.

Other Related Service Information: For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052, United States; phone: (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; email: *customersupport.helicopters@airbus.com;* website: *airbus.com/helicopters/services/technical-support.html.*

FOR FURTHER INFORMATION CONTACT: Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *OperationalSafety@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued a series of ADs, with the most recent being EASA AD 2021–0101R1, dated February 25, 2022 (EASA AD 2021–0101R1), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Sud Aviation, Model SA 365 N, SA 365 N1, AS 365 N2, AS 365 N3, EC 155 B, and EC 155 B1 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters. The NPRM published in the **Federal Register** on August 12, 2022 (87 FR 49773). The NPRM was prompted by reports of failure of the cockpit doors to open after ditching with inflated floats on certain helicopters equipped with an EFS. EASA advises emergency evacuation was only possible by jettisoning the hinged doors from the inside or by accessing the emergency exits in the cabin. EASA further advises that the passage from the cockpit to the cabin may be impaired on helicopters with certain interior layouts. The NPRM proposed to require revising the existing RFM for your helicopter, installing placards, and depending on your model helicopter, modification of the jettisoning system, as specified in EASA AD 2021–0101R1.

The FAA is issuing this AD to inform external rescuers that the cockpit door jettison function needs to be utilized to successfully egress incapacitated flight crew from the cockpit during an emergency when the EFS is activated. See EASA AD 2021–0101R1 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in the EASA AD referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0101R1 requires amending the RFM; installing placards on the left-hand (LH) and right-hand (RH) side of the helicopter; and for certain helicopters, modifying the jettison system by installing an external handle on the jettison system of the pilot and co-pilot doors.

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

Other Related Service Information

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS365–52.00.27, Revision 1, dated June 4, 2021 (AS365–52.00.27, Rev 1), which specifies procedures for installing labels (placards) on the pilot and co-pilot doors. AS365–52.00.27, Rev 1, also specifies procedures for installing an external handle on the jettison system.

The FAA also reviewed Airbus Helicopters ASB No. AS365–52.00.29, Revision 1, dated February 9, 2022, ASB No. AS365–52.00.29, Revision 0, dated February 10, 2021, and ASB No. EC155–52A033, Revision 0, dated September 30, 2020. This service information specifies procedures for installing labels (placards) on the pilot and co-pilot doors.

The FAA also reviewed Airbus Helicopters Flight Manual (FM) SA 365 N Supplement, SUP.10.4, Normal Revision (NR) 7, date code 20–40; Airbus Helicopters FM SA 365 N1 Supplement, SUP.10.4, NR 9, date code 20–40; Airbus Helicopters FM AS 365 N2 Supplement, SUP.14, NR 6, date code 20–40; Airbus Helicopters FM AS 365 N3 Supplement, SUP.14, NR 12, date code 20–28; Airbus Helicopters FM EC 155 B Supplement, SUP.14, NR 7, date code 20–11; and Airbus Helicopters FM EC 155 B1 Supplement, SUP.14, NR 8, date code 20–11. This service information provides updated procedures for ditching and emergency evacuation.

Differences Between This AD and the EASA AD

EASA AD 2021–0101R1 allows using Airbus Helicopters ASB No. AS365–52.00.27, original issue, dated November 17, 2020 (including Erratum to ASB AS365–52.00.27, original issue, dated January 21, 2021); whereas this AD does not. This AD requires using AS365–52.00.27, Rev 1 instead. Where paragraph (2) of EASA AD 2021–0101R1 specifies to ''modify the helicopter in accordance with the instructions of Section 3 of the applicable ASB,'' this AD requires using the instructions of Section 3.B. of the applicable ASB.

EASA AD 2021–0101R1 requires operators to ''inform all flight crews'' of revisions to the RFM, and thereafter to ''operate the helicopter accordingly.'' However, this AD does not specifically require those actions. FAA regulations mandate compliance with only the operating limitations section of the flight manual. The flight manual changes required by this AD would apply to the emergency procedures and normal procedures sections of the existing RFM for your helicopter. Furthermore, compliance with such requirements in an AD is impracticable to demonstrate or track on an ongoing basis; therefore, a requirement to operate the aircraft in such a manner is unenforceable. Nonetheless, the FAA recommends that flight crews of the helicopters listed in the applicability operate in accordance with the revised emergency procedures and normal procedures specified by this AD.

This AD allows the owner/operator (pilot) holding at least a private pilot certificate to revise the existing RFM for your helicopter and do the logbook entry, whereas EASA AD 2021–0101R1 does not specify this. This AD requires these actions to be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

For certain helicopters, this AD requires revising section 4.1, Normal Procedures, of the existing RFM for your helicopter to add a check to the RH and LH Cockpit Door Jettison Handles, whereas EASA AD 2021–0101R1 does not require that action.

Costs of Compliance

The FAA estimates that this AD affects 40 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Revising the existing RFM for your helicopter takes about 0.25 work-hour for an estimated cost of $21 per helicopter and $840 for the U.S. fleet.

Installing placards on the pilot and co-pilot doors takes about 1 work-hour and parts cost up to about $138 for an estimated cost of up to $223 per helicopter.

For helicopters with the Airbus Helicopters Forward Looking InfraRed (AH FLIR) system installed, installing placards on the pilot and co-pilot doors

takes about 0.5 work-hour and parts cost about $52 for an estimated cost of $95 per helicopter.

If required, installing an external handle on the jettison system takes about 7 work-hours and parts cost about $1,328 for an estimated cost of $1,923 per helicopter and $51,921 for the U.S. fleet (27 helicopters).

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–22–02 Airbus Helicopters: Amendment 39–22217; Docket No. FAA–2022–0988; Project Identifier MCAI–2021–00438–R.

(a) Effective Date

This airworthiness directive (AD) is effective December 21, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model SA–365N, SA–365N1, AS–365N2, AS 365 N3, EC 155B, and EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Codes: 1100, Placards and Markings; and 5210, Passenger/Crew Doors.

(e) Unsafe Condition

This AD was prompted by reports of failure of the cockpit doors to open after ditching with inflated floats on certain helicopters equipped with an emergency flotation system (EFS). The FAA is issuing this AD to inform external rescuers that the cockpit door jettison function needs to be utilized to successfully egress incapacitated flight crew from the cockpit during an emergency when the EFS is activated. This unsafe condition, if not addressed, could result in incapacitated occupants not being able to exit the helicopter after an emergency ditching with inflated floats.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0101R1, dated February 25, 2022 (EASA AD 2021–0101R1) and paragraph (i) of this AD.

(h) Exceptions to EASA AD 2021–0101R1

(1) Where EASA AD 2021–0101R1 refers to effective dates ''11 February 2021 [the effective date of EASA AD 2021–0041]'' and ''26 April 2021 [the effective date of the original issue of this AD],'' this AD requires using the effective date of this AD.

(2) Where paragraph (1) of EASA AD 2021–0101R1 specifies to ''inform all flight crews and, thereafter, operate the helicopter accordingly,'' this AD does not require those actions.

(3) The action required by paragraph (1) of EASA AD 2021–0101R1 may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(4) Where paragraph (2) of EASA AD 2021–0101R1 specifies to ''modify the helicopter in accordance with the instructions of Section 3 of the applicable ASB,'' for this AD, replace that text with, ''modify the helicopter in accordance with Section 3.B. in the Accomplishment Instructions of the applicable ASB.''

(5) Where EASA AD 2021–0101R1 refers to ''ASB AS365–52.00.27'' and ''AH ASB AS365–52.00.27 original issue dated 17 November 2020 (including Erratum to ASB AS365–52.00.27 original issue dated 21 January 2021),'' this AD requires replacing each instance of that text with ''Airbus Helicopters Alert Service Bulletin No. AS365–52.00.27, Revision 1, dated June 4, 2021.''

(6) Where the service information referenced in paragraph (2) of EASA AD 2021–0101R1 specifies discarding parts, this AD requires removing those parts from service.

(7) Where the service information referenced in paragraph (2) of EASA AD 2021–0101R1 specifies to use tooling, this AD allows the use of equivalent tooling.

(8) Where the service information referenced in paragraph (2) of EASA AD 2021–0101R1 specifies parking the helicopter in a hangar or maintenance hangar, this AD does not require those actions.

(9) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0101R1.

(i) Required Rotorcraft Flight Manual (RFM) Amendment

(1) For Group 2 helicopters as defined in EASA AD 2021–0101R1, concurrently with accomplishing the actions specified in paragraph (1) of EASA AD 2021–0101R1, revise the existing RFM for your helicopter by adding the following text at the end of section 4.1, Normal Procedures: ''right and left hand Cockpit Door Jettison Handles are properly closed and secured.''

(2) The action required by paragraph (i)(1) of this AD may be performed by the owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with 14 CFR 43.9(a) and 14 CFR 91.417(a)(2)(v). The record must be maintained as required by 14 CFR 91.417, 121.380, or 135.439.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Additional Information

For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email *OperationalSafety@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0101R1, dated February 25, 2022.

(ii) [Reserved]

(3) For EASA AD 2021–0101R1, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find the EASA material on the EASA website at *ad.easa.europa.eu.*

(4) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on October 12, 2022.

Christina Underwood,

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

[FR Doc. 2022–24876 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1299; Project Identifier MCAI–2022–00248–T; Amendment 39–22211; AD 2022–21–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Services B.V. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD becomes effective December 1, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of December 1, 2022.

The FAA must receive comments on this AD by January 3, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer-3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2022–1299.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1299; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *manuel.f.hernandez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1299; Project Identifier MCAI–2022–00248–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov*, including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information

that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *manuel.f.hernandez@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0027, dated February 18, 2022 (EASA AD 2022–0027) (also referred to as the MCAI), to correct an unsafe condition for all Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes.

EASA AD 2022–0027 requires a task (limitation) related to the tasks already in Part 2 of the Airworthiness Limitations Section (ALS) of the Instructions for Continued Airworthiness, referred to in Section 06, Appendix 1, of the Fokker 70/100 Maintenance Review Board document required by EASA AD 2020–0024 (which corresponds to FAA AD 2020–09–11, Amendment 39–19907 (85 FR 30592, May 20, 2020) (AD 2020–09–11)).

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to prevent reduced structural integrity of the airplane.

See the MCAI for additional background information.

Relationship Between This AD and AD 2020–09–11

This AD does not supersede FAA AD 2020–09–11. Rather, the FAA has determined that a stand-alone AD is more appropriate to address the changes in the MCAI. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0027 specifies new or more restrictive airworthiness limitations for airplane structures and safe life limits. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI described above. The FAA is issuing this AD after determining that the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Requirements of This AD

This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2022–0027 described previously, as incorporated by reference.

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

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0027 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0027 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0027 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0027. Service information required by EASA AD 2022–0027 for compliance will be available at regulations.gov by searching for and locating Docket No. FAA–2022–1299 after this AD is published.

Airworthiness Limitation ADs Using the New Process

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

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

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

FAA's Justification and Determination of the Effective Date

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

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

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

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

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

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–12 Fokker Services B.V.: Amendment 39–22211; Docket No. FAA–2022–1299; Project Identifier MCAI–2022–00248–T.

(a) Effective Date

This airworthiness directive (AD) is effective December 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Fokker Services B.V. Model F28 Mark 0070 and Mark 0100 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to prevent reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0027, dated February 18, 2022 (EASA AD 2022–0027).

(h) Exceptions to EASA AD 2022–0027

(1) Where EASA AD 2022–0027 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2022–0027 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2022–0027 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(4) The ''Remarks'' section of EASA AD 2022–0027 does not apply to this AD.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0258.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or

EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

For more information about this AD, contact Manuel Hernandez, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 562–627–5256; email *manuel.f.hernandez@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0027, dated February 18, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0027, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

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

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

Issued on October 6, 2022.

Christina Underwood,

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

[FR Doc. 2022–24908 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1420; Project Identifier AD–2022–01303–A; Amendment 39–22240; AD 2022–21–51]

RIN 2120–AA64

Airworthiness Directives; Viking Air Limited (Type Certificate Previously Held by Bombardier Inc. and de Havilland, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes. This AD was prompted by multiple recent reports of cracks in the left-hand elevator auxiliary spar. This AD requires repetitive detailed visual inspections of the entire left-hand elevator auxiliary spar for cracks, corrosion, and previous repairs, and depending on the findings, replacement of the left-hand elevator auxiliary spar. This AD also requires sending the inspection results to the FAA. The FAA previously sent an emergency AD to all known U.S. owners and operators of these airplanes and is now issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective December 1, 2022. Emergency AD 2022–21–51, issued on October 4, 2022, which contained the requirements of this amendment, was effective with actual notice.

The FAA must receive comments on this AD by January 3, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

AD Docket: You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1420; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: James Delisio, Continued Operational Safety Program Manager, COS Program Management Section, Operational Safety Branch, FAA, 1600 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; email: *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On October 4, 2022, the FAA issued Emergency AD 2022–21–51 (the emergency AD), which requires repetitive detailed visual inspections of the entire left-hand elevator auxiliary spar for cracks, corrosion, and previous repairs, and depending on the findings, replacement of the left-hand elevator auxiliary spar, and sending the inspection results to the FAA. The FAA sent the emergency AD to all known U.S. owners and operators of these airplanes. This action was prompted by multiple recent reports of cracks in the left-hand elevator auxiliary spar. The FAA's analysis of these reports indicates that immediate AD action is warranted. The FAA is issuing this AD to detect and address cracks, corrosion, and previous repairs to the left-hand elevator auxiliary spar. This condition, if not addressed, could result in elevator flutter leading to elevator failure, with consequent loss of control of the airplane. The FAA has coordinated this issue with Transport Canada, which is the aviation authority for Canada. Transport Canada issued AD CF–2018–04, dated January 19, 2018 (Transport Canada AD CF–2018–04), which includes a requirement for inspecting elevator assemblies for corrosion.

The FAA issued a notice of proposed rulemaking that published in the **Federal Register** on February 8, 2022 (87 FR 7059) in response to Transport Canada AD CF–2018–04, and is currently addressing comments. As an interim action, the FAA issued the emergency AD, as a result of the recent reports, to mandate an inspection of the left-hand elevator auxiliary spar and replacement if necessary.

FAA's Determination

The FAA is issuing this AD because the agency has determined that an unsafe condition is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires repetitive detailed visual inspections of the entire left-hand elevator auxiliary spar for cracks, corrosion, and previous repairs, and depending on the findings, replacement of the left-hand elevator auxiliary spar. This AD also requires sending the inspection results to the FAA.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that required the immediate adoption of Emergency AD 2022–21–51, issued on October 4, 2022, to all known U.S. owners and operators of these airplanes. The FAA found that the risk to the flying public justified waiving notice and comment prior to adoption of this rule because cracks in the left-hand elevator auxiliary spar, if not addressed, could result in elevator flutter leading to elevator failure, with consequent loss of control of the airplane. Accordingly, the FAA determined that a detailed visual inspection of the entire left-hand elevator auxiliary spar must be performed immediately. These conditions still exist, therefore, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forego notice and comment.

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1420; Project Identifier AD–2022–01303–A'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to James Delisio, Continued Operational Safety Program Manager, COS Program Management Section, Operational Safety Branch, FAA, 1600 Stewart Avenue, Westbury, NY 11590. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 68 airplanes of U.S. registry.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170.	Not Applicable	$170 per inspection	$11,560 per inspection.
Reporting Requirement	1 work-hour × $85 per hour = $85.	Not Applicable	$85 per inspection	$5,780 per inspection.

The FAA estimates the following costs to do any necessary replacement that would be required based on the results of the inspection to the left-hand elevator auxiliary spar. The agency has no way of determining the number of airplanes that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Left-hand elevator auxiliary spar replacement	16 work-hours × $85 per hour = $1360	$265	$1,625

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 1 hour per response, including the time for reviewing instructions, searching existing data

sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–21–51 Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.): Amendment 39–22240; Docket No. FAA–2022–1420; Project Identifier AD–2022–01303–A.

(a) Effective Date

The FAA issued Emergency Airworthiness Directive (AD) 2022–21–51, on October 4, 2022, directly to affected owners and operators. As a result of such actual notice, that AD was effective for those owners and operators on the date it was provided. This AD contains the same requirements as that emergency AD and, for those who did not receive actual notice, is effective on December 1, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Viking Air Limited (type certificate previously held by Bombardier Inc. and de Havilland, Inc.) Model DHC–3 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 5520, Elevator Structure.

(e) Unsafe Condition

This AD was prompted by multiple recent reports of cracks in the left-hand elevator auxiliary spar. The FAA's analysis of these reports indicates that immediate AD action is warranted. The FAA is issuing this AD to detect and address cracks, corrosion, and previous repairs to the left-hand elevator auxiliary spar. The unsafe condition, if not addressed, could result in elevator flutter leading to elevator failure, with consequent loss of control of the airplane.

(f) Compliance

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

(g) Definition of Corrosion

The definition of Levels 1, 2, and 3 corrosion are specified in Advisory Circular 43–4B, *Corrosion Control for Aircraft,* dated September 11, 2018. You may find this document at *drs.faa.gov/search.*

(h) Inspection

(1) Within 10 hours time-in-service (TIS) or 3 days after effective date of this AD, whichever occurs first, unless already done within the last 90 days, and thereafter at intervals not to exceed 110 hours TIS, remove the left-hand elevator tab from the elevator and perform a detailed visual inspection of the entire left-hand elevator auxiliary spar for cracks, corrosion, and previous repairs. For the purposes of this AD, structural reinforcements are not considered previous repairs.

(2) If any crack, corrosion beyond Level 1, or previous repair is found during any inspection required by this AD, before further flight, replace the left-hand elevator auxiliary spar.

(i) Reporting Requirements

Within 10 days after each inspection, report the results of the inspection to the FAA at *9-avs-nyaco-cos@faa.gov.* Include the airplane serial number, airplane hours TIS, auxiliary spar TIS (if known), and any crack, corrosion beyond Level 1, or previous repair that is found.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the New York ACO Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (k) of this AD or email to: *9-avs-nyaco-cos@faa.gov.* If mailing information, also submit information by email.

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

(k) Related Information

For more information about this AD, contact James Delisio, Continued Operational Safety Program Manager, COS Program Management Section, Operational Safety Branch, FAA, 1600 Stewart Avenue, Westbury, NY 11590; phone: (516) 228–7300; email: *9-avs-nyaco-cos@faa.gov.*

(l) Material Incorporated by Reference

None.

Issued on November 4, 2022.

Christina Underwood,

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

[FR Doc. 2022–25046 Filed 11–14–22; 4:15 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0764; Airspace Docket No. 21–ANM–37]

RIN 2120–AA66

Modification of Class D Airspace and Class E Airspace; Bozeman Yellowstone International Airport, MT

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

ACTION: Final rule.

SUMMARY: This action modifies the Class D and E surface areas, the Class E airspace area designated as an extension to a Class D or E surface area, and the Class E airspace extending upward from 700 feet above the surface at Bozeman Yellowstone International Airport, MT. Additionally, this action makes several administrative amendments to update the airport's legal descriptions. These actions support the safety and management of instrument flight rules (IFR) and visual flight rules (VFR) operations at the airport.

DATES: Effective 0901 UTC, December 29, 2022. The Director of the Federal Register approves this incorporation by reference under Title 1 CFR part 51, subject to the annual revision of FAA Order JO 7400.11, Airspace Designations and Reporting Points, and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11G, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Nathan A. Chaffman, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–3460.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

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

History

The FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** for FAA–2022–0764 (87 FR 45725; July 29, 2022) to modify the Class D and E surface areas, the Class E airspace area designated as an extension to a Class D or E surface area, and the Class E airspace extending upward from 700 feet above the surface. It also proposed administrative changes to the airport's legal descriptions. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. Two comments were received, although neither were germane to the proposal.

Subsequent to publication of the NPRM in the **Federal Register**, the FAA identified a discrepancy with the proposed Class E2 legal description. It was inadvertently referred to as ''Class D'' in the body of the description. This action corrects this error to read ''Class E'' Additionally, the proposed Class E6 legal description required multiple modifications. The airport name is removed from the description, as it is provided in the second line of the header and duplication is not necessary. Lastly, the Class E6 legal description contained exclusionary verbiage, which is removed as it is not necessary.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11G lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying the Class D and E surface areas, the Class E airspace area designated as an extension to a Class D or E surface area, and the Class E airspace extending upward from 700 feet above the surface.

Class D airspace is intended to contain IFR arrival operations while between the surface and 1,000 feet above the surface, and IFR departure operations while between the surface and the base of adjacent controlled airspace. The current Class D airspace radius is 5.4 miles, which is excessive. This radius is reduced to 4.9 miles, as additional airspace is not necessary. The Class D airspace is expanded to the southeast of the airport due to rising terrain, as it's needed to contain departures until reaching 700 feet above the surface.

The Class E surface airspace is amended to be coincident with the airport's Class D airspace legal description.

The Class E airspace area designated as an extension to a Class D or E surface area is removed southwest of the airport, as it is no longer needed. The Class E airspace area designated as an extension to a Class D or E surface area northwest of the airport is modified to more appropriately contain arrivals on the ILS/LOC RWY 12 approach.

The Class E airspace extending upward from 700 feet above the surface around Bozeman Yellowstone International Airport is reduced from a 13.5-mile radius to a 6.9-mile radius around the airport, as additional airspace is not necessary to contain IFR departures flying toward or over rising terrain. The Class E airspace extending upward from 700 feet above the surface northwest of the airport is reduced, as the existing airspace is excessive and not necessary. Class E airspace extending upward from 700 feet above the surface is extended southeast of the airport to contain IFR departures until reaching 1,200 feet above the surface, and IFR arrivals descending below 1,500 feet above the surface.

Finally, this action makes several administrative modifications to the airport's legal descriptions. The airport's geographic coordinates in the Class D and E legal descriptions are updated to match the FAA's database. The Class D and E2 legal descriptions are updated to replace the outdated use of the phrases ''Notice to Airmen,'' and ''Airport/Facility Directory.'' These phrases are amended to read ''Notice to Air Missions'' and ''Chart Supplement,'' respectively, to align with the FAA's current nomenclature. The airport name was removed from the Class E6 legal description due to redundancy. Lastly, the phrase ''excluding existing lateral limits of controlled airspace 12,000 feet MSL and above,'' was removed as it is unnecessary.

Class D, E2, E4, E5, and E6 airspace designations are published in

paragraphs 5000, 6002, 6004, 6005, and 6006, respectively, of FAA Order JO 7400.11G, dated August 19, 2022, and effective September 15, 2022, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in FAA Order JO 7400.11.

FAA Order JO 7400.11 is published annually and becomes effective on September 15.

Regulatory Notices and Analyses

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

Environmental Review

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

List of Subjects in 14 CFR 71

Airspace, incorporation by reference, navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the FAA amends 14 CFR part 71 as follows:

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR part 71.1 of FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM MT D Bozeman, MT [Amended]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′38″ N, long. 111°09′01″ W)

That airspace extending upward from the surface to and including 7,000 feet MSL within a 4.9-mile radius of Bozeman Yellowstone International Airport, and within 2.0 miles each side of the 146° bearing from the airport extending from the 4.9-mile radius of the airport to 6.5 miles southeast of the airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area.

* * * * *

ANM MT E2 Bozeman, MT [Amended]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′38″ N, long. 111°09′01″ W)

That airspace extending upward from the surface within a 4.9-mile radius of Bozeman Yellowstone International Airport, and within 2.0 miles each side of the 146° bearing from the airport extending from the 4.9-mile radius of the airport to 6.5 miles southeast of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Air Missions. The effective date and time will thereafter be continuously published in the Chart Supplement.

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D or Class E.

* * * * *

ANM MT E4 Bozeman, MT [Amended]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′38″ N, long. 111°09′01″ W)

That airspace extending upward from the surface within 3.4 miles each side of the 316° bearing from the Bozeman Yellowstone International Airport extending from the 4.9-mile radius of the airport to 13.5 miles northwest of the airport.

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

* * * * *

ANM MT E5 Bozeman, MT [Amended]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′38″ N, long. 111°09′01″ W)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius from the Bozeman Yellowstone International Airport, and within 1.8 miles each side of the 131° bearing from the airport extending from the 6.9-mile radius to 14.3 miles southeast of the airport, and within 2.7 miles northeast and 2.9 miles southwest of the 155° bearing from the airport extending from the 6.9-mile radius to 10.6 miles southeast of the airport, and within 3.6 miles each side of the 316° bearing from the airport extending from the 6.9-mile radius to 15.5 miles northwest of the airport.

Paragraph 6006 En Route Domestic Airspace Areas.

* * * * *

ANM MT E6 Bozeman, MT [Amended]

Bozeman Yellowstone International Airport, MT
(Lat. 45°46′38″ N, long. 111°09′01″ W)

That airspace extending upward from 1,200 feet above the surface within a 50-mile radius of the airport.

Issued in Des Moines, Washington, on November 8, 2022.

B.G. Chew,

Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2022–24800 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31455; Amdt. No. 4032]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight

operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 16, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 16, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA).

For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on October 14, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * *Effective Upon Publication*

AIRAC Date	State	City	Airport	FDC No.	FDC DI	Subject
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0727	10/4/22	ILS OR LOC RWY 3, Amdt 5C.
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0729	10/4/22	RNAV (GPS) Y RWY 3, Amdt 3C.
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0731	10/4/22	RNAV (GPS) RWY 17, Orig.
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0732	10/4/22	RNAV (GPS) RWY 35, Orig.
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0742	10/4/22	RNAV (GPS) Y RWY 21, Orig-C.
1–Dec–22	MT	Great Falls	Great Falls Intl	2/0743	10/4/22	VOR RWY 21, Amdt 10.
1–Dec–22	IA	Vinton	Vinton Veterans Meml Airpark.	2/2319	9/26/22	RNAV (GPS) RWY 27, Orig.
1–Dec–22	IA	Vinton	Vinton Veterans Meml Airpark.	2/2320	9/26/22	RNAV (GPS) RWY 9, Orig.
1–Dec–22	VT	Burlington	Burlington Intl	2/2692	9/19/22	ILS OR LOC/DME RWY 33, Amdt 1C.
1–Dec–22	IA	Davenport	Davenport Muni	2/3565	8/22/22	RNAV (GPS) RWY 21, Amdt 1F.
1–Dec–22	CA	San Bernardino	San Bernardino Intl	2/5618	10/6/22	ILS OR LOC Z RWY 6, Amdt 3.
1–Dec–22	CA	San Bernardino	San Bernardino Intl	2/5619	10/6/22	LOC Y RWY 6, Amdt 1.

[FR Doc. 2022–24928 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31454; Amdt. No. 4031]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective November 16, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 16, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. The National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email *fr.inspection@nara.gov* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29 Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and

textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (air).

Issued in Washington, DC, on October 14, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 1 December 2022

Winter Haven, FL, KGIF, RNAV (GPS) RWY 5, Amdt 1F
Winter Haven, FL, KGIF, RNAV (GPS) RWY 11, Orig-C
Winter Haven, FL, KGIF, VOR–A, Amdt 7C

Effective 29 December 2022

Healy, AK, Healy River, HEALY TWO, Graphic DP
Healy, AK, PAHV, RNAV (GPS) RWY 15, Amdt 1
Healy, AK, PAHV, RNAV (GPS)-A, Amdt 1
Sitka, AK, PASI, LDA RWY 11, Amdt 16
Carlisle, AR, 4M3, VOR RWY 9, Amdt 2D, CANCELLED
Washington, DC, KHEF, RNAV (GPS) RWY 16L, Amdt 2
Washington, DC, KHEF, RNAV (GPS) RWY 16R, Amdt 2
Miami, FL, KMIA, ILS OR LOC RWY 9, Amdt 11A
Pensacola, FL, KPNS, VOR RWY 8, Amdt 4D
Atlanta, GA, KCCO, ILS OR LOC RWY 33, Amdt 1
Lafayette, GA, 9A5, RNAV (GPS) RWY 2, Amdt 3
Lafayette, GA, 9A5, RNAV (GPS) RWY 20, Amdt 3
Statesboro, GA, KTBR, ILS OR LOC RWY 32, Amdt 4
Statesboro, GA, KTBR, RNAV (GPS) RWY 14, Orig
Statesboro, GA, KTBR, RNAV (GPS) RWY 32, Amdt 4
Bloomfield, IA, 4K6, NDB RWY 36, Amdt 3B, CANCELLED
Bloomington/Normal, IL KBMI, ILS OR LOC RWY 2, Orig-E
Bloomington/Normal, IL, KBMI, ILS OR LOC RWY 20, ILS RWY 20 (CAT II), Amdt 3C
Bloomington/Normal, IL, KBMI, ILS OR LOC RWY 29, Amdt 11C
Bloomington/Normal, IL, KBMI, LOC BC RWY 11, Amdt 12
Prestonsburg, KY, Big Sandy Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Nantucket, MA, KACK, Takeoff Minimums and Obstacle DP, Amdt 4
Sturgis, MI, KIRS, NDB RWY 19, Amdt 6A
Sturgis, MI, KIRS, RNAV (GPS) RWY 1, Orig-B
Sturgis, MI, KIRS, RNAV (GPS) RWY 19, Amdt 1C
Sturgis, MI, KIRS, Takeoff Minimums and Obstacle DP, Amdt 4A
Austin, MN, KAUM, VOR RWY 17, Amdt 3, CANCELLED
Louisville, MS, KLMS, RNAV (GPS) RWY 17, Amdt 3
Louisville, MS, KLMS, RNAV (GPS) RWY 35, Amdt 3
Louisville, MS, KLMS, Takeoff Minimums and Obstacle DP, Amdt 3
Billings, MT, KBIL, RNAV (GPS) RWY 25, Amdt 2C
Lincoln, NE, KLNK, ILS Y OR LOC Y RWY 36, Amdt 11L
Teterboro, NJ, KTEB, VOR RWY 24, Orig-F, CANCELLED
Teterboro, NJ, KTEB, VOR/DME RWY 6, Orig-F, CANCELLED
Teterboro, NJ, KTEB, VOR/DME–B, Amdt 2F, CANCELLED
Vineland, NJ, 29N, Takeoff Minimums and Obstacle DP, Amdt 1A, CANCELLED
Vineland, NJ, 29N, VOR OR GPS–B, Orig-A, CANCELLED
Lancaster, NY, KBQR, RNAV (GPS) RWY 9, Orig
Lancaster, NY, KBQR, RNAV (GPS) RWY 27, Orig
Lancaster, NY, KBQR, Takeoff Minimums and Obstacle DP, Orig
New York, NY, KJFK, ILS OR LOC RWY 4L, Amdt 11E
New York, NY, KJFK, ILS OR LOC RWY 13L, ILS RWY 13L (CAT II), Amdt 18D
Van Wert, OH, KVNW, RNAV (GPS) RWY 9, Orig-A
Van Wert, OH, KVNW, RNAV (GPS) RWY 27, Orig-A
Sterling, PA, 70N, RNAV (GPS)-A, Amdt 1A, CANCELLED
Sterling, PA, 70N, Takeoff Minimums and Obstacle DP, Amdt 1, CANCELLED
Sterling, PA, 70N, VOR/DME–B, Orig, CANCELLED
Anderson, SC, KAND, ILS OR LOC RWY 5, Amdt 2
Anderson, SC, KAND, RNAV (GPS) RWY 5, Amdt 2
Anderson, SC, KAND, RNAV (GPS) RWY 23, Amdt 3
Greenwood, SC, KGRD, VOR RWY 9, Amdt 14, CANCELLED
Newberry, SC, KEOE, NDB RWY 22, Amdt 6D
Madisonville, TN, KMNV, RNAV (GPS) RWY 5, Amdt 2D
El Paso, TX, KELP, ILS OR LOC RWY 22, Amdt 33
El Paso, TX, KELP, RNAV (GPS) Y RWY 22, Amdt 1
Greenville, TX, KGVT, ILS Y OR LOC Y RWY 17, Amdt 1B
Greenville, TX, KGVT, ILS Z OR LOC Z RWY 17, Amdt 9
Greenville, TX, KGVT, TACAN RWY 17, Orig-C
Sulphur Springs, TX, KSLR, VOR–B, Amdt 7A, CANCELLED
Port Angeles, WA, KNOW, COPTER NDB 242, Amdt 1A, CANCELLED
Appleton, WI, KATW, RNAV (GPS) RWY 21, Amdt 2E
Medford, WI, KMDZ, RNAV (GPS) RWY 27, Amdt 1A
Merrill, WI, KRRL, RNAV (GPS) RWY 7, Amdt 1D

Merrill, WI, KRRL, RNAV (GPS) RWY 25, Amdt 1C
Afton, WY, KAFO, RNAV (GPS) RWY 34, Amdt 4

[FR Doc. 2022–24927 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2021–0837; FRL–10029–02–R6]

Air Plan Approval; New Mexico; Clean Air Act Requirements for Nonattainment New Source Review Permitting for the 2015 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Clean Air Act (CAA or the Act), the Environmental Protection Agency (EPA) is approving revisions to the New Mexico State Implementation Plan (SIP) submitted by the State of New Mexico on August 10, 2021, that update the New Mexico Nonattainment New Source Review (NNSR) permitting program for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS).

DATES: This rule is effective on December 16, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R06–OAR–2021–0837. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet. Publicly available docket materials are available electronically through *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Adina Wiley, EPA Region 6 Office, Air Permit Section (ARPE), 214–665–2115, *wiley.adina@epa.gov.* Out of an abundance of caution for members of the public and our staff, the EPA Region 6 office may be closed to the public to reduce the risk of transmitting COVID–19. Please call or email the contact listed above if you need alternative access to material indexed but not provided in the docket.

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

I. Background

The background for this action is discussed in detail in our August 19, 2022, proposal (87 FR 51041). In that document we proposed to approve revisions to the New Mexico SIP adopted on July 21, 2021, that update the New Mexico NNSR permitting requirements to maintain consistency with the Federal NNSR program requirements. We also proposed to find that the New Mexico SIP includes the necessary provisions addressing CAA NNSR requirements for ozone nonattainment areas classified as Marginal.

We received two anonymous comments supporting our proposed approval. Both anonymous comments referenced the reduced overall emissions and favorable impact of the proposed rule for environmental justice purposes. The EPA appreciates the support of the commenters. We are making no changes to our proposed rule because of these comments.

II. Final Action

Pursuant to section 110 and part D of the Act, we are approving the submitted revisions to the New Mexico SIP that update the NNSR permitting requirements to maintain consistency with the Federal NNSR program requirements and address the 2015 ozone NAAQS requirements for nonattainment permitting. Specifically, we are approving the following revisions to the New Mexico SIP adopted on July 21, 2021, effective August 21, 2021:

- Revisions to 20.2.79.5 NMAC—Effective Date,
- Revisions to 20.2.79.7 NMAC—Definitions,
- Revisions to 20.2.79.9 NMAC—Documents,
- Revisions to 20.2.79.109 NMAC—Applicability,
- Revisions to 20.2.79.115 NMAC—Emission Offsets,
- Revisions to 20.2.79.119 NMAC—Tables, and
- Revisions to 20.2.79.120 NMAC—Actuals Plantwide Applicability Limits (PALs).

III. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference the revisions to the New Mexico regulations as described in Section II of this preamble, Final Action. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* a (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, 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, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: November 8, 2022.

Earthea Nance,

Regional Administrator, Region 6.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 52 as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart GG—New Mexico

■ 2. In § 52.1620:

■ a. In paragraph (c), amend the table titled ''EPA Approved New Mexico Regulations'' by revising the entry for ''Part 79''; and

■ b. In paragraph (e), amend the table titled ''EPA-Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the New Mexico SIP'' by adding an entry for ''Nonattainment New Source Review Requirements for the 2015 Ozone NAAQS'' at the end of the table.

The revision and addition read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c) * * *

EPA APPROVED NEW MEXICO REGULATIONS

State citation	Title/subject	State approval/ effective date	EPA approval date	Comments
*	*	*	*	*
Part 79	Permits—Nonattainment Areas	8/21/2021	11/16/2022, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

(e) * * *

EPA-APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE NEW MEXICO SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/ effective date	EPA approval date	Explanation
*	*	*	*	*
Nonattainment New Source Review Requirements for the 2015 Ozone NAAQS.	Sunland Park portion of Doña Ana County in the El Paso-Las Cruces, TX–NM Marginal nonattainment area.	8/21/2021	11/16/2022, [Insert **Federal Register** citation].	

[FR Doc. 2022–24748 Filed 11–15–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2022–0722; FRL–10156–02–R7]

Air Plan Approval; Missouri; Ameren Sioux Sulfur Dioxide Consent Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve a revision to the State Implementation Plan (SIP) for the State of Missouri. This final action will amend the SIP to incorporate an additional sulfur dioxide (SO_2) emissions limit for the Ameren Missouri (Ameren)—Sioux Energy Center (Sioux). Specifically, the EPA is approving into the SIP an additional SO_2 emissions limit and associated operating restrictions, monitoring, recordkeeping, and reporting (referred to as ''MRR''), and testing compliance requirements established in a consent agreement as permanent and enforceable SO_2 control measures.

DATES: This final rule is effective on December 16, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2022–0722. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Jason Heitman, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7664; email address: *heitman.jason@epa.gov.*

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

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I. What is being addressed in this document?
II. Have the requirements for approval of a SIP revision been met?
III. What action is the EPA taking?
IV. Environmental Justice Concerns
V. Incorporation by Reference
VI. Statutory and Executive Order Reviews

I. What is being addressed in this document?

The EPA is taking final action to approve source-specific revisions to the Missouri SIP. On September 1, 2022, the EPA published a notice of proposed rulemaking (NPRM) which proposed to approve the SIP revisions as submitted by Missouri on April 21, 2022 (87 FR 53703). The revisions include a specific SO_2 emissions limit and associated operating restrictions, MRR, and testing compliance requirements for the Ameren Sioux Facility as contained in Consent Agreement number APCP–2021–018. A copy of the Consent Agreement is included in the docket for this rulemaking. More detail on the EPA's analysis of the revisions can be found in the NPRM included in this docket.

II. Have the requirements for approval of a SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from December 27, 2021, to February 3, 2022, and received one comment. In addition, as explained above, the revision meets the substantive SIP requirements of the Clean Air Act, including section 110 and implementing regulations.

III. What action is the EPA taking?

On September 1, 2022, the EPA published a NPRM proposing to approve Missouri's April 21, 2022, SIP revision submittal (87 FR 53703). The EPA sought public comment on the NPRM and received no comments. Therefore, the EPA is taking final action to amend the Missouri SIP to include source-specific revisions pertaining to the Ameren Sioux Facility as contained in Consent Agreement number APCP–2021–018. Approval of these revisions will ensure consistency between State and federally approved rules. As described in the NPRM, the EPA has determined that these changes meet the requirements of the Clean Air Act and will not adversely impact air quality or the stringency of the SIP.

IV. Environmental Justice Concerns

When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. Area designations address environmental justice concerns by ensuring that the public is properly informed about the air quality in an area. In this action, the EPA is approving an additional emissions limit for a source into the Missouri SIP.

The EPA utilized the EJSCREEN tool to evaluate environmental and demographic indicators within the area. The tool outputs report is contained in the docket for this action. While the EPA's EJSCREEN tool demonstrates that demographic indicators are consistent or lower than national averages, there are vulnerable populations in the area including low-income populations and persons over 64 years of age.

Based on the information presented in this document, this proposed action does not result in disproportionately high and adverse human health or environmental effects on minority populations, low-income populations and/or indigenous peoples.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Consent Agreement discussed in Section I of this preamble and as set forth below in the amendments to 40 CFR part 52. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[1]

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k);

[1] 62 FR 27968, May 22, 1997.

40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).
- In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).
- This action is subject to the Congressional Review Act, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).
- Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 17, 2023. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 8, 2022.

Meghan A. McCollister,

Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart AA—Missouri

■ 2. In § 52.1320, the table in paragraph (d) is amended by adding an entry for ''(37)'' in numerical order to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(d) * * *

EPA-APPROVED MISSOURI SOURCE-SPECIFIC PERMITS AND ORDERS

Name of source	Order/permit No.	State effective date	EPA approval date	Explanation
* *	* *	*	* *	*
(37) Ameren Missouri—Sioux Energy Center.	Consent Agreement No. APCP–2021–018.	3/31/2022	11/16/2022, [insert **Federal Register** citation].	

* * * * *

[FR Doc. 2022–24789 Filed 11–15–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 371

[Docket No. FMCSA–2022–0134]

Definitions of Broker and Bona Fide Agents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notification of interim guidance; request for comments.

SUMMARY: FMCSA is issuing this interim guidance to inform the public and regulated entities about FMCSA's interpretation of the definitions of ''broker'' and ''bona fide agents'' as it relates to all brokers of transportation by motor vehicle. FMCSA is taking this action to better define the terms in response to a mandate in the Infrastructure Investment and Jobs Act (IIJA). After consideration of public comments received, FMCSA is providing clarification on its interpretation of the definitions of ''broker'' and ''bona fide agents,'' in addition to meeting other criteria

required by the IIJA. While this interim guidance is effective immediately, FMCSA is also seeking comments in response to this interim guidance and may issue updated guidance if comments demonstrate a need.

DATES:

Effective date: This updated guidance is effective November 16, 2022.

Comment date: Comments must be received on or before January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Secrist, Registration, Licensing, and Insurance Division, Office of Registration and Safety Information, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, (202) 385–2367, *jeff.secrist@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Request for Public Comments

FMCSA requests public comment on its regulatory guidance and the factors the Agency will use in its interpretation of the definitions of ''broker'' and ''bona fide agents.''

Docket: For access to the docket to read background documents or comments, go to *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, DOT, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its guidance process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

B. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0134), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2022-0134/document,* click on this notice, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

C. Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments to this notice contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the notice, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket for this notice. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this proceeding.

D. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0134/document* and choose the document to review. To view comments, click this notice, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

E. Privacy Act

In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its decision-making process DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14—FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

II. Background

Broker is defined in 49 U.S.C. 13102(2) as a ''person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.'' It is also defined in 49 CFR 371.2(a) as a ''person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.'' In that same section, *bona fide agents* are defined as ''persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.'' 49 CFR 371.2(b).

On November 15, 2021, the President signed the IIJA into law (Pub. L. 117–58, 135 Stat. 429). Section 23021 of the IIJA [1] directed the Secretary (FMCSA) to issue guidance, within one year of the date of enactment of the IIJA, clarifying the definitions of the terms ''broker'' and ''bona fide agents'' in 49 CFR 371.2. The guidance must take into consideration the extent to which technology has changed the nature of freight brokerage, the role of bona fide

[1] The full text is available at *congress.gov/117/plaws/publ58/PLAW-117publ58.pdf.*

agents, and other aspects of the freight transportation industry. Additionally, when issuing the guidance, FMCSA must, at a minimum: (1) examine the role of a dispatch service in the transportation industry; (2) examine the extent to which dispatch services could be considered brokers or bona fide agents; and (3) clarify the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. 14916, applicable to a dispatch service.[2]

In an effort to obtain and consider stakeholder input in the development of its guidance, FMCSA issued a **Federal Register** notice on June 10, 2022, seeking comment in 13 specific areas. 87 FR 35593.

Stakeholder Comments

FMCSA appreciates the robust response to our request for comment. Over 80 stakeholders filed comments in the public docket, including individuals, trade associations, brokers, and dispatch services.[3] While the Agency does not specifically reference all comments in this guidance, the Agency would like to assure stakeholders it has reviewed and considered all comments filed.

III. Compliance With the IIJA

A. Technology

As an initial matter, commenters were nearly unanimous that while technology has changed freight brokerage, such changes have not affected the fundamental nature of freight brokerage, nor are they relevant for the issuance of this guidance.[4] One commenter did note that the technological changes have exacerbated fraud problems.[5] Accordingly, while the Agency recognizes that brokerage has changed immeasurably due to technology, including moving from a phone based system to one based on the internet, such changes do not impact the fundamental nature of brokerage, which involves arranging transportation for compensation, and hence do not have a significant impact on this guidance.

B. Bona Fide Agents

Stakeholders provided FMCSA with useful information on the role of bona fide agents. Commenters have described bona fide agents as advocates or a sales force for a single motor carrier,[6] an outside sales force that acquires freight for an employer,[7] a dispatch service used in lieu of motor carrier employees,[8] people who look for freight for a motor carrier,[9] a service that allows motor carriers to outsource operations instead of having employees handle them,[10] a sales force from acquired motor carriers that big motor carriers use,[11] and an operation where people work for one motor carrier and have no discretion to allocate traffic.[12] Based upon stakeholder comments, it appears that bona fide agents are generally considered individuals/entities that solicit business for a motor carrier.

C. Other Aspects of the Freight Transportation Industry

Finally, stakeholders provided input, albeit more limited, on other aspects of the freight transportation industry. A broker indicated that other aspects of the transportation industry do not need to be considered.[13] A managing general agency and program administrator for insurance companies focused on transportation indicated that FMCSA should issue guidance that is consistent with the Motor Carrier Safety Improvement Act of 1999 and the Moving Ahead for Progress in the 21st Century Act (MAP–21).[14] A truck safety advocacy group indicated that FMCSA must issue a clear definition of broker that enables enforcement.[15] And, a coalition of stakeholders noted the significant ramifications of being considered a broker or not.[16]

While stakeholders did not provide FMCSA with specific information related to the requirement that the Agency must consider ''other aspects of the freight transportation industry'' in issuing the guidance, FMCSA recognizes that its guidance is operating in a broader context and has impacts beyond the immediate focus of this guidance. In today's notice, FMCSA has worked to avoid creating unintended consequences, in issuing guidance on its interpretation of its regulations and related matters. While guidance may be relevant to stakeholder compliance with FMCSA's regulations, any changes to FMCSA's regulations and hence compliance responsibilities would need to be enacted in a separate rulemaking proceeding.[17]

IV. Interim Guidance

With the aforementioned consideration of factors as background, FMCSA now turns to the core IIJA mandate: the issuance of guidance pertaining to the definition of broker and bona fide agents, the examination of the role of dispatch services in the transportation industry, the extent to which dispatch services could be considered brokers or bona fide agents, and the level of financial penalties for unauthorized brokerage activities under 49 U.S.C. 14916 applicable to a dispatch service. This document does not have the force and effect of law and is not meant to bind the public in any way, and the document is intended only to provide information to the public regarding existing requirements under the law or agency policies

A. Definition of Broker

While FMCSA is unable to change the definition of ''broker'' absent a rulemaking, it is able to provide clarification here. As an initial matter,

[2] Due to a statutory omission, FMCSA is unable to assess civil penalties for violations of 49 U.S.C. 14916 and may pursue such penalties only through the Department of Justice in federal court. Congress has indicated interest in FMCSA's statutory authority in a recent House Appropriations Committee Report.

[3] FMCSA appreciates commenters that provided submissions by the July 11 deadline for comment submission. A number of commenters submitted comments after the deadline. While FMCSA reminds stakeholders of the importance of submitting timely comments, in this particular proceeding, FMCSA will consider the late-filed comments in the interest of developing a complete record. While FMCSA accepted the comments in this proceeding, it may not consider late-filed comments in future proceedings.

[4] *See* comments of *Truckstop.com*, at 5; Mode Transportation (Mode), at 8; Transportation Intermediaries Association (TIA), at 10; National Industrial Transportation League (NITL), at 2; Small business in Transportation Coalition (SBTC), at 14; England Logistics (England), at 8; and Uship, at 3.

[5] *See* Comments of 13 stakeholders (13 Stakeholder comments), at 12–13. The 13 stakeholders include the Air & Expedited Motor Carriers Association, Airforwarders Association, Alliance for Safe, Efficient, and Competitive Truck Transportation (ASECTT), Auto Haulers Association of America, American Home Furnishings Alliance, Apex Capital Corp, National Association of Small Trucking Companies (NASTC), PFA Transportation Insurance & Surety Services, Sompo International, Transportation & Logistics Council, Specialized Furniture Carriers, The Expedite Association of North America, Transportation Loss Prevention and Security Association.

[6] *See* Mode comments, at 7.

[7] *See* comment of AWM Associates, LLC (AWM), at 4.

[8] *See* TIA comments, at 9.

[9] *See* comments of the Owner-Operator Independent Drivers Association (OOIDA), at 5.

[10] *See* comments of the Intermodal Association of North America (IANA), at 5.

[11] *See* 13 Stakeholder comments, at 10–11.

[12] *See* comments of the American Trucking Associations Moving and Storage Conference (MSC), at 5.

[13] *See* comments of Mode, at 8.

[14] *See* comments of Greenwich Transportation Underwriters, at 2.

[15] *See* comments of the Truck Safety Coalition (TSC), at 3. FMCSA reminds stakeholders that guidance is not enforceable, in contrast to statutes and regulations, which are.

[16] *See* 13 Stakeholder comments, at 4–6.

[17] FMCSA notes and appreciates SBTC's Petition for rulemaking regarding the definition of ''dispatcher.'' As noted in its response to SBTC, FMCSA is continuing to review SBTC's petition. Today's notice is not to be interpreted as a decision on SBTC's petition. Other stakeholders are free to file petitions for rulemaking related to the issues covered in today's notice as well.

there was a split amongst stakeholders on whether the current definition of broker was adequate. A majority of stakeholders believed that the current definition of broker was adequate,[18] while others proposed some changes. A safety advocacy group recommended amendment of the definition of ''broker.'' [19] A stakeholder representing the household goods (HHG) motor carrier industry asked FMCSA to clarify that merely selling leads does not require an entity to obtain broker authority.[20] One broker believed that FMCSA should amend the definition of ''broker'' to comport with changes in MAP–21 that required motor carriers and hence their agents to obtain broker operating authority.[21] Additionally, internet based load matching services have requested that FMCSA consider electronic load boards to not be considered brokers.[22]

Given the prevailing view among commenters that the current definition of ''broker'' is adequate, the Agency feels the need to clarify it in only one area: the relevance of an entity's handling of funds in a transaction between shippers and motor carrier. FMCSA appreciates the robust input it received on this issue. Some commenters believed that whether one handles funds is irrelevant to whether one is a broker.[23] A coalition of stakeholders believed the handling of money is not determinative in the broker determination.[24] Other stakeholders felt that the handling of money had at least some relevance as to whether one is brokering.[25]

After consideration of the stakeholder comments and the important role of financial responsibility in broker regulation,[26] FMCSA wishes to clarify that handling money exchanged between shippers and motor carriers is a factor that strongly suggests the need for broker authority, but it is not an absolute requirement for one to be considered a broker.

B. Definition of Bona Fide Agent

Next, FMCSA is mandated to clarify the definition of ''bona fide agents'' in 49 CFR 371.2. Stakeholders provided feedback on this point. A HHG motor carrier trade association thought the current definition was ''clear as to what entities fall within that term.'' [27] A broker indicated that the definition should be eliminated due to MAP–21 requiring motor carriers, and hence their agents, to have broker authority.[28] And multiple entities believe that in order to be deemed a ''bona fide agent'' one can represent only one motor carrier.[29]

After careful consideration, FMCSA has determined that representing more than one motor carrier does not necessarily mean one is a broker rather than a bona fide agent. Any determination will be highly fact specific and will entail determining whether the person or company is engaged in the allocation of traffic between motor carriers.

C. Role of Dispatch Services

Next, the IIJA required the agency to examine the role of dispatch services in the transportation industry and the extent to which such services could be considered brokers or bona fide agents.

Stakeholder comments make clear that there is no universally accepted definition of ''dispatch service,'' nor did Congress define the term in the IIJA provision mandating this guidance.[30] One broker trade association characterized it is as a vague term,[31] while a coalition of stakeholders said it is an invented term.[32] According to a self-identified dispatch service, dispatchers represent motor carriers, they don't connect shippers and motor carriers, they don't handle money, but they do provide carrier support services.[33] Additional commenters stated that dispatchers perform back office operations for motor carriers; [34] they book freight and perform other tasks; [35] they perform many administrative duties and basic accounting for small carriers; [36] and they are paid a percentage of the freight charges from a motor carrier.[37] Other stakeholders indicate that dispatch services find loads for motor carriers, handle administrative tasks and assist with compliance,[38] source shipments, and allocate shipments between motor carriers.[39] According to a shipper trade association, dispatch services would be expected to be like an in-house truck dispatcher, but in reality many are operating more like brokers.[40] A broker commenter indicated that dispatch services have multiple motor carriers in their client base, they seek freight and obtain freight for motor carriers, and they are paid by motor carriers.[41]

After consideration of the public comments, while it is clear that there is no commonly accepted definition of a dispatch service, such services appear to have certain common features. First,

[18] *See* comments of Mode, at 3–4; TIA, at 3; OOIDA, at 2; NITL, at 2; IANA, at 2; MSC, at 2–3; Agricultural and Food Transporters Conference of ATA and multiple state trucking associations (AFTC), at 2; 13 Stakeholder comments, at 4; Larry Walker.

[19] TSC comments, at 2. In order for FMCSA to consider such a change, TSC would need to file a petition for rulemaking.

[20] *See* comments of MSC, at 4. FMCSA appreciates MSC's comments and recognizes that they have raised the issue with the Agency for quite some time. In order to give stakeholders a chance to comment in this area, FMCSA will treat MSC's comments as a request for guidance on the definition of HHG broker and issue guidance in a separate proceeding.

[21] *See* Comments of England, at 1–4. FMCSA recognizes this issue but does not believe that this is the appropriate forum to resolve it. England would need to file a petition for rulemaking with the Agency for a change in the definition of ''broker.'' However, as England notes, Congress did not change the definition of ''broker'' in 49 U.S.C. 13102(2). In order for FMCSA to change the definition of broker in its regulations as England suggests, the Agency would have to carefully consider its authority to make such a change given that Congress specifically left the prior definition of ''broker'' in place in MAP–21.

[22] *See* comments of DAT, at 1; *Truckstop.com*, at 1–5; and Uship, at 4. Comments filed by representatives of the HHG motor carrier industry do not believe a carveout from the broker definition for load boards is appropriate. See comments of Unigroup/Mayflower/MoveRescue, at 3. While whether an entity requires broker operating authority must be determined on a case by case basis, FMCSA does not believe that where entities merely host an electronic platform for shippers and motor carriers to connect directly that broker operating authority registration is required. This position is consistent with a 2000 letter from FMCSA that has been placed in the docket. See Letter from Judith Rutledge, FMCSA Acting Chief Counsel, to Andrew K. Light, Esq.

[23] *See* comments of SBTC, at 6; England, at 5; TSC, at 2.

[24] *See* 13 Stakeholder comments, at 6–7.

[25] *See* comments of TIA, at 7; OOIDA, at 4; MSC, at 4; Cox Automotive, at 1–2.

[26] One of the most significant broker regulations is the requirement that brokers have a $75,000 bond or trust fund to protect motor carriers from non-payment. Where a shipper pays a fee to third party that then takes a profit and remits the balance to a motor carrier, the third party is clearly required to have broker authority. FMCSA will soon be issuing a Notice of Proposed Rulemaking on broker and freight forwarder financial responsibility, which will further clarify related duties.

[27] *See* comments of the MSC, at 5.

[28] *See* comments of England, at 1–4. As noted above, any such change would require rulemaking in accordance with the APA and statutory authority concerns would need to be addressed.

[29] *See* comments of TIA, at 8; NITL, at 2; SBTC, at 9.

[30] *See* comments of England, at 5–7.

[31] *See* TIA comments, at 7.

[32] *See* 13 stakeholder comments, at 7.

[33] *See* comments of Seeley & Sylvester. LLC, at 2–4; *See also* comments of A1 Express, at 2 (stating that dispatch services ''are and should be a carrier support service.'') Note that a number of individuals submitted identical comments which are cited as A1 Express.

[34] *See* Mode comments, at 5; *See also* comments from Shelley Smith (stating that ''a dispatcher should be categorized as a back office assistant because that is truly a power dispatcher.'').

[35] *See* comments of Quality Dispatching, at 5.

[36] *See* comments of WCF Freight Transport.

[37] *See* comments of AWM Associates LLC, at 2.

[38] *See* comments of OOIDA, at 4.

[39] *See* comments of IANA, at 3–4.

[40] *See* comments of the Transportation and Logistics Council, Inc., at 2.

[41] *See* comments of England, at 5–7.

they work exclusively for motor carriers, not for shippers. Second, they source loads for motor carriers. And third, they perform additional services for motor carriers that are unrelated to sourcing shipments.

D. Dispatch Service: Broker or Bona Fide Agent

Further, the IIJA mandated that FMCSA examine when a dispatch service could be considered a broker and when it could be considered a bona fide agent. Stakeholders provided significant input on these points.

A trade association indicated that when a dispatch service represents one motor carrier it is a bona fide agent, but when it represents more than one it is a broker.[42] A broker thought that when a dispatch service only performed back office operations, it was not a broker, but if it arranges loads it is.[43] A dispatch service indicated that dispatch services are bona fide agents, as they are merely agents to locate freight and are paid a flat fee or a percentage.[44] Another dispatch service also believes that a dispatch service is a bona fide agent and not a broker because dispatch services do not connect shippers with carriers that can transport their loads, and therefore do not meet the broker business model.[45] A consulting firm believes that dispatch services are bona fide agents if they are employees per IRS regulations, but not if they represent more than one motor carrier.[46] Several trade organizations believe that if a dispatch service represents more than one motor carrier it is a broker, and that the handling of funds warrants a finding of brokerage.[47] A coalition of 13 stakeholders believes that representing more than one motor carrier renders a dispatch service a broker, and a broker believes that representing more than one motor carrier takes one outside of the definition of ''bona fide agent.''[48] Finally, a dispatch service indicated that broker authority should be required only when arranging transportation on behalf of shippers.[49]

After careful consideration, FMCSA clarifies that when a dispatch service does not participate in the arrangement of freight, or when it represents only one motor carrier, it is not a broker. If a dispatch service arranges transportation on behalf of multiple motor carriers and engages in the allocation of traffic, however, then pursuant to 49 CFR 371.2, it is not a bona fide agent and must obtain broker operating authority registration. Ultimately, the analysis of whether a person or entity requires broker authority is often highly fact specific and must be made on a case-by-case basis.

Regarding whether a dispatch service is a bona fide agent, one must analyze whether the service falls within the definition of bona fide agent in 49 CFR 371.2(b). However, if the dispatch service allocates traffic between two motor carriers, it cannot be a bona fide agent by definition.

E. Dispatch Services That Would Not Require Broker Authority

Generally, the factors relevant to whether a dispatch service is not required to obtain broker authority are stated below:

(1) The dispatch service has a written legal contractual relationship with a motor carrier that clearly reflects the motor carrier is appointing the dispatch service as a licensed agent for the motor carrier. This is often a long-term contractual relationship;

(2) The written legal contract specifies the insurance and liability responsibilities of the dispatch service and motor carrier. The dispatch service must also meet all state licensing requirements;

(3) The dispatch service goes through a broker to arrange for the transportation of shipments for the motor carrier. The dispatch service may not seek or solicit shippers for freight;

(4) The dispatch service does not provide billing nor accept compensation from the broker, 3PL (third-party logistics company), or factoring company, but instead receives compensation from the motor carrier(s) based on the pre-determined written legal contractual agreement;

(5) The dispatch service is not an intermediary or involved in the financial transaction between a broker and motor carrier;

(6) The dispatch service is an IRS 1099 recipient from the motor carrier, or a W2 employee of the motor carrier as specified in the legal written contract agreement;

(7) The dispatch service discloses that they are a dispatch service operating under the authority of a specific motor carrier, and the shipment is arranged for that motor carrier only;

(8) The dispatch service does not subsequently assign or arrange for the load to be carried/moved by another motor carrier; or

(9) A dispatch service does not provide their ''services'' for a motor carrier unless that motor carrier specifically appointed the dispatch service as their agent in accordance with the aforementioned requirements.

F. Dispatch Services That Require Broker Authority

The following factors would indicate the dispatch service should obtain broker authority:

(1) The dispatch service interacts or negotiates a shipment of freight directly with the shipper, or a representative of the shipper;

(2) The dispatch service accepts or takes compensation for a load from the broker, or factoring company, or is involved in any part of the monetary transaction between any of those entities;

(3) The dispatch service arranges for a shipment of freight for a motor carrier, with which there is no written legal contract with the motor carrier that meets the aforementioned criteria;

(4) The dispatch service accepts a shipment without a truck/carrier, then attempts to find a truck/carrier to move the shipment;

(5) The dispatch service is a named party on the shipping contract; or

(6) The dispatch service is soliciting to the open market of carriers for the purposes of transporting a freight shipment.

It is clear based on feedback from industry that there is a need and desire for dispatch services, among large and small motor carriers. A beneficial role that a dispatch service may provide is the outsourcing of resources for small motor carriers who cannot afford a full-time employee to perform these functions. The dispatch service can help to ensure the motor carrier has a steady stream of shipments while allowing the motor carrier to focus on its core business of safely transporting freight. FMCSA does not believe it is the intent of Congress to eliminate the services that dispatch services provide.

While no single factor is paramount in assessing the business relationship between a dispatch service and a motor carrier, the extent of a motor carrier's control over the individual(s) performing the dispatch services is highly significant, *i.e.,* the dispatch service works on behalf of the motor carrier and makes decisions based on the motor carrier's guidance and direction. As noted, FMCSA determines whether a dispatcher is conducting broker operations on a case-by-case basis, utilizing factors including those above.

[42] *See* comments of IANA, at 4.

[43] *See* comments of Mode, at 5.

[44] *See* comments of Quality Dispatching, at 4–5.

[45] *See* comments of A1 Express, at 2.

[46] *See* comments of AWM, at 4.

[47] *See* comments of TIA, at 7; and OOIDA, at 4.

[48] *See* comments of 13 stakeholders, at 10; England, at 8.

[49] *See* comments of Seeley & Sylvester LLC, at 4.

G. Financial Penalties

Finally, FMCSA must clarify the level of penalties for unauthorized brokerage applicable to dispatch services. Such an assessment is straightforward. If the dispatch service is deemed to be providing unauthorized brokerage services pursuant to 49 U.S.C. 14916, the service will be subject to applicable penalties.[50] If no finding of unauthorized brokerage is made, it will not be subject to such penalties.

V. Request for Public Comment

FMCSA requests public comment on its regulatory guidance and the factors the Agency will use in its interpretation of the definitions of ''broker'' and ''bona fide agent.'' The Agency welcomes comments from stakeholders that are relevant to identifying a dispatch service that engages in actions that would require broker authority compared with actions that don't require broker authority. Additionally, FMCSA welcomes comments concerning the potential impact of this guidance on dispatch services upon which the broker rules would be considered applicable.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–24923 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–EX–P

[50] Penalties for violations of section 14916 are provided in 49 U.S.C. 14916(c)(1),(d).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054; RTID 0648–XC383]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2022 total allowable catch (TAC) of Atka mackerel in the CAI allocated to vessels participating in the BSAI trawl limited access sector fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2022, through 2400 hrs, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan (FMP) for Groundfish of the BSAI prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 TAC of Atka mackerel, in the CAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 1,500 metric tons by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the CAI by vessels participating in the BSAI trawl limited access sector fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the closure of the Atka mackerel directed fishing in the CAI for vessels participating in the BSAI trawl limited access sector fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 9, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 10, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–24941 Filed 11–10–22; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054]

RTID 0648–XC380

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Aleutian District of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific ocean perch in the Central Aleutian district (CAI) of the Bering Sea and Aleutian Islands management area (BSAI) by vessels participating in the BSAI trawl limited access sector fishery. This action is necessary to prevent exceeding the 2022 total allowable catch (TAC) of Pacific ocean perch in the CAI allocated to vessels participating in the BSAI trawl limited access sector fishery.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), November 10, 2022, through 2400 hrs, A.l.t., December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Steve Whitney, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP

appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2022 TAC of Pacific ocean perch, in the CAI, allocated to vessels participating in the BSAI trawl limited access sector fishery was established as a directed fishing allowance of 525 metric tons by the final 2022 and 2023 harvest specifications for groundfish in the BSAI (87 FR 11626, March 2, 2022).

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the CAI by vessels participating in the BSAI trawl limited access sector fishery. While this closure is effective, the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the directed fishing closure of Pacific ocean perch in the CAI for vessels participating in the BSAI trawl limited access sector fishery. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of November 9, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 10, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–24945 Filed 11–10–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 220
Wednesday, November 16, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 841 and 842

RIN 3206–AO42

Retirement: Members of Congress and Congressional Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The U.S. Office of Personnel Management (OPM) is proposing this rule to amend the CFR for purposes of ensuring these regulations reflect the provisions enacted under the Middle Class Tax Relief and Job Creation Act of 2012 (''2012 Act'') and the Bipartisan Budget Act of 2013 (''2013 Act''). The 2012 Act made significant changes to the retirement benefits of Members of Congress (Members) or congressional employees who are first covered by the Federal Employees' Retirement System (FERS) after December 31, 2012. The 2012 Act decreased the FERS benefit accrual rate used in the FERS annuity calculation for congressional employees or Members first covered by FERS (or reelected with less than five years of FERS service) after December 31, 2012. The 2012 Act also increased the FERS employee contributions by 1.8 percentage points for Members first covered by FERS (or reelected with less than five years of FERS-covered service) after December 31, 2012. Enactment of the 2013 Act, further increased the FERS employee deductions by an additional 1.3 percentage points for all FERS-covered employees first covered by FERS after December 31, 2013 (or rehired/reelected with less than five years of FERS-covered service), including Members and congressional employees. OPM's proposed rule amends the CFR to reflect these changes.

DATES: We must receive your comments by January 17, 2023.

ADDRESSES: You may submit comments identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

- *Electronic:* Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jane Bancroft, (202) 606–0299. Email: *Retirement.Policy@opm.gov,* with Public Law 112–96 and Attn: Jane Bancroft in the subject line.

SUPPLEMENTARY INFORMATION:

Background

Because of the uncertain tenure of congressional service, the Federal Employees Retirement System (FERS) was originally designed, as CSRS had been, to provide a larger benefit for each year of service to Members of Congress or congressional employees than to most other federal employees. Prior to the enactment of the 2012 Act, all Members of Congress (Members) or congressional employees became eligible for retirement annuities at an earlier age and with fewer years of service than most other federal employees. However, all Members or congressional employees paid a higher percentage of employee deductions for their retirement benefits than most other federal employees.

The 2012 Act made two significant changes to the retirement benefits of congressional employees and Members who are first covered by FERS after December 31, 2012. First, the 2012 Act decreased the FERS benefit accrual rates used in the FERS annuity calculation for congressional employees or Members first covered by FERS (or reelected with less than five years of FERS service) after December 31, 2012, to be the same as regular FERS employees. Therefore, the higher accrual rate applicable to Members or congressional employees is no longer available to those first covered by FERS after December 31, 2012.

Second, the 2012 Act increased the FERS employee contributions by 1.8 percentage points for Members first covered by FERS (or reelected with less than five years of FERS-covered service) after December 31, 2012. Therefore, Members newly covered by FERS beginning January 1, 2013, are required to contribute 3.1% of their basic pay to the Civil Service Retirement and Disability Fund. Enactment of the 2013 Act, further increased the FERS employee deductions by an additional 1.3 percentage points for all FERS-covered employees, including Members and congressional employees, first covered by FERS after December 31, 2013 (or rehired/reelected with less than five years of FERS-covered service). Subsequently, under the 2013 Act, Members and other federal employees first covered by FERS beginning in 2014 are required to contribute 4.4% of basic pay to FERS.

Beginning January 1, 2013, there is no longer a larger employee contribution under FERS required for Members and congressional employees in comparison with regular FERS employees; all of these groups contribute 3.1% of basic pay toward their FERS annuity if first covered after December 31, 2012, or 4.4% of basic pay if first covered by FERS after December 31, 2013. Members first elected after December 31, 2012, however, remain eligible for retirement annuities under FERS at earlier ages and with fewer years of service than regular federal employees.

Executive Order 12866

Executive Order 12866 Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). This proposed rule is not a significant regulatory action and was not reviewed by OMB under E.O. 12866.

Regulatory Flexibility Act

The Office of Personnel Management certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and

responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

The Congressional Review Act (5 U.S.C. 801 *et seq.*) requires rules (as defined in 5 U.S.C. 804) to be submitted to Congress before taking effect. OPM will submit to Congress and the Comptroller General of the United States a report regarding the issuance of this action before its effective date, as required by 5 U.S.C. 801. This is not a ''major rule'' as defined by the Congressional Review Act (5 U.S.C. 804(2)).

Paperwork Reduction Act

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

List of Subjects

5 CFR Part 841

Administrative practice and procedure, Air traffic controllers, Claims Disability benefits, Firefighters, Government employees, Income taxes, Intergovernmental relations, Law enforcement officers, Pensions, Retirement.

5 CFR Part 842

Air traffic controllers, Alimony, Firefighters, Law enforcement officers, Pensions, Retirement.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

For the reasons stated in the preamble, the Office of Personnel Management proposes to amend 5 CFR parts 841 and 842 to read as follows:

PART 841—FEDERAL EMPLOYEES RETIREMENT SYSTEM—GENERAL ADMINISTRATION

■ 1. Revise the authority citation for part 841 to read as follows:

Authority: 5 U.S.C. 8461; Sec. 841.108 also issued under 5 U.S.C. 552a; Secs. 841.110 and 841.111 also issued under 5 U.S.C. 8470(a); subpart D also issued under 5 U.S.C. 8423; Sec. 841.504 also issued under 5 U.S.C. 8422; Sec. 841.507 also issued under section 505 of Pub. L. 99–335; subpart J also issued under 5 U.S.C. 8469; Sec. 841.506 also issued under 5 U.S.C. 7701(b)(2); Sec. 841.508 also issued under section 505 of Pub. L. 99–335; Sec. 841.604 also issued under Title II, Pub. L. 106–265, 114 Stat. 780; Sec. 5001 of Pub. L. 112–96 at 126 Stat. 199.

■ 2. Amend § 841.103 by adding, in alphabetical order, the definition of ''FERS FRAE'' to read as follows:

§ 841.103 Definitions.

* * * * *

FERS FRAE, or a Further Revised Annuity Employee as identified under 5 U.S.C. 8422, is an employee or Member covered under FERS hired on or after January 1, 2014, unless the employee or Member—

(1) was covered under FERS on December 31, 2012; or

(2) performed civilian service creditable or potentially creditable under FERS on December 31, 2012;

(3) or, if not covered under FERS on December 31, 2012, performed at least 5 years of civilian service creditable or potentially creditable under FERS prior to December 31, 2012; or

(4) was covered under FERS RAE on December 31, 2013; or

(5) was performing civilian service creditable or potentially creditable under FERS RAE on December 31, 2013; or

(6) if not covered under FERS RAE on December 31, 2013, performed at least 5 years of civilian service creditable or potentially creditable under FERS prior to December 31, 2013.

FERS RAE, or a Revised Annuity Employee as identified under 5 U.S.C. 8422, is an employee or Member covered under FERS hired on or after January 1, 2013, and before January 1, 2014, unless the employee or Member—

(1) was covered under FERS on December 31, 2012; or

(2) performed civilian service creditable or potentially creditable under FERS on December 31, 2012; or

(3) if not covered under FERS on December 31, 2012, performed at least 5 years of civilian service creditable or potentially creditable under FERS prior to December 31, 2012.

■ 3. Amend § 841.503 by revising paragraphs (b) and (c), and adding paragraphs (d) and (e) to read as follows:

§ 841.503 Amounts of employee deductions.

* * * * *

(b) The rate of employee deductions from basic pay for FERS coverage for a Member, law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, Congressional employee, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees (who are not FERS RAE or FERS FRAE employees or Members, as defined under § 841.103 of this part), is seven and one-half percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(c) After December 31, 2012, the rate of employee deductions from basic pay for—

(i) a FERS RAE employee, Member, or Congressional employee is nine and three-tenths percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(ii) a FERS RAE law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees is nine and eight-tenths percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(d) After December 31, 2013, the rate of employee deductions from basic pay for—

(i) FERS FRAE employee, Member, or Congressional employee is ten and six-tenths percent basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(ii) a FERS FRAE law enforcement officer, firefighter, nuclear materials courier, customs and border protection officer, air traffic controller, member of the Supreme Court Police, or employee under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees is eleven and one-tenth percent of basic pay, minus the percent of tax which is (or would be) in effect for the payment, for the employee cost of social security.

(e) Employee deductions will be at the rate in paragraph (a) through (d) of this section as if social security deductions were being made even if social security deductions have ceased because of the amount of earnings during the year, or are not made for any other reason.

PART 842—FEDERAL EMPLOYEES RETIREMENT SYSTEM—BASIC ANNUITY

■ 4. Revise the authority citation for part 842 to read as follows:

Authority: 5 U.S.C. 8461(g); Secs. 842.104 and 842.106 also issued under 5 U.S.C. 8461(n); Sec. 842.104 also issued under Secs. 3 and 7(c) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.105 also issued under 5 U.S.C. 8402(c)(1) and 7701(b)(2); Sec. 842.106 also issued under Sec. 102(e) of Pub. L. 104–8, 109 Stat. 102, as amended by Sec. 153 of Pub. L. 104–134, 110 Stat. 1321–102; Sec. 842.107 also issued under Secs. 11202(f), 11232(e), and 11246(b) of Pub. L. 105–33, 111 Stat. 251, and Sec. 7(b) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.108 also issued under Sec. 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 842.109 also issued under Sec. 1622(b) of Pub. L. 104–106, 110 Stat. 515; Sec. 842.110 also issued under Sec. 111 of Pub. L. 99–500, 100 Stat. 1783, and Sec. 111 of Pub. L. 99–591, 100 Stat. 3341–348, and also Sec. 1 of Pub. L. 110–279, 122 Stat. 2602, as amended by Sec. 1(a) of Pub. L. 116–21, 133 Stat. 903; Sec. 842.208 also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Sec. 842.213 also issued under 5 U.S.C. 8414(b)(1)(B) and Sec. 1313(b)(5) of Pub. L. 107–296, 116 Stat. 2135; Secs. 842.304 and 842.305 also issued under Sec. 321(f) of Pub. L. 107–228, 116 Stat. 1383; Secs. 842.604 and 842.611 also issued under 5 U.S.C. 8417; Sec. 842.607 also issued under 5 U.S.C. 8416 and 8417; Sec. 842.614 also issued under 5 U.S.C. 8419; Sec. 842.615 also issued under 5 U.S.C. 8418; Sec. 842.703 also issued under Sec. 7001(a)(4) of Pub. L. 101–508, 104 Stat. 1388; Sec. 842.707 also issued under Sec. 6001 of Pub. L. 100–203, 101 Stat. 1300; Sec. 842.708 also issued under Sec. 4005 of Pub. L. 101–239, 103 Stat. 2106, and Sec. 7001 of Pub. L. 101–508, 104 Stat. 1388; Subpart H also issued under 5 U.S.C. 1104; Sec. 842.810 also issued under Sec. 636 of Appendix C to Pub. L. 106–554 at 114 Stat. 2763A–164; Sec. 842.811 also issued under Sec. 226(c)(2) of Pub. Law 108–176, 117 Stat. 2529; Subpart J also issued under Sec. 535(d) of Title V of Division E of Pub. L. 110–161, 121 Stat. 2042; Pub. L. 115–352, 132 Stat. 5067 (5 U.S.C. 101); Sec. 5001 of Pub. L. 112–96 at 126 Stat. 199; 5 U.S.C. 8401; 5 U.S.C. 8415.

Subpart D—Computations

■ 5. Revise § 842.406 to read as follows:

§ 842.406 Members of Congress and Congressional Employees.

(a) The annuity of a congressional employee or Member who is first covered by FERS on or before December 31, 2012, and who has had at least 5 years of service as a congressional employee, Member, or any combination thereof totaling 5 years is —

(1) One and seven-tenths percent of average pay multiplied by the total number of years of service as a Member and/or congressional employee not exceeding 20 years; plus

(2) One percent of average pay multiplied by the years of service other than that of a Member and/or congressional employee.

(b) Except as provided in paragraph (c) of this section, the annuity of a congressional employee or Member who is first covered by FERS after December 31, 2012, or Member re-elected with less than 5 years of FERS service after December 31, 2012, and who has had at least 5 years of service as a congressional employee, Member, or any combination thereof totaling 5 years is 1 percent of average pay multiplied by total service.

(c) The annuity of a congressional employee or Member is 1.1 percent of average pay multiplied by total service, provided the congressional employee or Member–

(i) Has completed 20 years of service; and

(ii) Is at least age 62 at the time of separation on which entitlement to an annuity is based.

[FR Doc. 2022–24875 Filed 11–15–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1152; Project Identifier MCAI–2022–00260–T]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain BAE Systems (Operations) Limited Model Avro 146–RJ series airplanes. This proposed AD was prompted by a report that certain inertial reference units (IRUs) have out-of-date magnetic variation (MagVar) tables. This proposed AD would require assessing the values between the MagVar tables of the affected IRUs and the most recently published MagVar data tables, and corrective actions if necessary. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 3, 2023.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1152; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3228; email *Todd.Thompson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1152; Project Identifier MCAI–2022–00260–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider

all comments received by the closing date and may amend the proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this NPRM.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone: 206–231–3228; email *Todd.Thompson@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The Civil Aviation Authority (CAA), which is the aviation authority for the United Kingdom, has issued CAA AD G–2022–0005, dated February 24, 2022 (CAA AD G 2022–0005) (also referred to after this as the MCAI), to correct an unsafe condition for Model AVRO 146–RJ airplanes equipped with Honeywell Inertial Reference Unit part number (P/N) HG2001BC02 or P/N HG2001BC04. You may examine the MCAI in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1152.

This proposed AD was prompted by a report that Honeywell IRUs, P/N HG2001BC02 and P/N HG2001BC04, have out-of-date MagVar tables. The navigation system for Model Avro 146–RJ series airplanes has an inertial reference system (IRS) that uses true north to calculate magnetic heading and track. The IRS includes IRUs with MagVar data tables that correct the heading/track for the effects of magnetic variation. Due to the change in the location of magnetic north over time, the level of IRS accuracy diminishes in certain geographical locations if an IRU's MagVar data table is not kept up to date with current WMM MagVar data tables. Consequently, certain airplanes may have IRUs with MagVar tables that are out of date, which can lead to inaccurate heading, course, and bearing calculations.

The FAA is proposing this AD to address IRUs having outdated MagVar data tables, which could lead to inaccurate IRS calculations, possibly resulting in increased risk of controlled flight into terrain, or collision with another airplane and injury to occupants. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

BAE Systems has issued All Operator Message 21–011V–1, Issue 1, dated September 27, 2021. This service information describes, among other actions, procedures for assessing the accuracy of an affected IRU's MagVar data table when compared to the existing WMM MagVar data tables, and corrective actions if the MagVar is greater than 2 degrees. The corrective actions include either updating an affected IRU's MagVar data tables, or operating an airplane only if the terrain awareness warning system (TAWS) and traffic collision avoidance system (TCAS) are installed and operative and revising the operator's FAA-approved minimum equipment list (MEL) to prohibit dispatch unless both TAWS and TCAS are installed and operative. BAE Systems All Operator Message 21–011V–1, Issue 1, dated September 27, 2021, also specifies that updating the data tables would terminate the MEL prohibition provided the airplane has operative TAWS and TCAS.

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

FAA's Determination

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

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except as discussed under ''Differences Between this Proposed AD and the MCAI.''

Differences Between This Proposed AD and the MCAI

CAA AD G–2022–0005 requires operators to provide ''information for flight crew'' regarding procedures for operating in areas with known or suspected significant magnetic variation and a means for flight crews to report other suspected affected locations.'' However, this proposed AD would not specifically require those actions as they are already required by FAA 14 CFR part 91 regulations.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 10 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$850

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited: Docket No. FAA–2022–1152; Project Identifier MCAI–2022–00260–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 3, 2023.

(b) Affected ADs

None.

(c) Applicability

This AD applies to BAE Systems (Operations) Limited Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes, certificated in any category, equipped with Honeywell inertial reference unit (IRU) part number (P/N) HG2001BC02 or P/N HG2001BC04.

(d) Subject

Air Transport Association (ATA) of America Code 34, Navigation.

(e) Unsafe Condition

This AD was prompted by a report that certain IRUs have out-of-date magnetic variation (MagVar) tables. The FAA is issuing this AD to address IRUs having outdated MagVar lookup tables, which could lead to inaccurate inertial reference system calculations, possibly resulting in increased risk of controlled flight into terrain, or collision with another airplane and injury to occupants.

(f) Compliance

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

(g) Definitions

For the purpose of this AD, the following definitions apply:

(1) *Affected IRU:* A Honeywell IRU having P/N HG2001BC02 using a MagVar lookup table from 1990, or P/N HG2001BC04 using a MagVar lookup table from 1995.

(2) *WMM:* World Magnetic Model, which is the standard model for navigation, altitude, and heading referencing systems using the geomagnetic field. The WMM is produced at 5-year intervals. The existing WMM as of November 16, 2022 was released December 10, 2019.

(h) Magnetic Variation Assessment

Within 3 months after the effective date of this AD, and thereafter at intervals not to exceed 5 years, assess the accuracy of an affected IRU's MagVar data table, in accordance with the Recommendations of BAE Systems All Operator Message 21–011V–1, Issue 1, dated September 27, 2021.

(1) If the difference between an affected IRU's MagVar data table and the existing WMM MagVar data tables is less than or equal to 2 degrees for the routes that the airplane may operate, no further action is required until the assessment is repeated, as required by the introductory text to paragraph (h) of this AD.

(2) If the difference between an affected IRU's MagVar data table and the existing WMM MagVar data tables is greater than 2 degrees for the routes that the airplane may operate: Do the actions required by paragraph (h)(2)(i) or (ii) of this AD.

(i) Within three months after the effective date of this AD or before further flight after the assessment in the introductory text to paragraph (h) of this AD, whichever occurs later: Update the airplane's affected IRU MagVar data tables in accordance with the Recommendations of BAE Systems All Operator Message 21–011V–1, Issue 1, dated September 27, 2021.

(ii) Comply with the provisions specified in, and at the times specified in, paragraphs (h)(2)(ii)(A) and (B) of this AD.

(A) Further flight is prohibited in areas where the difference between the installed and the existing WMM MagVar values exceeds the 2 degree tolerance unless both terrain awareness warning system (TAWS) and traffic collision avoidance system (TCAS) are installed and operative.

(B) Before further flight, revise the operator's existing FAA-approved minimum equipment list (MEL) to prohibit dispatch unless both TAWS and TCAS are installed and operative.

(3) If an affected IRU's MagVar data table cannot be determined, follow the procedures specified in the Recommendations of BAE Systems All Operator Message 21–011V–1, Issue 1, dated September 27, 2021.

(4) This AD does not require operators to provide flightcrews with certain operating procedures as those actions are already required by existing FAA operating regulations.

(i) Terminating Action for MEL Prohibition

Updating both affected IRUs, as specified in paragraph (h)(2)(i) of this AD, terminates the MEL prohibition specified in paragraph (h)(2)(ii)(B) of this AD, provided both TAWS and TCAS are installed and operative.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the Large Aircraft Section, International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* As of the effective date of this AD, for any requirement in this AD to obtain instructions from a

manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or the UK CAA; or BAE Systems (Operations) Limited's UK CAA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) CAA AD G–2022–0005, dated February 24, 2022, for related information. This MCAI may be found in the AD docket on the internet at *regulations.gov* by searching for and locating Docket No. FAA–2022–1152.

(2) For more information about this AD, contact Todd Thompson, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3228; email *Todd.Thompson@faa.gov.*

(3) For service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* internet *baesystems.com/Businesses/RegionalAircraft/index.htm.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on November 9, 2022.

Christina Underwood,

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

[FR Doc. 2022–24840 Filed 11–15–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 700

[EPA–HQ–OPPT–2020–0493; FRL–7911–04–OCSPP]

RIN 2070–AK64

Fees for the Administration of the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this document to modify and supplement its proposed rule issued on January 11, 2021, in which the Agency proposed updates and adjustments to the 2018 Fee Rule established under the Toxic Substances Control Act (TSCA). With over five years of experience administering the TSCA amendments of 2016, EPA is publishing this document to ensure that the fees charged accurately reflect the level of effort and resources needed to implement TSCA in the manner envisioned by Congress when it reformed the law. Additionally, the purpose of this document is to propose narrowing certain proposed exemptions for entities subject to the EPA-initiated risk evaluation fees and propose exemptions for the test rule fee activities; to propose modifications to the self-identification and reporting requirements for EPA-initiated risk evaluation and test rule fees; to propose a partial refund of fees for premanufacture notices withdrawn at any time after the first 10 business days during the assessment period of the chemical; to propose modifications to EPA's proposed methodology for the production volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario where a consortium is not formed; to propose expanding the fee requirements to companies required to submit information for test orders; to propose modifying the fee payment obligations to require payment by processors subject to test orders and enforceable consent agreements (ECA); to propose extending the timeframe for test order and test rule payments; as well as to propose changes to the fee amounts and the estimate of EPA's total costs for administering TSCA.

DATES: Comments must be received on or before January 17, 2023.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2020–0493, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Marc Edmonds, Existing Chemicals Risk Management Division (7404M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–0758; email address: *edmonds.marc@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be affected by this action if you manufacture (including import), process, or distribute in commerce a chemical substance (or any combination of such activities) and are required to submit information to EPA under TSCA sections 4 or 5, or if you manufacture a chemical substance that is the subject of a risk evaluation under TSCA section 6(b).The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them.

Potentially affected entities may include companies found in major NAICS groups:

- Chemical Manufacturers (NAICS code 325).
- Petroleum and Coal Products (NAICS code 324).
- Chemical, Petroleum and Merchant Wholesalers (NAICS code 424).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What is the Agency's authority for taking this action?

TSCA, 15 U.S.C. 2601 *et seq.,* as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act of 2016 (Pub. L. 114–182) (Ref. 1), provides EPA with authority to establish fees to defray, or provide payment for, a portion of the costs associated with administering TSCA sections 4, 5, and 6, as amended, as well as the costs of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances under TSCA. EPA is required in TSCA section 26(b)(4)(F) to review and, if necessary, adjust the fees every three years, after consultation with parties potentially subject to fees, to ensure that funds are sufficient to defray part of the cost of administering TSCA. EPA is issuing this supplemental notice of proposed rulemaking under TSCA section 26(b), 15 U.S.C. 2625(b).

C. What action is the Agency taking?

After establishing fees under TSCA section 26(b), TSCA requires EPA to review and, if necessary, adjust the fees every three years, after consultation with parties potentially subject to fees.

This document describes proposed changes to 40 CFR part 700, subpart C as promulgated in the 2018 Fee Rule (Ref. 2) and explains the methodology by which these proposed changes to TSCA fees were determined. This supplemental notice of proposed rulemaking adds to and modifies the proposed rulemaking issued on January 11, 2021 (''the 2021 Proposal'') (Ref. 3). EPA is proposing to narrow certain proposed exemptions for entities subject to the EPA-initiated risk evaluation fees and propose exemptions for test rule fee activities; to modify the self-identification and reporting requirements for EPA-initiated risk evaluation and test rule fees; to institute a partial refund of fees for premanufacture notices withdrawn at any time after the first 10 business days during the assessment period of the chemical; to modify EPA's proposed methodology for the production volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario where a consortium is not formed; to expand the fee requirements to companies required to submit information for test orders; to modify the fee payment obligations to require payment by processors subject to test orders and ECA; to extend the timeframe for test order and test rule payments; and to change the fee amounts and the estimate of EPA's total costs for administering TSCA sections 4, 5, 6, and 14.

D. Why is the Agency taking this action?

The fees collected under TSCA are intended to achieve the goals articulated by Congress by providing a sustainable source of funds for EPA to fulfill its legal obligations under TSCA sections 4, 5, and 6 and with respect to information management under TSCA section 14. Information management includes ''collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under [section 14] information on chemical substances under [TSCA]. In 2021, EPA proposed changes to the TSCA fee requirements established in the 2018 Fee Rule based upon TSCA fee implementation experience and proposed to adjust the fee amounts based on changes to program costs and inflation and to address certain issues related to implementation of the fee requirements (Ref. 3). EPA consulted and met with stakeholders that were potentially subject to fees, including several meetings with individual stakeholders and a public webinar in February 2021. Additional information on stakeholder engagement can be found in the 2021 Proposal Unit III.A.1 (Ref. 3). EPA is hosting another public engagement after the publication of this proposed rule where EPA will hear from stakeholders on the proposed TSCA fees. This engagement and the previous stakeholder outreach will inform EPA's final rule.

This supplemental proposal takes into consideration comments received in response to the 2021 Proposal which EPA plans to respond to, along with comments received on this notice, when EPA finalizes the rule. Based on these comments, adjustments to EPA's cost estimates, and experience implementing the 2018 Fee Rule, EPA is issuing this supplemental notice and is requesting comments on the proposed provisions and primary alternative provisions described herein that would add to or modify the 2021 Proposal. TSCA allows the Agency to collect approximately but not more than 25 percent of its costs for eligible TSCA activities via fees; however, fee revenue has been roughly half of the estimated costs for eligible activities than EPA estimated in the 2018 Fees Rule. The reason for the shortfall was, in part, that EPA used estimates of the costs based on what the Agency had historically spent on implementing TSCA prior to the 2016 amendments, not what it would cost the Agency to implement TSCA in the manner envisioned and directed by Congress in the Lautenberg Amendments. In the first four years following the 2016 law's enactment, EPA also did not conduct a comprehensive budget analysis designed to estimate the actual costs of implementing the amended law until the spring of 2021. In this notice, EPA is proposing to revise its cost estimate to adequately account for the anticipated costs of meeting its statutory mandates, which are based on the comprehensive analysis conducted in 2021. These proposed revisions are designed to ensure fee amounts capture approximately but not more than 25 percent of the costs of administering certain TSCA activities, fees are distributed equitably among fee payers when multiple fee payers are identified by revising the fee allocation methodology for EPA-initiated risk evaluations, and fee payers are identified via a transparent process.

E. What are the estimated incremental impacts of this action?

EPA has evaluated the potential incremental economic impacts of the 2021 Proposal, as modified by this supplemental notice for FY 2023 through FY 2025. The ''Economic Analysis of the Supplemental Notice of Proposed Rule for Fees for the Administration of the Toxic Substances Control Act'' (Economic Analysis) (Ref. 4) is available in the docket and is briefly summarized here.

1. *Benefits.* The principal benefit of the 2021 Proposal, as modified by this supplemental notice, is to provide EPA a sustainable source of funding necessary to administer certain provisions of TSCA.

2. *Cost.* The annualized fees collected from industry under the proposed cost estimate described in this supplemental notice are approximately $45.47 million (at both 3 percent and 7 percent discount rates [*Note:* The annualized fee collection is independent of the discount rate.]), excluding fees collected for manufacturer-requested risk evaluations. Total annualized fee collection was calculated by multiplying the estimated number of fee-triggering events anticipated each year by the corresponding fees (Ref. 4). Total annual fee collection for manufacturer-requested risk evaluations is estimated to be $3.01 million for chemicals included in the 2014 TSCA Work Plan (TSCA Work Plan) (based on the assumed potential for two requests over the three-year period) and approximately $2.99 million for chemicals not included in the TSCA Work Plan (based on the assumed potential for one request over the three-year period) (Refs. 4 and 5). EPA analyzed a three-year period because the statute requires EPA to reevaluate and adjust, as necessary, the fees every three years.

3. *Small entity impact.* EPA estimates that 29 percent of section 5 submissions will be from small businesses that are eligible to pay the section 5 small business fee because they meet the definition of ''small business concern.'' Total annualized fee collection from small businesses submitting notices under section 5 is estimated to be $666,810 (Ref. 4). For sections 4 and 6, reduced fees paid by eligible small businesses and fees paid by non-small businesses may differ because the fee paid by each entity would be dependent on the number of entities identified per fee-triggering event and production volume of that chemical substance. EPA estimates that average annual fee collection from small businesses for fee-triggering events under section 4 and section 6 would be approximately $103,574 and $2,896,351, respectively (Ref. 4). For each of the three years covered by this proposed rule, EPA estimates that total fee revenue collected from small businesses will account for about 6 percent of the approximately $52 million total fee collection, for an

annual average total of approximately $3 million.

4. *Environmental justice.* Although not directly impacting environmental justice-related concerns, the fees will enable the Agency to better protect human health and the environment, including in helping minority, low-income, tribal, or indigenous populations in the United States that potentially experience disproportionate environmental harms and risks, and supporting the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation and enforcement of environmental laws, regulations and policies involving TSCA. EPA identifies and addresses environmental justice concerns by providing for fair treatment and meaningful involvement in the implementation of the TSCA program and addressing unreasonable risks from chemical substances.

5. *Effects on State, local, and Tribal governments.* The proposed rule would not have any significant or unique effects on small governments, or federalism or tribal implications.

F. What should I consider as I prepare my comments for EPA?

1. Submitting CBI. Do not submit CBI information to EPA through *https://www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets#tips.*

II. Background

TSCA authorizes EPA to establish, by rule, fees for certain fee-triggering activities under TSCA sections 4, 5, and 6. In so doing, the Agency must set lower fees for small business concerns and establish the fees at a level such that they will offset approximately but not more than 25 percent of the Agency's costs to carry out a broader set of activities under TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14. In addition, in the case of manufacturer-requested risk evaluations, the Agency is directed to establish fees sufficient to defray 50 percent of the costs associated with conducting a manufacturer-requested risk evaluation on a chemical substance included in the TSCA Work Plan, and 100 percent of the costs of conducting a manufacturer-requested risk evaluation for all other chemicals. EPA is also required in TSCA section 26(b)(4)(F) to review and adjust, as necessary, the fees every three years.

On January 11, 2021, EPA proposed updates and adjustments to the 2018 Fee Rule (Ref. 2). This included proposed modifications to the TSCA fees and fee categories for fiscal years (FY) 2023, 2024, and 2025, and explained the methodology by which these TSCA fees were determined. EPA proposed to add three new fee categories: a Bona Fide Intent to Manufacture or Import Notice (Bona Fide Notice), a Notice of Commencement of Manufacture or Import (NOC), and an additional fee associated with test orders. In addition, EPA proposed exemptions for entities subject to certain fee triggering activities, including: (1) an exemption for research and development activities; (2) an exemption for entities manufacturing less than 2,500 pounds (lbs) of a chemical subject to an EPA-initiated risk evaluation; (3) an exemption for manufacturers of chemical substances produced as a non-isolated intermediate; and (4) exemptions for manufacturers of a chemical substance subject to an EPA-initiated risk evaluation if the chemical substance is imported in an article, produced as a byproduct, or produced or imported as an impurity. EPA proposed to update its cost estimates for administering TSCA and individual fee calculation methodologies. EPA also proposed a production volume-based fee allocation for EPA-initiated risk evaluation fees in any scenario where a consortium is not formed and proposed to require export-only manufacturers to pay fees for EPA-initiated risk evaluations. EPA also proposed various changes to the timing of certain activities required throughout the fee payment process.

EPA requested public comments on its proposal through February 25, 2021, and later extended the comment period through March 27, 2021 (86 FR 10918). EPA received a total of 43 comments. Of the 43 submissions, there were two comment submissions and five oral comments associated with a public webinar hosted on February 18, 2021 (Ref. 6) and three requests for a comment period extension. Based on comments received on the proposed rule, stakeholder engagement, and EPA's continued experience in implementing the 2018 Fee Rule (*e.g.,* through collection of fees associated with EPA-initiated risk evaluations for the 20 High Priority Substances (*https://www.epa.gov/tsca-fees/tsca-fees-epa-initiated-risk-evaluations*), EPA is supplementing its proposal.

III. Proposed Changes

A. Agency Costs for the Administration of TSCA

As explained in Unit I.D. of this document, TSCA allows the Agency to collect approximately but not more than 25 percent of its costs for eligible TSCA activities via fees; however, fee revenue has been approximately half of what was estimated in the 2018 Fees Rule. Therefore, EPA is revising its cost estimates to account for the resources needed for anticipated implementation efforts. The Lautenberg amendments of 2016 were the first major overhaul of the TSCA statute in forty years. The Lautenberg Act promised a broad array of far-reaching improvements to America's chemical safety infrastructure by requiring EPA to use strengthened TSCA authorities to protect human health and the environment more effectively from risks. EPA's early implementation efforts included establishing key rules laying out the framework under which EPA would act in implementing the amendments, initiating the first 10 multi-year risk evaluations of existing chemicals in commerce, developing a process for making required determinations on all TSCA section 5 notices, and refreshing the TSCA inventory of chemicals in commerce. However, EPA faces challenges in TSCA implementation that stem from new requirements established through the 2016 Lautenberg amendments.

The primary reason for these implementation challenges is a lack of resources. Although EPA has the authority to offset approximately but not more than 25 percent of the Agency's costs to carry out a broader set of activities under TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14, the 2018 Fee Rule did not include the collection of any fees for the first 10 TSCA risk evaluations [Note: EPA will not be collecting fees for the first 10 TSCA risk evaluation.] and the baseline

cost estimates that drove the fee amounts in that rule were selected by using the costs for implementing TSCA before the law was amended and thus before EPA was required to carry out any of its new responsibilities. In other words, the baseline cost estimates EPA chose were based on what EPA spent on implementing TSCA before it was amended in 2016, not what it would cost the Agency to implement the revised law in the manner envisioned and directed by Congress, resulting in an artificially-low baseline cost estimate. In the first four years following the 2016 law's enactment, EPA also did not conduct a comprehensive budget analysis designed to estimate the actual costs of implementing the amended law until the spring of 2021. Thus, the 2018 Fee Rule, and particularly, the Rule's failure to collect any fees associated with any of the first 10 risk evaluations resulted in collection of roughly half of the (artificially-low) baseline costs EPA has the authority to collect, resulting in additional implementation challenges discussed in the following paragraphs.

Under TSCA section 5, EPA conducts risk assessments and risk management activities for hundreds of new chemical submissions per year to assess the safety of such chemicals before they enter commerce and take action to prevent unreasonable risk. However, due to resource constraints, EPA has a backlog of delayed reviews. The backlog of delayed cases continues to increase and drives competition for Agency resources with new incoming cases. The backlog is due to both a change made by the 2016 amendments, which shifted the Agency's past practice of conducting initial ''screening'' reviews of chemicals for risk and only making risk determinations on about 20 percent of the new chemical submittals it received to the new statutory requirement to make such determinations on 100 percent of submittals, and the absence of the additional resources required to implement 2016 amendments. This will ensure that new chemicals entering commerce do not present an unreasonable risk to human health and the environment under the conditions of use.

Additional funding collected through TSCA fees will help EPA reduce the backlog of delayed reviews, support additional work for new cases, and provide necessary support to address new chemicals-related, such as those for chemicals like per- and polyfluoroalkyl substances (PFAS) actions.

Under TSCA section 6, EPA is responsible for developing existing chemical risk evaluations, including for chemicals designated as High-Priority Substances through prioritization. TSCA requires evaluations to be completed in three and a half years from the date of initiation of the risk evaluation. EPA experienced significant implementation challenges and missed the statutory deadlines for nine of the first 10 chemical substance risk evaluations, which primarily resulted from the start-up time needed to develop an approach for implementing the Lautenberg Act and scaling up to handle 10 simultaneous risk evaluations. Additionally, as previously noted, no fees were collected for the first 10 risk evaluations, further limiting the resources available to conduct this work. Going forward, EPA has a statutory requirement to ensure that risk evaluations are being conducted on at least 20 High-Priority Substances and an additional number of manufacturer-requested chemicals. Experience has shown that at current funding and staffing levels, 20 risk evaluations will not be completed within the statutory timeframe. Collecting additional resources through TSCA fees will enable EPA to significantly improve on-time performance and quality.

Improved performance (timeliness and quality) in developing risk evaluations is also contingent on obtaining needed data in a timely manner. Increased resources will support issuance of additional TSCA section 4 test orders to close any relevant data gaps identified in the Prioritization process or the Scoping stage of the risk evaluation process for High-Priority Substances or to advance additional information development activities through TSCA section 4, such as the issuance of test order for certain PFAS, as informed by the National PFAS Testing Strategy (Ref. 7). Delivering data that enables the completion of risk evaluations on a timelier basis may also improve EPA's delivery of the risk reduction benefits through earlier development and issuance of risk management actions and may thereby increase benefits to human health and the environment.

Under TSCA section 14, EPA is required to review and make determinations regarding the validity of a significant portion of CBI claims. EPA reviews, processes, and provides access to and/or protects CBI from disclosure, as appropriate, on information reported under TSCA. The CBI review requirements of TSCA section 14 apply to submissions to EPA under TSCA, including sections 4, 5, 6, 8, and 12. Increased resources will ensure EPA continues to establish improved processes, systems, and procedures to enable submitters to provide the information required when making CBI claims and to facilitate EPA's review, where applicable, under TSCA section 14.

To offset approximately but not more than 25 percent of the Agency's costs, and for the various reasons listed throughout this document and in Unit III.B., EPA is proposing to revise its costs estimates to adequately account for the anticipated costs of meeting its statutory mandates, which are based on a comprehensive analysis conducted in 2021. The estimate includes anticipated implementation efforts and resources, which EPA sees as consistent with recommendations and statements made previously by the Office of Inspector General (OIG), the Government Accountability Office (GAO) and Congress. For example, the 2020 EPA OIG report, titled ''Lack of Planning Risks EPA's Ability to Meet Toxic Substances Control Act Deadlines,'' recommends that EPA include the ''anticipated'' implementation efforts and financial and staff resources when planning for work conducted under the Lautenberg amendments of 2016, particularly for existing chemicals work (Ref. 8). The GAO, in its 2021 report titled ''Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas,'' acknowledged that a lack of resources has impacted EPA's ability to successfully implement TSCA. The report also stated that EPA needs to conduct planning to make sure it has the resources and plans in place to facilitate progress on risk evaluations and other work implementing TSCA (Ref. 9). In a joint explanatory statement in Congress's FY 2022 omnibus spending bill, Congress reminded the Agency that the Lautenberg Act established a shared responsibility for the taxpayer and industry to contribute their share to support the TSCA program. In addition, Congress encouraged the Agency to properly consider full costs in its deliberations, in line with the Lautenberg Act's intent (Ref. 10).

B. Program Cost Estimates and Activity Assumptions

EPA calculated fees by estimating the total annual costs of carrying out relevant activities under TSCA sections 4, 5, and 6 (excluding the costs of manufacturer-requested risk evaluations) and conducting relevant information management activities under TSCA section 14; identifying the full cost amount to be defrayed by fees under TSCA section 26(b) (*i.e.,* 25 percent of those annual costs); and allocating that amount across the fee-triggering events in TSCA sections 4, 5,

and 6. In addition, EPA affords small businesses an approximately 80 percent discount, in accordance with TSCA section 26(b)(4)(A).

The estimated annual Agency costs of carrying out relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14 in the 2021 Proposal were based on cost data from FY 2019 and 2020 which were the first full FY after EPA implemented a time reporting system that tracks employee hours worked on administering TSCA. However, this estimate did not include any costs of TSCA section 6(a) risk management activities that are now required to be underway for the first 10 chemical substances or that will be required for any of the 20 High Priority Substances for which the Agency finds unreasonable risks. Since the proposed rule was published, EPA has developed a more accurate estimate of its anticipated costs to implement TSCA in the manner envisioned by Congress when it amended the law in 2016. The estimate is informed by the Agency's experience administering TSCA since 2016, factors in the Agency's failure to meet the statutory deadlines for 9 of the first 10 existing chemical risk evaluations and consistent challenges meeting the requirements associated with reviewing new chemicals, and thus includes what the Agency believes is a much more reliable estimate of the resources needed for the anticipated implementation efforts than the inaccurate cost estimate that was previously used. Changes to program cost estimates are discussed in the following sections and in more detail in the *2022 TSCA Fees Technical Support Document (TSD)* (Ref. 11).

Total Agency costs of carrying out relevant activities under TSCA sections 4, 5, 6 and relevant information management activities under TSCA section 14 are estimated at approximately $181.9 million each year (which differs from the $87.5 million discussed in the 2021 Proposal). Based on the new cost estimates, EPA anticipates collecting approximately 25 percent of that, or $45.5 million each year (which differs from the $22 million discussed in the 2021 Proposal) in fees collected from all fee-triggering events, except manufacturer-requested risk evaluations (MRREs). The increase in costs from the 2021 Proposal is due to multiple factors on top of the lack of a comprehensive analysis of baseline costs until 2021 as has already been discussed in this Unit. For example, estimates in the 2021 Proposal did not include any costs of TSCA section 6(a) risk management activities that are now required to be underway for the first 10 chemical substances or that will be required for any of the 20 High Priority Substances for which the Agency finds unreasonable risks, which resulted in EPA significantly underestimating TSCA section 6 Agency costs. In addition, the estimate from the 2021 Proposal did not include costs for EPA's plan to develop and implement a multi-year collaborative research program under section 5, which is explained in more detail in this Unit.

For new chemical submissions under TSCA section 5, EPA has now formulated a per unit cost estimate that was not included in the 2021 Proposal. The updated estimate provides a more comprehensive accounting of program implementation, which includes, but is not limited to: (1) costs incurred by EPA for multiple rounds of revisions to the risk assessment due to late submission of information or rebuttals by companies, (2) multiple rounds of risk management actions, redactions and posting of final reports to meet transparency commitments while safeguarding CBI, (3) IT infrastructure maintenance and enhancement to ensure the quality and safeguard of data collection, storage and reporting, staffing and contractor support from supporting offices such as the Office of General Counsel (OGC), the Office of Enforcement and Compliance Assurance (OECA), and the Office of Research and Development (ORD), among others, and (4) other operational costs that were not previously captured or fully itemized. The anticipated direct and indirect program costs associated with relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14 for FY 2023 through FY 2025, are listed in Table 1 below.

TABLE 1—ESTIMATED ANNUAL COSTS TO EPA

[FY 2023 through FY 2025]

	Annual costs
TSCA section 4	$7,383,300
TSCA section 5	54,162,600
TSCA section 6 (excluding manufacturer-requested risk evaluations).	88,251,500
TSCA section 14	1,783,800
Agency Indirect Costs	30,316,200
Total	$181,897,400

Table Note: The indirect cost rate is estimated at 20 percent for the purposes of this analysis.

1. Program Costs

To determine the program costs for implementing relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14, the Agency accounted for the direct costs, both intramural and extramural, for those activities.

Intramural costs are those costs related to the efforts exerted by EPA staff and management in operating the program, collecting and processing information and funds, conducting reviews, and related activities. Extramural costs are those costs related to the acquisition of contractors to conduct activities such as analyzing data, developing IT systems, and supporting the TSCA Help Desk.

The Agency then added indirect costs to the direct program cost estimates. The Agency used an indirect cost rate of 20 percent to calculate the indirect costs associated with all direct program cost estimates for TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14 based on EPA's indirect cost methodology as required by Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts (Ref. 12).

a. TSCA Section 4 Program Costs

TSCA permits the Agency to undertake test rules, test orders, and enforceable consent agreements (ECA). Developing these regulatory actions is a complex, time-consuming, and

resource-intensive process involving many scientific and regulatory considerations. EPA must establish what information is required, inventory what reasonably available information EPA has that would address EPA's needs, what testing will provide such information, and what test protocols—such as the Organisation for Economic Co-operation and Development (OECD) test guidelines—can generate such information. Standard globally recognized test guidelines may sometimes be appropriate to inform certain data needs, however, other times, EPA may need to look elsewhere such as at New Approach Methods or even develop new protocols because of the spectrum of data needs and multiple technical considerations that go into determining testing requirements. Additionally, the Agency must satisfy the requirements of the statute to reduce vertebrate testing (*i.e.,* the use of vertebrate animals in testing to generate chemical information to assess risks to health or the environment posed by substances or mixtures), which may involve the use of New Approach Methods. Ultimately, EPA seeks to ensure that the testing required generates useful, high-quality data. For example, depending on the complexity of the chemical substance(s) or mixture(s) that is(are) the subject of a test order, EPA estimates that developing and issuing a test order generally takes a minimum six months of personnel fully allocated (assuming one to two personnel depending on the complexity of the test order and the number of recipients of the test order) and an array of technical personnel from different disciplines partially allocated to doing test order work. The complexity associated with a chemical substance(s) or mixture(s) made the subject of a test order is influenced by EPA's grasp of the scientific and market data on and analytical methods applicable to the chemical(s). Further resources are also needed to administer the test orders after they have been issued (*e.g.,* answering questions related to its requirements, reviewing submissions, etc.); the number of resources needed for such activities varies depending on the complexity of the testing requirements and the number of recipients.

EPA's limited resources have hampered the Agency from effectively exercising those authorities (*e.g.,* in support of the prioritization of the 20 High-priority Substances). In addition, EPA intends to expand the use of Section 4 authorities significantly moving forward to inform prioritization of substances for risk evaluation and develop the most scientifically-sound risk evaluations of those chemical substances. Additional resources will facilitate the Agency's exercise of these authorities under TSCA. Therefore, to estimate the costs associated with TSCA section 4 activities, the Agency relied upon prior experience with the past test orders, test rules and ECAs, and considered anticipated costs to cover future TSCA section 4 activities. Based on past experience and anticipated costs, EPA has calculated the total program costs for TSCA section 4 activities to be approximately $7.38 million annually. More information about EPA's estimated TSCA section 4 costs basis can be found in the *TSD* (Ref. 11).

b. TSCA Section 5 Program Costs

Under the 2016 amendments to TSCA, EPA must review and make a determination pertaining to all new chemical substances or significant new uses of chemicals submitted under TSCA section 5(a) before they can proceed to the marketplace. Previously, EPA conducted initial reviews of TSCA section 5 notices and determined whether further review was needed, and made an interim finding following the initial review. Before the 2016 amendments, about 80 percent of new chemical reviews were halted at this 'interim' stage and were allowed into commerce without further review. Following the 2016 amendments to TSCA, EPA modified its review processes such that all TSCA section 5 notices go through a full risk assessment and receive a risk determination, and therefore the Agency no longer makes interim findings.

EPA estimates that it will receive 210 premanufacture notices (PMNs), significant new use notices (SNUNs), and microbial commercial activity notices (MCANs) per year, and another 290 exemption notices and applications per year. EPA's cost estimates for administering TSCA section 5 include the costs associated with processing and retaining records related to NOC submissions, as well as the costs of pre-notice consultations, processing and reviewing applications, retaining records, and related activities. This estimate is based on a projected 185 full-time equivalents (FTEs) and extramural support needed for these actions. Costs estimates for administering TSCA section 5 activities also include EPA's plan to develop and implement a multi-year collaborative research program to modernize the information used in performing risk assessments for new chemical substances under TSCA and bring innovative science to the review of the new chemicals before they can enter the marketplace. More information related to this research program can be found in the *TSD* (Ref. 11). These activities and additional funding needs resulted in EPA proposing higher fees for TSCA section 5 activities in this document.

Based on past experience and anticipated costs, EPA has estimated the total program costs for TSCA section 5 activities to be approximately $54.2 million annually in FY 2023 through FY 2025. More information about EPA's estimated TSCA section 5 costs basis can be found in the *TSD* (Ref. 11).

c. TSCA Section 6 Program Costs

EPA has the authority under TSCA section 26(b) to collect fees to recover costs for TSCA section 6 activities including prioritization, risk evaluations, and risk management rulemaking. TSCA section 6 cost estimates have been informed by the Agency's experience conducting evaluations for the first 10 chemical substances to undergo risk evaluation under amended TSCA, by the Agency's experience prioritizing and developing the scope of the risk evaluations of the 20 chemicals designated as High-Priority Substances in December 2019, and by the Agency's initial and ongoing experience with risk management actions addressing unreasonable risks identified in the first 10 chemical substance risk evaluations. Cost estimates for risk management activities have also been informed by EPA's recent risk management actions on several chemicals under TSCA section 26(l)(4) authority, including development of the proposed rules regarding the use of N-methylpyrrolidone and methylene chloride in paint and coating removal, and the use of trichloroethylene in both commercial vapor and aerosol degreasing and for spot cleaning in dry cleaning facilities, and the development of the final rule regarding methylene chloride in consumer paint and coating removal.

During the public comment period on the 2021 Proposal, EPA received comments stating that EPA underestimated the TSCA section 6 costs. For example, commenters stated that EPA inappropriately relied on narrow, partially completed risk management actions to inform the cost of its current and future risk management actions (Docket Number EPA–HQ–OPPT–2020–0493). Commenters also raised concerns stating that EPA had not reconciled the costs for administering section 6 activities

which had been reduced compared to the 2018 Fee Rule despite the increase in risk management workload. Additionally, EPA's estimates did not include any costs of TSCA section 6(a) risk management activities for the first 10 chemical substances or 20 High Priority Substances in the proposal which resulted in EPA underestimating TSCA section 6 Agency costs. Therefore, EPA is proposing to include recent risk management activities into the TSCA section 6 program cost estimates. Although section 6 cost estimates were informed by risk management and risk evaluation activities for the first 10 chemicals, EPA will not be recovering fees for those chemicals. Adding more recent and comprehensive risk management costs and the anticipated increases associated with prioritization and risk evaluation costs, as described previously and in more detail in the TSD, would result in the estimated annual cost to administer TSCA section 6 to be approximately $88 million per year, except the MRREs.

In the case of manufacturer-requested risk evaluations, the Agency is directed to establish fees sufficient to defray 50 percent of the costs associated with conducting a manufacturer-requested risk evaluation on a chemical substance included in the TSCA Work Plan, and 100 percent of the costs of conducting a manufacturer-requested risk evaluation for all other chemicals. EPA is also required in TSCA section 26(b)(4)(F) to review and adjust, as necessary, the fees every three years. The Agency intends to collect fees to recover 50 percent or 100 percent of the actual costs incurred by EPA in conducting chemical risk evaluations requested by manufacturers, depending on whether the chemical substance is included in the TSCA Work Plan. EPA expects the amount collected will be approximately $4.40 million per risk evaluation for chemicals on the TSCA Work Plan and $8.98 million per risk evaluation for chemicals not on the TSCA Work Plan.

d. Costs of Collecting, Processing, Reviewing, and Providing Access to and Protecting From Disclosure as Appropriate Under TSCA Section 14 Information on Chemical Substances

EPA is making minimal changes to estimates of program costs of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances that were previously described in the 2021 Proposal. More information about specific activities considered when developing this estimate for activities under section 14 can be found in the 2021 Proposal (Ref. 3).

The annual cost estimate of collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate information on chemical substances under section 14 of TSCA, including 8.6 FTE and extramural costs, from FY 2023 through FY 2025 is approximately $1.8 million (Ref. 4).

2. Indirect Costs

Indirect costs are the intramural and extramural costs that are not accounted for in the direct program costs, but are important to capture because of their necessary enabling and supporting nature, and so that EPA's proposed fees will accomplish full cost recovery up to that provided by law. Indirect costs typically include such cost items as accounting, budgeting, payroll preparation, personnel services, purchasing, centralized data processing, and rent.

EPA included indirect costs in its estimate of total Agency costs pursuant to OMB Circular A–25 (Ref. 13) which states that agencies should collect the full costs when setting fees. In addition, section 6(d)(1) explains that full costs include all direct and indirect costs to the Federal Government. EPA describes how an indirect cost rate is determined annually according to EPA's indirect cost methodology and as required by Federal Accounting Standards Advisory Board's Statement of Federal Financial Accounting Standards No. 4: Managerial Cost Accounting Standards and Concepts in the 2021 Proposal. An indirect cost rate of 20 percent was applied to direct program costs of work conducted by EPA's Office of Chemical Safety and Pollution Prevention. Some of the direct program costs included in the estimates for TSCA sections 4, 5, and 6 and collecting, processing, reviewing, and providing access to and protecting from disclosure as appropriate under TSCA section 14 information on chemical substances are for work performed in other Agency offices (*e.g.,* the Office of Research and Development and the Office of General Counsel). Appropriate indirect cost rates were applied to those cost estimates and are based on EPA's existing indirect cost methodology. Indirect cost rates are calculated each year and therefore subject to change. Indirect costs of approximately $30 million were included in the program cost estimates in the previous sections.

3. Total Costs of Fee-Triggering Events

The annual estimated costs for fee categories under TSCA section 4, including both direct and indirect program costs, are shown in Table 2. Note that the costs presented in Tables 2 through 4 include only the costs of fee triggering events and do not include costs associated with activities such as CBI reviews and alternative testing methods development. Costs associated with those activities are part of the overall costs of administering relevant activities under TSCA sections 4, 5, and 6 and relevant information management activities under TSCA section 14 and, as such, are included in the overall cost estimates provided previously in Table 1.

The Agency believes it is reasonable to assume that approximately 75 test orders per year will be initiated between FY 2023 and FY 2025. Approximately 45 of these test orders are expected to be associated with the Agency's actions on PFAS. In addition, the EPA assumed two test rules and two ECAs between FY 2023 and FY 2025.

TABLE 2—TSCA SECTION 4 COSTS *

	$ Total costs	Payroll	$ Non-payroll	FTE
TSCA Section 4 Activities	$7,383,300	$4,878,000	$2,505,300	27.9

* **Table Note:** Numbers may not add due to rounding.

The estimated annual costs for fee categories under TSCA section 5, including both direct and indirect program costs are shown in Table 3. EPA estimates that it will receive 210 PMNs, SNUNs, and MCANs per year, and another 290 exemption applications per year. EPA's cost estimates for administering TSCA section 5 include the costs associated with processing and retaining records related to a NOC submission, as well as the costs of pre-notice consultations, processing and reviewing applications, retaining records, and related activities.

TABLE 3—TSCA SECTION 5 COSTS *

	$ Total costs	Payroll	$ Non-payroll	FTE
TSCA Section 5 Activities	$54,162,600	$32,370,000	$21,792,600	185.2

* **Table Note:** Numbers may not add due to rounding.

The estimated annual costs for fee categories under TSCA section 6, including both program and indirect costs are shown in Table 4. EPA estimates that the EPA's workforce will be involved in at least 3 MRRE and at least 20 EPA-initiated chemical risk evaluations at all times.

TABLE 4—TSCA SECTION 6 COSTS *

	$ Total costs	Payroll	$ Non-payroll	FTE
TSCA Section 6				
TSCA Section 6 Prioritization	$8,820,900	$6,254,000	$2,566,900	35.9
EPA-initiated Risk Evaluation	54,877,100	28,291,100	26,585,900	161.40
Manufacturer-requested Risk Evaluation	7,483,200	3,857,900	3,625,400	22.0
TSCA Section 6 Risk Management	24,553,500	13,536,000	11,017,500	77.3
Totals	95,734,700	51,939,000	43,795,700	296.6

* **Table Note:** Numbers may not add due to rounding.

C. Fee Amounts

While TSCA allows the Agency to collect approximately but not more than 25 percent of its costs for eligible TSCA activities via fees, to date, EPA has collected roughly half of that amount due to the insufficiencies of the current fees rule. These proposed revisions are designed to ensure fee amounts capture approximately but not more than 25 percent of the costs of TSCA activities, fees are distributed equitably, and fee payers are identified via a transparent process. Although TSCA allows EPA to recover approximately but not more than 25 percent of its costs of implementing certain provisions of TSCA, the percentage applies to the total aggregate cost and does not preclude EPA from recovering an amount above or below 25 percent of the costs for each section of TSCA.

As discussed in the 2021 Proposal, the existing and proposed fee categories are fee-triggering events that result in obligations to pay fees but do not encompass all activities under TSCA sections 4, 5, 6, and 14 that incur costs to the Agency (*e.g.,* costs of administering TSCA section 14, risk management activities under section 6, prioritization of chemicals for evaluation, support for alternative testing and methods development and enhancement). However, costs for all relevant activities are included in the total Agency costs estimate, even those not discussed in this document (*e.g.,* specific TSCA work with other EPA offices). Therefore, EPA is proposing fee amounts to ensure these costs would be captured, not just the costs of the fee-triggering events. EPA is also proposing new fee amounts to capture the higher proportion (in percentage) of the estimated costs of TSCA section 6 activities and ensure EPA fees are set to recover approximately but not more than 25 percent of the total cost for implementing the relevant sections of TSCA.

After estimating the annual costs of administering relevant activities under TSCA sections 4, 5, 6, and relevant information management activities under TSCA section 14, the Agency had to determine how the costs would be allocated over the narrower set of activities under TSCA sections 4, 5, and 6 that trigger a fee. The Agency took an approach to determining fees that tied the payment of fees to individual distinct activity types or ''fee-triggering events.''

The proposed fee amounts are described in Table 5.

TABLE 5—PROPOSED CHANGES TO TSCA FEE AMOUNTS

Fee category	2018 Fee rule	Current fees [1]	2022 Supplemental proposed rule
Test order	$9,800 [2]	$11,650	$25,000.
Test rule	$29,500	$35,080	$50,000.
Enforceable consent agreement	$22,800	$27,110	$50,000.
PMN and consolidated PMN, SNUN, MCAN and consolidated MCAN.	$16,000	$19,020	$45,000.
LoREX, LVE, TME, Tier II exemption, TERA, Film Articles.	$4,700	$5,590	$13,200.
EPA-initiated risk evaluation	$1,350,000	Two payments resulting in $2,560,000.	Two payments resulting in $5,081,000.
Manufacturer-requested risk evaluation on a chemical included in the TSCA Work Plan.	Initial payment of $1.25M, with final invoice to recover 50% of actual costs.	Two payments of $945,000, with final invoice to recover 50% of actual costs.	Two payments of $1,497,000, with final invoice to recover 50% of actual costs.
Manufacturer-requested risk evaluation on a chemical *not* included in the TSCA Work Plan.	Initial payment of $2.5M, with final invoice to recover 100% of actual costs.	Two payments of $1.89M, with final invoice to recover 100% of actual costs.	Two payments of $2,993,000, with final invoice to recover 100% of actual costs.

[1] The current fees reflect an adjustment for inflation required by TSCA. The adjustment went into effect on January 1, 2022.

[2] In 2018 final rule, the fees for TSCA section 4 test orders and test rules were incorrectly listed as $29,500 for test orders and $9,800 for test rules. The 2021 Proposal proposes to correct this error by changing the fees for TSCA section 4 test orders to $9,800 and TSCA section 4 test rules to $29,500.

1. Fee Amounts for TSCA Section 4 Activities

EPA is proposing changes to the fees associated with TSCA section 4 activities. Additional justification for fee triggering activities associated with each TSCA section is discussed within this Unit. In addition, in the 2021 Proposal, EPA proposed an additional fee category under TSCA section 4 for amended test orders. EPA is proposing to remove this new fee category (discussed in further detail in Unit III.D).

EPA is proposing fees that, based on the expected activity levels of the three fee categories for TSCA section 4 activities, will defray 26.4 percent of the program costs described in the previous paragraphs, or approximately $1.94 million. The proportion (in percentage) of the estimated cost of the activity is slightly higher for fees for TSCA section 4 (26.3 percent) to ensure EPA is recovering the required 25 percent of the total cost for implementing the relevant sections of TSCA in light of collecting less than 25 percent of costs for section 5 activities as explained in Unit III.C.2.

2. Fee Amounts for TSCA Section 5 Activities

EPA currently sets two fee amounts for TSCA section 5 activities—one for notices (PMNs, SNUNs, and MCANs), and one for exemptions which include low exposure/low release exemptions (LoREXs), low volume exemptions (LVEs), test-marketing exemptions (TMEs), certain microorganism Tier II exemptions (Tier II), and TSCA experimental release applications (TERAs). In the 2021 Proposal, EPA proposed two additional fee categories under TSCA section 5, one for Bona Fide Notices and the other for NOCs. EPA is proposing to remove those two new fee categories (discussed in further detail in Unit III.D), as well as proposing to increase the fee amounts under TSCA section 5 activities. Specifically, EPA is proposing an increase to the fees for PMNs, consolidated PMNs, SNUNs, MCANs, consolidated MCANs, LoREXs, LVEs, TMEs, Tier II, TERAs, and film article exemptions.

Additional funding collected through TSCA section 5 fees will help EPA reduce the backlog of delayed reviews and support additional work for new cases. As previously noted, these delays result from a years-long absence of the additional resources required to implement the 2016 amendments, which shifted the Agency's past practice of making risk determinations on about 20 percent of the new chemical submittals it received to a requirement to make such determinations on 100 percent of submittals. The fee increases for TSCA section 5 activities, if finalized as proposed in this document, would also shift costs for administering TSCA section 5 away from fees for TSCA section 6 actions. EPA proposed to increase TSCA section 6 fees to recover costs for TSCA section 5 activities in the 2021 Proposal. As newly proposed, the fees for TSCA section 5 activities amount to approximately 18 percent of the estimated costs of the activities and are described in Table 5. EPA is proposing to collect less than 25 percent of the costs for section 5 activities to lessen the impact due to the increase in section 5 fee amounts since 2018. For example, before the 2018 Fee Rule the fee for a PMN was $2,500. The fee was increased to $16,000 in the 2018 Fee Rule and will be increased further to $45,000 under this proposal. Due to the significant increase since 2018, is proposing to reduce the impact of increased section 5 fees by collecting less than 25 percent of the implementation costs for section 5. EPA is requesting comment on its proposal to recover less than 25 percent of the costs for implementing TSCA section 5.

EPA also accounted for full (100 percent) refunds that may be provided when estimating the total fees collected and in setting the fee amounts. Full refunds may be provided for notices or exemptions when EPA determines a submission is not a new chemical substance, new microorganism, or significant new use, or when the Agency fails to make a determination on a notice by the end of the applicable notice review period. In addition, EPA is proposing to refund 20 percent of the user fee to the submitter if a notice is withdrawn after 10 business days after the beginning of the applicable review period, but prior to EPA initiating risk management on the chemical substance. The 20 percent refund is based on the allocation of resources needed for risk assessment and risk management of chemical substances under TSCA section 5 where 80 percent of costs are associated with risk assessment and 20 percent with risk management. Based on the number of PMNs withdrawn during FY 2020 and 2021, EPA estimates that approximately 23 percent of PMNs are withdrawn during review (discussed in further detail in Unit III.E).

3. Fee Amounts for TSCA Section 6 Activities

EPA collects one fee amount for EPA-initiated risk evaluations. Based on the expected activity levels of this fee category, this will defray 38.4 percent of the estimated program costs. As explained in Unit III.C.2, EPA is collecting under 25 percent of the costs for section 5 activities. For this reason and to ensure EPA is recovering the required 25 percent of the total cost for implementing the relevant sections of TSCA, the proportion (in percentage) of the estimated cost of EPA-initiated risk evaluations that are recovered by fees is higher (38.4 percent) than the other fee triggering activities. EPA takes an actual cost approach for manufacturer-requested risk evaluations, whereby the requesting manufacturer (or requesting consortia of manufacturers) would be obligated to pay either 50 percent or 100 percent of the actual costs of the activity, depending on whether the chemical was listed on the TSCA Work Plan or not, respectively.

Based on additional cost estimates for risk management and anticipated increases associated with prioritization and risk evaluation costs, as described in Unit III.B.1.a., estimated Agency costs for TSCA section 6 activities have increased to $88,251,500 per year with fee collections of $33,890,270 for EPA-initiated risk evaluations. EPA is proposing to increase the EPA-initiated risk evaluation fees from the 2021 Proposal of $2,560,000 to $5,081,000 (or from $1.35 million in the 2018 Fee Rule). This payment would be collected over two installments, the first payment of 50 percent to be due 180 days after EPA publishes the final scope of a chemical risk evaluation and the second payment due not later than 545 days after EPA publishes the final scope of a chemical risk evaluation, as proposed in the 2021 Fee Proposal.

As stated previously, EPA takes an actual cost approach for manufacturer-requested risk evaluations. In addition, EPA proposed in the 2021 Proposal to separate the manufacturer-requested risk evaluation payments into three installments with the total fee paid reflecting the actual cost. Based on that proposed installment plan and the estimated costs of these risk evaluations, two payments of $1,497,000 then invoiced for the remainder is being

proposed for chemicals on the TSCA Work Plan and two payments of $2,993,000 with final invoice for the remainder is being proposed for chemicals not listed on the TSCA Work Plan.

D. Fee Categories

Under the 2018 Fee Rule, EPA has eight distinct fee categories: (1) test orders, (2) test rules, and (3) Enforceable Consent Agreements (ECAs), all under TSCA section 4; (4) notices and (5) exemptions, both under TSCA section 5; and (6) EPA-initiated risk evaluations; (7) manufacturer-requested risk evaluations for chemicals on the TSCA Work Plan; and (8) manufacturer-requested risk evaluations for chemicals not on the TSCA Work Plan, all under TSCA section 6. The activities in these categories are fee-triggering events (other than the first 10 risk evaluations) that result in obligations to pay fees under the 2018 Fee Rule.

In the 2021 Proposal, EPA proposed two additional fee categories under TSCA section 5, Bona Fide Notices and NOCs, and one additional fee category for TSCA section 4 amended test orders. After considering public comments received on the 2021 Proposal, and in an effort to keep the fee structure simple by reducing the number of fee categories, EPA is proposing not to finalize the new fee categories for Bona Fide Notices, NOCs, and amended test orders.

The cost associated with NOCs will continue to be captured with those of PMNs, MCANs, and SNUNs, as they were under the 2018 Fee Rule. EPA believes these fees are better captured under the proposed fee increase for existing TSCA section 5 categories. In addition, while EPA envisioned the additional fee for amended test orders to create an incentive for manufacturers to submit facially complete data outlined under TSCA section 4, in order to simplify the TSCA section 4 fee structure EPA is proposing to remove the amended test order fees. Because the costs incurred by EPA to review resubmitted data are included in the Agency's total program cost estimate, these costs will be captured under other fees.

E. Refund for Withdrawal During Review

In addition to increasing the TSCA section 5 fees for PMNs, SNUNs, and MCANs, EPA is proposing to refund 20 percent of the user fee to the submitter if a notice is withdrawn after 10 business days after the beginning of the applicable review period, but prior to EPA initiating risk management on the chemical substance. In the 2018 Fee Rule, EPA established a partial refund (*i.e.,* 75 percent of the fee amount) for TSCA section 5 submissions withdrawn during the first 10 business days after the beginning of the applicable review period (83 FR 52694, October 17, 2019). EPA is proposing an amendment to add a partial refund of 20 percent for TSCA section 5 submissions withdrawn after the first 10 business days during the assessment period of the chemical but before EPA begins any necessary risk management. This newly proposed refund is in addition to the already existing refund of 75% for notices withdrawn in the first 10 business days established under the 2018 Fee Rule. After EPA concludes the risk assessment for a TSCA section 5 submission, the Agency will provide the submitter notice that the risk assessment has been completed and the submitter will then have five business days to withdraw their notice for a partial refund of 20 percent. After 5 business days from receiving the notice that the risk assessment has been completed, if the company wishes to withdraw a notice, no refund will be given.

When EPA's review leads to a determination that one or more conditions of use may present an unreasonable risk and EPA lacks sufficient information to permit a reasoned evaluation of the health and environmental effects of the PMN substance, or on the basis of insufficient information alone, the Agency will issue a section 5(e) order to address potential risks and may require testing for additional information. After learning of the Agency's determination and risk management actions, a submitter may no longer wish to pursue the commercialization of the chemical substance, depending on the potential risks identified and any risk mitigation likely required to address those risks.

EPA's proposal to refund 20 percent of the fee is based on the allocation of resources needed for risk assessment and risk management of chemical substances under TSCA section 5. EPA's cost estimates for administering TSCA section 5 include the costs of processing, reviewing, and making determinations, and the Agency's costs of taking any regulatory action such issuing an order and a TSCA section 5 significant new use rule (SNUR). Approximately 80 percent of the cost associated with reviewing a new chemical substance is due to activities associated with risk assessment, while approximately 20 percent of the cost is associated with risk management activities. EPA is not able to issue refunds for the entire fee amount because significant work begins as soon as EPA receives the PMN. As described in the 2018 Proposed Fee Rule (83 FR 8212; February 26, 2018), up to three significant milestones of the PMN review process can take place within 10 business days (Ref. 14). The Chemical Review/Search Strategy Meeting occurs between Day 8 and 12; the Structure Activity Team Meeting occurs between Day 9 and 13; and Development of Exposure/Release Assessments occurs between Day 10 and 19. Due to concerns with administrative burden and potential delays in issuing refunds, EPA will not calculate and refund a unique amount for each withdrawn submission. By adding this option for a refund of 20 percent, submitters will be able to recoup part of the cost associated with submitting a notice for chemicals they decide to withdraw during the review period. Based on the cases withdrawn during FY 2020 and 2021, EPA estimates that approximately 23 percent of cases are withdrawn during review. However, EPA anticipates this percentage could be much higher if submitters had the opportunity to obtain a partial refund when risk assessment results and likely risk management actions are known. Withdrawals and refunds provided under such circumstances would prevent the need for EPA to conduct risk assessment rework and executing unneeded risk management actions. Risk assessment rework requires EPA to re-analyze some or all the information supporting a risk assessment in order to factor in new information, causing substantial delay to the review process for that substance and delays staff from initiating or completing risk assessment work on other new chemical substances. The Agency requests comment on this new partial refund process for the review of TSCA section 5 notices.

F. Methodology for Calculating Fees for EPA-Initiated Risk Evaluations

In 2018, the TSCA Fee Rule established a methodology for allocating fees to manufacturers of chemicals subject to EPA-initiated risk evaluations in which EPA distributes the fees evenly among manufacturers, while giving an 80 percent discount for manufacturers that qualify as a small business concern. In January 2021, EPA proposed a production volume-based approach for fee allocation for EPA-initiated risk evaluations under TSCA section 6. Specifically, EPA proposed to reallocate the remaining fee, after allocating the fees for small businesses, across the remaining manufacturers, based on their percentage of total volume produced of that chemical minus the amount produced by the small businesses. EPA

continues to believe that using production volume in calculating TSCA section 6 fee allocations will result in a more equitable distribution of fees and better account for the wide variation in production volume sometimes associated with a particular chemical substance, but is proposing modifications to the methodology included in the 2021 Proposal as described in the following section.

1. Description of the Proposed Regulatory Action

While 10 commenters supported EPA's proposed volume-based fee allocation methodology, nine commenters did not support the proposed methodology or expressed concern over unintentional disclosure of CBI under the proposed methodology, stating that collecting and reporting production volumes to EPA could force companies to involuntarily disclose CBI. In response to these comments, EPA is proposing to modify the proposed fee allocation methodology to protect potential submissions of CBI. The modified approach includes ranking the fee-payers that do not qualify as a small business concern by their reported production volume, then assigning fees based on those rankings. The non-small business manufacturers in the top 20th percentile ranking would pay 80 percent of the total fee, distributed evenly among these manufacturers. EPA believes this methodology is equitable, accounts for various fee payer scenarios, protects CBI, and ensures EPA is collecting approximately but not more than 25 percent of applicable program costs. These proposed changes would ensure that the manufacturers of the largest quantity of production volume for a chemical undergoing risk evaluation pay the majority of the obligated fee. In addition, this proposed approach reflects EPA's review of the distribution of production volume data reported across individual producers for the 20 High-Priority Substances and the first 10 chemical substances, and EPA believes it is consistent with the distribution of fee payers expected for any one EPA-initiated risk evaluation expected in the future. EPA is requesting comment on the methodology outlined below, including whether the approach is a more equitable way of distributing fees.

In any scenario where all manufacturers of the chemical substance undergoing the EPA-initiated risk evaluation do not form a single consortium, EPA would take the following steps to allocate fees:

Step 1: Count the total number of manufacturers, including the number of manufacturers within any consortia.

Step 2: Divide the total fee amount by the total number of manufacturers to generate a base fee.

Step 3: Provide all small businesses who are either (a) not associated with a consortium, or (b) associated with an all-small business consortium, with an 80 percent discount from the base fee.

Step 4: Calculate the total remaining fee amount and the total number of remaining manufacturers that will share the fee by subtracting out the discounted fees and the number of small businesses identified.

Step 5: Place remaining manufacturers in ascending order (from lowest to highest production volume based on their average annual production volume from the three calendar years prior to the publication of the preliminary list).

Step 6: Assign each remaining manufacturer a number with 1 for lowest production volume, 2 for second lowest production volume, etc.

Step 7: Multiply the total number of remaining manufacturers by 0.8.

Step 8: Determine the manufacturer(s) in the top 20th percentile spot by comparing the number derived from Step 7 to the manufacturer(s) with the assigned number derived in Step 5. Manufacturers with an assigned number under Step 6 that is equal to or larger than the number in Step 7 are in the top 20th percentile.

Step 9: Reallocate 80 percent of the remaining fee evenly across manufacturers in the top 20th percentile determined in Step 8, counting each manufacturer in a consortium as one person.

Step 10: Reallocate the remaining fee evenly across the remaining manufacturers, counting each manufacturer in a consortium as one person.

In addition, EPA is proposing to require reporting of average production volume over the past three years instead of four years as stated in the 2021 Proposal (Ref. 3). This proposed change would alleviate additional concerns over potential CBI disclosure by further separating the production volume submissions under this rule from other potentially public production volume reporting (*e.g.,* CDR) which could be used in conjunction with data reported under this proposal to estimate a manufacturer's production volume. The reduction to 3-year production volume average would address multiple commenters' concerns that collecting and reporting production volume is burdensome. In addition, EPA is proposing that the production volume calculation be based on the three previous calendar years prior to the publication of the preliminary list, instead of the year self-identification and/or certification was made. This change is being made to alleviate potential confusion that may arise due to inconsistencies with other timeframe provisions in this rulemaking (additional discussion on those timeframes can be found in Unit III.G). If finalized as proposed, applicable manufacturers would be required to report their average production volume using the past three calendar years of production volume data.

These proposed changes would eliminate all expected potential disclosure of production volume that may be claimed as CBI. However, in the rare event of multiple fee payers submitting under the same parent company and asserting a CBI claim for production volume, and/or multiple companies reporting the exact same amount of a competitor, EPA would mask the company names on the final list for that chemical to protect disclosure.

EPA is not proposing these calculation and methodology changes for the fee allocations under TSCA section 4 activities. Fees for section 4 activities are significantly lower than those for a risk evaluation and, therefore, less burdensome, obviating the need to allocate the fees based on production volume. As described in steps one through three previously in this Unit, EPA is also not proposing the production volume-based methodology for manufacturers of a chemical substance undergoing an EPA-initiated risk evaluation that qualify as a small business concern. These entities would be provided an 80 percent discount from the ''base fee'' calculated as described in the 2018 Fee Rule (40 CFR 700.45(f)).

2. Description of the Primary Alternative Regulatory Action Considered

Commenters have expressed concerns over the burden of calculating and reporting production volume in order to comply with the self-identification and recordkeeping requirements in the 2021 Proposal. As a primary alternative regulatory action, EPA is considering the use of the ranking methodologies as described previously but requiring reporting of production volume ranges instead of averages. These ranges would be consistent with those ranges used to show aggregate national production volume of a chemical under EPA's Chemical Data Reporting (CDR). EPA

believes reporting these ranges would be easier for industry to calculate and would ensure CBI is always protected since only ranges would be used. However, these ranges are large, which could result in many manufacturers paying the same share of the fees, negating the point of creating a production volume-based fee to improve distribution of fees and to make fees more equitable. EPA is requesting comment on this alternative and on whether ranges narrower than the ones used for CDR would be feasible or appropriate to use under the described circumstances.

G. Exemptions for Fees Associated With EPA-Initiated Risk Evaluations

In the 2021 Proposal, EPA proposed six fee exemptions for manufacturers of chemical substances undergoing EPA-initiated risk evaluation. These proposed exemptions would apply to: (1) Importers of articles containing a chemical substance; (2) Producers of a chemical substance as a byproduct; (3) Manufacturers (including importers) of a chemical substance as an impurity; (4) Producers of a chemical as a non-isolated intermediate; (5) Manufacturers (including importers) of small quantities of a chemical substance solely for research and development; and (6) Manufacturers (including importers) of chemical substances with production volume less than 2,500 lbs. EPA proposed that the volume threshold exemption would not apply when all manufacturers of that chemical substance manufacture in quantities below 2,500 lbs (See 40 CFR 700.45(a)(3)(vi) of the 2021 Proposal). EPA is proposing modifications to the exemptions included in the 2021 Proposal as described in the following section.

Twenty-seven industry commenters supported one or more of EPA's proposed exemptions for EPA-initiated risk evaluation fees for byproducts, impurities, and non-isolated intermediates and many also suggested that EPA use existing TSCA definitions to identify those that are subject to exemptions (*e.g.,* conform the byproducts definition to match other TSCA programs and use 40 CFR 720.30(g) or 720.30(h)(2)) (EPA–HQ–OPPT–2020–0493). EPA is proposing regulatory action aimed to narrow one of the six proposed exemptions (producers of a chemical substance as a byproduct) and to include self-identification requirements for manufacturers (including importers) of chemical substances with production volume less than 2,500 lbs. EPA is proposing to modify the byproduct exemption to, ''producers of a chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use.'' By narrowing the byproduct exemption to include only manufacturers of byproducts that are not later used for commercial purposes or distributed for commercial use, EPA could still collect fees from producers of chemicals that are then sold or used for commercial purposes. In addition, EPA believes those producers of byproducts that are later used in commerce or distributed for commercial use by that manufacturer will not encounter the same issues and concerns with the self-identification requirements as described in EPA's memorandum issued on March 18, 2020 (Ref. 15) previously discussed in the 2021 Proposal since those producers knowingly produce the byproduct before it is introduced into the market (86 FR 1899) (Ref. 3). The byproduct exemption, with these proposed changes, would address challenges with self-identification raised by stakeholders as it relates to identifying and tracking byproducts that are unintentionally or coincidentally produced (40 CFR 700.45(b)(5)).

Twelve industry commenters specifically supported the 2,500 lbs production volume exemption for EPA-initiated risk evaluation fees. However, three of those commenters requested additional clarification or modification of the provision where the exemption would not apply for the EPA-initiated risk evaluation fee for that chemical substance because all manufacturers are low-volume manufacturers (described in the proposed regulations at 40 CFR 700.45(a)(3)(vi)) (EPA–HQ–OPPT–2020–0493). Specifically, one commenter requested clarification of whether, in this case, additional time to make fee payments would be granted to low-volume manufacturers that would otherwise have qualified for this exemption. The commenter asked if low-volume producers would be subject to reduced fees considering the financial burden risk evaluation fees would impose on low-volume manufacturers. Finally, the commenter sought clarification of the procedural steps that will occur and how manufacturers would be notified if they are all low-volume manufacturers (EPA–HQ–OPPT–2020–0493–0034). Another commenter requested that EPA clarify the timeframes associated with the 2,500 lb exemption, specifically on the proposed provision where all identified manufacturers meet the exemption criteria (EPA–HQ–OPPT–2020–0493–0059).

In response to these comments, EPA is proposing self-identification requirements for manufacturers (including importers) of chemical substances with production volume less than 2,500 lbs. Specifically, EPA is proposing to require manufacturers that qualify for the 2,500 lb exemption to self-identify, as described in the 2021 Proposal at 40 CFR 700.45 (b)(5), to report the average annual production volume from the three calendar years prior to the publication of the preliminary list. Requiring self-identification of those manufacturers that qualify for the 2,500 lbs exemption would allow EPA to allocate fees based on production volume and collect fees in a timely manner in the situation where all fee payers have production volumes below 2,500 lbs. In this situation, as described in the 2021 Proposal and not affected by this document, the exemption would not apply for the fee for that chemical substance (described in the proposed regulations at 40 CFR 700.45(a)(3)(vi)). EPA would mask the company names on the final list for that chemical to protect disclosure of potential CBI and notify subject manufacturers of their obligation to pay fees prior to the 90-day consortium deadline (see 40 CFR 700.45(f)(2) and (3) of the 2021 Proposal). For EPA-initiated risk evaluations, the applicable fee would be paid in two installments, with the first payment due 180 days after publishing the final scope of a risk evaluation (see 40 CFR 700.45(g)(3) of the 2021 Proposal). Additional discussion on how these exemptions would apply to test rules is in the following section, Unit III.H.

In addition, EPA recognizes that requiring reporting of a three-year production volume average (discussed in Unit III.F) differs from the timeframes associated with this exemption for low volume producers in new 40 CFR part 700.45(a) which requires a manufacturer to meet the exemption for the five-year period preceding publication of the preliminary list and the successive five years. In response to comments on the timeframe and to avoid confusion, EPA has made changes to the definition of production volume in new 40 CFR 700.43, as discussed in Unit III.F. EPA has also provided clarification on how to determine if the exemption criteria is met in the following paragraph.

To calculate whether a manufacturer produces low enough amounts of a chemical substance to qualify for the exemption, manufacturers would determine their annual production volume for the five calendar years prior to the publication of the preliminary list

and their annual projected production volume for the successive five years (as described in new 40 CFR 700.45(a)). To qualify for the exemption for low volume producers, manufacturers would need to produce below 2,500 lbs. for EPA-initiated risk evaluations and below 1,100 lbs. for test rules (see Unit III.H for more details) for those applicable years. If finalized as proposed, manufacturers would not qualify if they produce 2,500 lbs. or 1,100 lbs. or above for EPA-initiated risk evaluations and test orders respectively for any of the applicable years.

EPA is not proposing a reduced fee amount for test rules and/or fees for EPA-initiated risk evaluations for manufacturers reporting a production volume less than 2,500 lbs or 1,100 lbs, respectively, in the event the exemption does not apply. However, EPA is proposing to utilize the production volume-based fee allocation for EPA-initiated risk evaluation fees. The 80% discount for manufacturers that qualify as a small business concern still applies to both test rules and the EPA-initiated risk evaluation fees. EPA requests comments on the proposed changes, as well as the procedural steps EPA plans to take in implementing this provision.

EPA is requesting comment on all six exemptions, including whether any modifications to the exemptions are warranted and whether any additional CBI concerns are present given EPA's proposed approach. EPA is also requesting comment on whether the exemptions, as described in the proposed, new 40 CFR 700.45(a), should be modified based on other TSCA programs like CDR.

H. Exemptions for Fees Associated With TSCA Section 4 Test Rules

The 2018 Fee Rule and the 2021 Proposal did not establish any exemptions related to TSCA section 4 test rules. Currently, manufacturers subject to test rules (and thereby required to pay fees for such rules) are identified using the same process for identifying fee payers for TSCA section 6 EPA-initiated risk evaluations, which involves publishing preliminary and final lists of manufacturers. Including exemptions for TSCA section 4 rules would prevent similar challenges experienced with the self-identification requirements associated with EPA-initiated risk evaluation fees (Refs. 2 and 3).

1. Description of the Proposed Regulatory Action

Based on comments received during the public comment period for the 2021 Proposal, EPA is proposing and requesting comment on applying the EPA-initiated Risk Evaluation fee exemptions to fees for TSCA section 4 test rules. EPA is proposing this change to TSCA section 4 test rules to reduce confusion and prevent challenges regarding the self-identification requirements which apply to fees for both test rules and EPA-initiated risk evaluations. The self-identification requirements do not apply to test orders or ECA's. For this reason, the exemptions will not be applied to those actions. The exemptions outlined earlier in this Unit will remain the same for test rule fees except the annual production volume threshold will change to 1,100 lbs. Manufacturers with an annual production volume of less than 1,100 lbs will qualify for the exemption for the TSCA section 4 test rule fee. This change is necessary to conform to the regulations at 40 CFR 790.42 (a)(4) which specifies a potential annual production volume threshold exemption of less than 1,100 lbs for chemicals subject to TSCA section 4 test rules. EPA is conforming the regulations to avoid possible confusion by manufacturers regarding the TSCA section 4 test rule requirements.

The proposed exemptions for TSCA section 4 test rule fees include: (1) importers of articles containing a chemical substance; (2) producers of a chemical substance as a byproduct; (3) manufacturers (including importers) of a chemical substance as an impurity; (4) producers of a chemical as a non-isolated intermediate; (5) manufacturers (including importers) of small quantities of a chemical substance solely for research and development and; (6) manufacturers (including importers) of chemical substances with production volume less than 1,100 lbs of a chemical subject to a TSCA section 4 test rule. EPA believes these exemptions will provide greater consistency and fairness between TSCA section 4 and TSCA section 6 fees. Including such exemptions for TSCA section 4 will also prevent challenges regarding the self-identification requirements associated with risk evaluation fees for manufacturers similar to what occurred in March 2020 (Ref. 15).

Under these proposed exemptions, appropriate record keeping must be conducted by affected manufacturers as it relates to each listed exemption. Accordingly, EPA is proposing that these manufacturers must maintain production volume records and ordinary business records related to compliance with the six proposed exemptions as outlined in 40 CFR 700.45 (b)(10)(i)-(iv).

2. Description of the Primary Alternative Regulatory Action Considered

The primary alternative to the proposed regulatory action above is to finalize the 2021 Proposal, which did not establish any exemptions related to TSCA section 4 test rules.

I. Expansion of Fee Requirements To Include Companies Required To Submit Information Under TSCA Section 4

The 2018 Fee Rule does not reflect all circumstances in which a manufacturer subject to a TSCA section 4 test order could be required to pay fees. Specifically, fees are required for manufacturers that conduct testing. However, TSCA section 26(b)(1) provides for the collection of fees ''from any person required to submit information'' under TSCA section 4. There are circumstances in which a manufacturer subject to information development requirements under TSCA section 4 may not need to conduct any testing. For instance, a manufacturer may have already conducted the testing prior to the issuance of a TSCA section 4 test order, in which case the manufacturer may submit the information they have already produced. As explained in greater detail in Unit III.B.1, developing test orders is a complex, time-consuming, and resource-intensive process involving many scientific and regulatory considerations. EPA must establish what information is required, what testing will provide such information, and what test protocols can inform the generation of such information. Further resources are also needed to administer the test orders after they have been issued; the amount of resources needed for such activities varies depending on the complexity of the testing requirements and the number of recipients.

Regardless of whether a manufacturer conducts testing to comply with a test order, EPA incurs costs for developing the test order and administering the test order after it has been issued, including reviewing the data submitted by test order recipients. To ensure that a portion of these costs will be recovered, EPA proposes to require payment from manufacturers subject to TSCA section 4 test order fees that submit information under TSCA section 4 that do not need to conduct any testing.

1. Description of the Proposed Regulatory Action

EPA is proposing and requesting comment on revising the 2018 Fee Rule language under 40 CFR 700.45(a)(2) to

refer to manufacturers required to submit information rather than manufacturers ''required to test.'' Making this change would extend fee obligations to manufacturers who collect and submit existing data. This proposed change would include all manufacturers of a certain chemical regardless of when data was procured, and would create a more equitable fee allocation. Without this proposed change, in situations where test orders are issued to manufacturers which have already completed testing and procured data, those manufacturers would not be subject to fees despite their submission of data to EPA under that test order and despite the costs incurred by EPA for the resource intensive process of developing and administering a test order as explained further in Unit III.B.1.

2. Description of the Primary Alternative Regulatory Action Considered

The primary alternative action to the proposed regulatory action above is to retain the 2018 Fee Rule language under 40 CFR 700.45(a)(2).

J. Payment by Processors Subject to Test Orders and ECAs

The 2018 Fee Rule established that only manufacturers are required to pay fees for TSCA section 4 test orders and ECAs. As a result, in the event that no manufacturers are identified as recipients, EPA would be required to absorb the entire cost of administering TSCA section 4 test orders and ECAs. As an example, in the TSCA section 4 test order issued in January 2021 for o-dichlorobenzene, because only processors were responsible for submitting information, EPA did not collect fees to support the administration of the test order.

EPA is proposing and requesting comment on modifying the fee payment obligations in 40 CFR 700.45(a) to require payment by processors identified in the TSCA section 4 test orders and ECAs who submit information. In the event that there are no manufacturers receiving a test order or ECA, requiring fee payments by processors would allow EPA to recoup the costs of administering such test orders and ECAs. This proposed change would expand the universe of fee payers for these section 4 actions to include both manufacturers and, in some circumstances, processors subject to TSCA section 4 test orders and ECAs. Increasing the scope of fee payers included in TSCA section 4 test orders and ECAs would prevent situations where no manufacturer was identified, thus leaving EPA responsible for the entire cost of administering the test order or ECA.

K. Timeframe for Test Order and Test Rule Payments

The 2018 Fee Rule established a 120-day timeline for TSCA section 4 test order and test rule payments. This 120-day timeline has been found to be too short for the creation of invoice payments and other Agency work related to allocating such payments before any fees are assessed for entities submitting data. It is difficult to calculate such assessed fees quickly under the current timeline which includes various steps such as allocating fees across a number of different manufacturers, issuing invoices, and notifying consortia of those fees within 120 days.

EPA is proposing and requesting comment on extending the timeframe for test order and test rule payments to 180 days after the effective date of the order or rule. This timeframe aligns with the proposed timeframe for the initial fee payment associated with EPA-initiated risk evaluations under section 6, which is also 180 days. The change would provide EPA with sufficient time to review fee payments, identify and allocate fees across a number of different entities, and issue invoices.

L. Requests for Comment

EPA is issuing this supplemental notice and is requesting comments on the proposed provisions and primary alternative provisions described herein that would add to or modify the 2021 Proposal. In addition to the areas on which EPA has specifically requested comment, EPA requests comment on all other aspects of this proposed rule. This includes feedback on potential flexibilities to address small business concerns especially with regard to their ability to pay.

EPA is proposing to refund 20 percent of the user fee to the submitter if a notice is withdrawn after 10 business days after the beginning of the applicable review period, but prior to EPA initiating risk management on the chemical substance. The Agency requests comment on this new partial refund process for the review of TSCA section 5 notices. EPA is also requesting comment on its proposal to recover less than 25 percent of the costs for implementing TSCA section 5.

EPA is proposing a new approach to allocating fees for EPA-initiated risk evaluations, as discussed in Unit III.F. EPA is requesting comment on the methodology outlined below, including whether the approach is a more equitable way of distributing fees. EPA also considered an alternative approach to allocating those fees using production volume ranges. EPA is requesting comment on this alternative and on whether ranges narrower than the ones used for CDR would be feasible or appropriate to use under the described circumstances.

EPA is proposing to require manufacturers that qualify for the 2,500 lb exemption to self-identify, as described in the 2021 Proposal at 40 CFR 700.45 (b)(5), to report the average annual production volume from the three calendar years prior to the publication of the preliminary list. Unit III.G also outlines steps EPA will take to implement this provision while protecting CBI disclosure. EPA requests comments on the proposed changes, as well as the procedural steps EPA plans to take in implementing this provision.

EPA is requesting comment on all six exemptions, including whether any modifications to the exemptions are warranted and whether any additional CBI concerns are present given EPA's proposed approach. EPA is also requesting comment on whether the exemptions, as described in the proposed, new 40 CFR 700.45(a), should be modified based on other TSCA programs like CDR, as well as whether the EPA-initiated Risk Evaluation fee exemptions should apply to fees for TSCA section 4 test rules.

Lastly, EPA is proposing and requesting comment on revising the 2018 Fee Rule language under 40 CFR 700.45(a)(2) to refer to manufacturers required to submit information rather than manufacturers ''required to test,'' as well as extending the timeframe for test order and test rule payments to 180 days after the effective date of the order or rule.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

1. The Frank R. Lautenberg Chemical Safety for the 21st Century Act. June 22, 2016. Public Law 114–182.
2. EPA. Final Rule; Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 83 FR 52694, October 17, 2018 (FRL–9984–41).

3. EPA. Proposed Rule; Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 86 FR 1890, January 11, 2021 (FRL–10018–40).
4. EPA. Economic Analysis of the Supplemental Notice of Proposed Rulemaking for Fees for the Administration of the Toxic Substances Control Act. October 2022.
5. EPA. TSCA Work Plan Chemicals: Methods Document. February 2012. *https://www.epa.gov/sites/production/files/2014-03/documents/work_plan_methods_document_web_final.pdf*.
6. EPA. Outreach for the TSCA Administration Fees Rule. February 2021. *https://www.epa.gov/tsca-fees/outreach-tsca-administration-fees-rule*.
7. EPA. National PFAS Testing Strategy: Identification of Candidate Per- and Poly- fluoroalkyl Substances (PFAS) for Testing. October 2021. *https://www.epa.gov/system/files/documents/2021-10/pfas-natl-test-strategy.pdf*.
8. EPA. Office of Inspector General (OIG). Lack of Planning Risks EPA's Ability to Meet Toxic Substances Control Act Deadlines (No. 20–P–0247). August 2020. *https://www.epa.gov/sites/default/files/2020-08/documents/_epaoig_20200817-20-p-0247.pdf*.
9. U.S. Government Accountability Office (GAO). Report to Congressional Committees. High-Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas. *https://www.gao.gov/assets/gao-21-119sp.pdf*.
10. Joint Explanatory Statement from the House and Division G—Department of Interior, Environment, and Related Agencies Appropriations Act, 2022, *https://docs.house.gov/billsthisweek/20220307/BILLS-117RCP35-JES-DIVISION-G.pdf*.
11. EPA. Technical Background Document for TSCA Fees. October 2022.
12. EPA. Interagency Agreement and Oil Indirect Cost Rates for FY 2022 and Beyond. November 2021.
13. OMB. Circular A–25 (Revised). July 8, 1993. *https://www.whitehouse.gov/wp-content/uploads/2017/11/Circular-025.pdf*.
14. EPA. Proposed Rule; User Fees for the Administration of the Toxic Substances Control Act. **Federal Register**. 83 FR 8212, February 26, 2018 (FRL–9974–31).
15. EPA. Request for No Action Assurance Regarding Self-Identification Requirement for Certain ''Manufacturers'' Subject to the TSCA Fees Rule. March 2020. *https://www.epa.gov/sites/production/files/2020-03/documents/tsca_fees_-_naa_request_final.pdf*.
16. EPA. Information Collection Request (ICR) Supporting Statement under the Paperwork Reduction Act entitled: ''Reporting Requirements Associated with the Payment of Fees under Section 26(b) of the Toxic Substances Control Act (TSCA); Supplemental Proposed Rule (RIN 2070–AK64).'' EPA ICR No. 2569.05; OMB Control No. 2070–0208. October 20, 2022.
17. EPA. Information Collection Request (ICR) Supporting Statement under the Paperwork Reduction Act entitled: ''User Fees for the Administration of the Toxic Substances Control Act (TSCA); Proposed Rule (RIN 2070–AK64).'' EPA ICR No. 2569.05; OMB Control No. 2070–0208. Submitted January 31, 2021.
18. OMB. Notice of Office of Management and Budget Action under the Paperwork Reduction Act on ICR entitled: ''User Fees for the Administration of the Toxic Substances Control Act (TSCA) (Proposed Rule).'' EPA ICR No. 2569.03; OMB Control No. 2070–0208; OMB ICR Reference No. 202101–2070–002. April 5, 2021. *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202101-2070-002#*.

V. Statutory and Executive Order Reviews

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

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Any changes made in response to OMB recommendations have been documented in the docket for this action as required by section 6(a)(3)(E) of Executive Order 12866.

EPA prepared an economic analysis of the potential costs and benefits associated with this action (Ref. 4). A copy of this economic analysis is available in the docket.

B. Paperwork Reduction Act (PRA)

The information collection activities in this supplemental proposed rule have been submitted to OMB under the PRA, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) that EPA prepared for this supplemental proposed rule has been assigned EPA ICR No. 2569.05 (Ref. 16). EPA also prepared and submitted an ICR for the 2021 proposed rule (Ref. 17), and on April 5, 2021, the Notice of OMB Action was issued on that submission that identified the OIRA Conclusion Action as ''Comment filed on proposed rule and continue'' (Ref. 18). EPA intends for the final rule ICR to amend an existing ICR that is currently approved under OMB Control No. 2070–0208 through February 28, 2025. You can find a copy of the ICR for this supplemental proposal (Ref. 16) in the docket for this action, and it is briefly summarized here.

The information collection activities associated with the supplemental proposed rule include familiarization with the regulation; reduced fee eligibility determination; CDX registration; formation, management and notification to EPA of participation in consortia; self-identification and certification; and electronic payment of fees through *Pay.gov.*

Respondents/affected entities: Persons who manufacture or process a chemical substance (or any combination of such activities) and are required to submit information to EPA under TSCA sections 4 or 5, or manufacture a chemical substance that is the subject of a risk evaluation under TSCA section 6(b).

Respondent's obligation to respond: Mandatory. TSCA section 26(b).

Estimated number of respondents: 960.

Frequency of response: On occasion.

Total estimated burden: 496 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $31,046 (per year), includes $0 annualized capital or operation and maintenance costs.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 700 are listed in 40 CFR part 9.

Submit your comments on the Agency's need for this information, the accuracy of the provided burden estimates and any suggested methods for minimizing respondent burden to the EPA using the docket identified at the beginning of this rule. You may also send your ICR-related comments to OMB's Office of Information and Regulatory Affairs using the interface at *https://www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

If you wish to comment on the information collection requirements in this supplemental proposed rule, please note that OMB is required to make a decision concerning the collection of information contained in this supplemental proposed rule between 30 and 60 days after publication of this supplemental proposed rule in the **Federal Register**.

EPA will respond to ICR-related comments received on the 2021 proposed rule and on this supplemental

proposed rule in the context of the final rule.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* The small entities expected to be subject to the requirements of this action are small chemical manufacturers and processors, small petroleum refineries, and small chemical and petroleum wholesalers. There may be some potentially affected firms within other sectors, but not all firms within those sectors will be potentially affected firms. 306 small businesses, including 256 processors and 50 manufacturers, may be affected annually by TSCA section 4 actions; 149 small businesses may be affected by section 5 actions; and 31 small businesses may be affected by section 6 actions. EPA estimates the annual revenue distribution using U.S. Census data for small businesses likely to be affected by TSCA sections 4, 5, and 6 actions, with the following properties: 92% of parent firms have an annual revenue greater than $152,800, 7% have an annual revenue between $152,800 and $50,933, and 1% have revenue less than $50,933. The average annual incremental cost per affected small business is expected to be about $392 for TSCA section 4; $2,477 for TSCA section 5, and $44,559 for TSCA section 6. As a result, EPA estimates that, of the 485 small businesses paying fees every year, 451 will have impacts under 1%, 19 will have impacts between 1% and 3%, and 16 will have impacts greater than 3%.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The rule is not expected to result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (when adjusted annually for inflation) in any one year. Accordingly, this proposed rule is not subject to the requirements of sections 202, 203, or 205 of UMRA. The total quantified annualized social costs for this supplemental proposal are approximately $85,014 (at both 3% and 7% discount rate), which does not exceed the inflation-adjusted unfunded mandate threshold of $160 million.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule will not impose substantial direct compliance costs on Indian Tribal Governments. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997), as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate environmental health risks or safety risks.

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

This action is not a ''significant energy action'' as specified in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution or use of energy and has not otherwise been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272 *note,* does not apply to this action.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations and Executive Order 14008: Tackling the Climate Crisis at Home and Abroad

In accordance with Executive Order 12898 (59 FR 7629, February 16, 1994) and Executive Order 14008 (86 FR 7619, January 27, 2021), EPA finds that this action will not result in disproportionately high and adverse human health, environmental, climate-related, or other cumulative impacts on disadvantaged communities. The documentation for this decision is contained in the Economic Analysis (Ref. 4), which is in the docket for this action. Although not directly impacting environmental justice-related concerns, the fees will enable the Agency to better protect human health and the environment, including in low-income and minority communities. The fees also provide for fair treatment and meaningful involvement in the implementation of TSCA.

List of Subjects 40 CFR Part 700

Chemicals, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements, User fees.

Michael S. Regan,
Administrator.

Therefore, for the reasons presented in the preamble, it is proposed that 40 CFR chapter I, subchapter R, be amended as follows:

PART 700—GENERAL [AMENDED]

■ 1. The authority citation for part 700 continues to read as follows:

Authority: 15 U.S.C. 2625 and 2665, 44 U.S.C. 3504.

■ 2. Amend § 700.43 by adding in alphabetical order a definition for ''Production volume'' and ''Small quantities solely for research and development'' the additions read as follows:

§ 700.43 Definitions applicable to this subpart.

* * * * *

Production volume means manufactured (including imported) amount in pounds.

* * * * *

Small quantities solely for research and development (or ''small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product'') means

quantities of a chemical substance manufactured (including imported), or processed or proposed to be manufactured (including imported), or processed solely for research and development that are not greater than reasonably necessary for such purposes.

* * * * *

■ 3. Amend § 700.45 by:
■ a. Revising paragraphs (a)(2) and (3).
■ b. In paragraph (b), by:
■ i. Revising the introductory text in paragraph (b)(5) and paragraphs (b)(5)(ii) and (iii),
■ ii. Adding paragraphs (b)(5)(iv) and (v),
■ iii. Revising paragraph (b)(7), and
■ v. Adding paragraph (b)(10).
■ c. In paragraph (c), by:
■ i. Revising the intro text heading in paragraph (c),
■ ii. Revising paragraphs (c)(1)(i) through (iii) and (iv) through (viii), and
■ iii. Revising paragraphs (c)(2)(i) through (iii) and (iv) through (xi).
■ d. Revising paragraph (d),
■ e. In paragraph (f), by:
■ i. Revising paragraphs (f)(2)(i), (3)(i), (4) and (5), and
■ ii. Adding paragraph (f)(6).
■ f. In paragraph (g) by:
■ i. Revising paragraphs (g)(3)(i) and (iv),
■ ii. Revising paragraph (g)(5), and (6).
■ g. In paragraph (i), by:
■ i. Revising paragraphs (i)(1) through (3), and
■ ii. Adding paragraph (i)(4).

The revisions and additions read as follows.

§ 700.45 Fee payments.

(a) * * *

(2) Manufacturers and processors of chemical substances and mixtures required to submit information for these chemical substances and mixtures under a TSCA section 4(a) test order or enforceable consent agreement, or manufacturers of chemical substances and mixtures required to submit information for these chemical substance and mixtures under a TSCA section 4(a) test rule, shall remit for each such test rule, order, or enforceable consent agreement the applicable fee identified in paragraph (c) of this section in accordance with the procedures in paragraphs (f) and (g) of this section. Manufacturers of a chemical substance subject to a test rule under section 4(a) of the Act are exempted from fee payment requirements in this section, if they meet one or more of the exemptions under this paragraph (a)(2)(i) through (vi) for the five-year period preceding publication of the preliminary list and do not conduct manufacturing outside of those exemptions during the five-year period preceding publication of the preliminary list; and will meet one or more of the exemptions in paragraph (a)(2)(i) through (vi) of this section in the successive five years and will not conduct manufacturing outside of those exemptions in the successive five years:

(i) import articles containing that chemical substance;

(ii) produce that chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use;

(iii) manufacture (including import) that chemical substance as an impurity as defined in § 704.3;

(iv) manufacture that chemical substance as a non-isolated intermediate as defined in 40 § 704.3;

(v) manufacture (including import) small quantities of that chemical substance solely for research and development, as defined in § 700.43; and/or

(vi) manufacture (including import) that chemical substance in quantities below a 1,100 lbs annual production volume as described in § 700.43, unless all manufacturers of that chemical substance manufacture that chemical in quantities below a 1,100 lbs annual production volume as described in § 700.43, in which case this exemption is not applicable.

(3) Manufacturers of a chemical substance that is subject to a risk evaluation under section 6(b) of the Act, shall remit for each such chemical risk evaluation the applicable fee identified in paragraph (c) of this section in accordance with the procedures in paragraphs (f) and (g) of this section. For the purposes of this section, entities that manufacture a chemical substance subject to a risk evaluation under section 6(b) of the Act solely for export are subject to fee requirements in this section whenever such substance is manufactured, processed, or distributed in commerce by any other entity for any purpose other than export from the United States. Manufacturers of a chemical substance subject to risk evaluation under section 6(b) of the Act are exempted from fee payment requirements in this section, if they meet one or more of the exemptions under this paragraph (a)(3)(i) through (vi) for the five-year period preceding publication of the preliminary list and do not conduct manufacturing outside of those exemptions during the five-year period preceding publication of the preliminary list; and will meet one or more of the exemptions in paragraph (a)(3)(i) through (vi) of this section in the successive five years and will not conduct manufacturing outside of those exemptions in the successive five years:

(i) import articles containing that chemical substance;

(ii) produce that chemical substance as a byproduct that is not later used for commercial purposes or distributed for commercial use;

(iii) manufacture (including import) that chemical substance as an impurity as defined in § 704.3;

(iv) manufacture that chemical substance as a non-isolated intermediate as defined in § 704.3;

(v) manufacture (including import) small quantities of that chemical substance solely for research and development, as defined in § 700.43; and/or

(vi) manufacture (including import) that chemical substance in quantities below a 2,500 lbs annual production volume as described in § 700.43, unless all manufacturers of that chemical substance manufacture that chemical in quantities below a 2,500 lbs annual production volume as described in § 700.43, in which case this exemption is not applicable.

* * * * *

(b) * * *

* * * * *

(5) *Self-identification.* All manufacturers other than those listed in paragraph (a)(2)(i) through (iii) and (a)(3)(i) through (iii) of this section who have manufactured (including imported) the chemical substance in the previous five years must submit notice to EPA, irrespective of whether they are included in the preliminary list specified in paragraph (b)(3) of this section. The notice must be submitted electronically via EPA's Central Data Exchange (CDX), the Agency's electronic reporting portal, using the Chemical Information Submission System (CISS) reporting tool, and must contain the following information:

(i) * * *

(ii) *Certification of cessation.* If a manufacturer has manufactured in the five-year period preceding publication of the preliminary list, but has ceased manufacture prior to the certification cutoff dates identified in paragraph (b)(6) of this section and will not manufacture the substance again in the successive five years, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) of this section and will not be obligated to pay the fee under this section.

(iii) *Certification of no manufacture.* If a manufacturer is identified on the preliminary list but has not manufactured the chemical in the five-year period preceding publication of the preliminary list, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) of this section and will not be obligated to pay the fee under this section.

(iv) *Certification of meeting exemption.* If a manufacturer is identified on the preliminary list and exclusively meets one or more of the exemptions in paragraph (a)(2)(i) through (vi) or (a)(3)(i) through (vi) of this section for the five-year period preceding publication of the preliminary list and will exclusively meet one of more of the exemptions in paragraph (a)(2)(i) through (vi) or (a)(3)(i) through (vi) of this section in the successive five years, the manufacturer must submit a certification statement attesting to these facts in order to not be included in the final list of manufacturers described in paragraph (b)(7) of this section. If a manufacturer is not on a preliminary list and exclusively meets one or more of the exemptions in paragraph (a)(2)(i) through (vi) or (a)(3)(i) through (vi) of this section for the five-year period preceding publication of the preliminary list and will exclusively meet one of more of the exemptions in paragraph (a)(2)(i) through (vi) or (a)(3)(i) through (vi) of this section in the successive five years, the manufacturer may submit a certification statement attesting to these facts. If EPA receives such a certification statement from a manufacturer, the manufacturer will not be included in the final list of manufacturers described in paragraph (b)(7) of this section and will not be obligated to pay the fee under this section, unless all manufacturers of that chemical substance meet the exemption as described in (a)(2)(vi) or (a)(3)(vi) of this section.

(v) *Production volume.* If a manufacturer has not submitted certification of cessation, as described in paragraph (b)(5)(ii) of this section, or certification of no manufacture, as described in paragraph (b)(5)(iii) of this section, for purposes of identifying manufacturers subject to fees for section 6 EPA-initiated risk evaluations and does not meet one or more of the exemptions in paragraph (a)(3)(i) through (v) of this section, the manufacturer must submit their production volume as defined in § 700.43 for the applicable substance for the three calendar years prior to publication of the preliminary list. Only production volume reported to EPA prior to the final list being published will be used in determining fees described in § 700.45(f).

* * * * *

(7) *Publication of final list.* EPA expects to publish a final list of manufacturers to identify the specific manufacturers subject to the applicable fee. This list will indicate if additional manufacturers self-identified pursuant to paragraph (b)(5) of this section, if other manufacturers were identified through credible public comment, and if manufacturers submitted certification of cessation, no manufacture, or meeting exemption pursuant to paragraph (b)(5)(ii), (iii), or (iv) of this section. The final list will be published no later than concurrently with the final scope document for risk evaluations initiated by EPA under section 6, and with the final test rule for test rules under section 4.

* * * * *

(10) *Recordkeeping.* After [*date 60 calendar days after the date of publication of the final rule*]:

(i) All manufacturers other than those listed in paragraph (a)(2)(i) through (v) or (a)(3)(i) through (v) of this section must maintain production volume records related to compliance with paragraph (b)(5)(v) of this section. These records must be maintained for a period of five years from the date notice is submitted pursuant to paragraph (b)(5) of this section.

(ii) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(2)(iv) or (3)(iv) of this section must maintain ordinary manufacturing and other business records related to compliance with the exemption criteria described in paragraph (a)(2)(iv) or (3)(iv) of this section, respectively. These records must be maintained for a period of five years from the date the record is generated.

(iii) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(2)(v) or (3)(v) of this section must maintain ordinary manufacturing and other business records related to compliance with the exemption criteria described in paragraph (a)(2)(v) or (3)(v) of this section respectively, such as production volume, plans of study, information from research and development notebooks, study reports, or notice solely for research and development use. These records must be maintained for a period of five years from the date the record is generated.

(iv) Those manufacturers that are exempt from fee payment requirements pursuant to paragraph (a)(2)(vi) or (3)(vi) of this section must maintain production volume records related to compliance with the exemption criteria described in paragraph (a)(2)(vi) or (3)(vi) of this section, respectively. These records must be maintained for a period of five years from the date the exemption is claimed.

* * * * *

(c) *Fees for the 2023, 2024, and 2025 fiscal years.*

(1) * * *

(i) *Premanufacture notice and consolidated premanufacture notice.* Persons shall remit a fee totaling $7,880 for each premanufacture notice (PMN) or consolidated PMN submitted in accordance with part 720 of this chapter.

(ii) *Significant new use notice.* Persons shall remit a fee totaling $7,880 for each significant new use notice (SNUN) submitted in accordance with part 721 of this chapter.

(iii) *Exemption application.* Persons shall remit a fee totaling $2,650 for each of the following exemption requests submitted under section 5 of the Act:

(A) * * *

(iv) *Instant photographic film article exemption notice.* Persons shall remit a fee totaling $2,650 for each instant photographic film article exemption notice submitted in accordance with § 723.175 of this chapter.

(v) *Microbial commercial activity notice* and *consolidated microbial commercial activity notice.* Persons shall remit a fee totaling $7,880 for each microbial commercial activity notice (MCAN) or consolidated MCAN submitted in accordance with §§ 725.25 through 725.36 of this chapter.

(vi) *Test rule, test order, or enforceable consent agreement.* Persons shall remit a total of twenty percent of the applicable fee under paragraph (c)(2)(vi), (vii) or (viii) of this section for a test rule, test order, or enforceable consent agreement.

(vii) *EPA-initiated risk evaluation.* Persons shall remit a total fee of twenty percent of the applicable fee under paragraphs (c)(2)(ix) of this section for an EPA-initiated risk evaluation.

(viii) *Manufacturer-requested risk evaluation.* Persons shall remit the total fee under paragraph (c)(2)(x) or (xi) of this section, as applicable, for a manufacturer-requested risk evaluation.

(2) * * *

(i) *PMN* and *consolidated PMN.* Persons shall remit a fee totaling

$45,000 for each PMN or consolidated PMN submitted in accordance with part 720 of this chapter.

(ii) *SNUN.* Persons shall remit a fee totaling $45,000 for each significant new use notice submitted in accordance with part 721 of this chapter.

(iii) *Exemption applications.* Persons shall remit a fee totaling $13,230 for each of the following exemption requests, and modifications to previous exemption requests, submitted under section 5 of the Act:

(A) * * *

(iv) *Instant photographic film article exemption notice.* Persons shall remit a fee totaling $13,230 for each exemption notice submitted in accordance with § 723.175 of this chapter.

(v) *MCAN and consolidated MCAN.* Persons shall remit a fee totaling $45,000 for each MCAN or consolidated MCAN submitted in accordance with §§ 725.25 through 725.36 of this chapter.

(vi) *Test rule.* Persons shall remit a fee totaling $50,000 for each test rule.

(vii) *Test order.* Persons shall remit a fee totaling $25,000 for each test order.

(viii) *Enforceable consent agreement.* Persons shall remit a fee totaling $50,000 for each enforceable consent agreement.

(ix) *EPA-initiated chemical risk evaluation.* Persons shall remit a fee totaling $5,081,000.

(x) *Manufacturer-requested risk evaluation of a Work Plan Chemical.* Persons shall remit an initial fee of $1,497,000, a second payment of $1,497,000, and final payment to total 50% of the actual costs of this activity, in accordance with the procedures in paragraph (g) of this section. The final payment amount will be determined by EPA, and invoice issued to the requesting manufacturer.

(xi) *Manufacturer-requested risk evaluation of a non-work plan chemical.* Persons shall remit an initial fee of $2,993,000, a second payment of $2,993,000, and final payment to total 100% of the actual costs of the activity, in accordance with the procedures in paragraph (g) of this section. The final payment amount will be determined by EPA, and invoice issued to the requesting manufacturer.

* * * * *

(d) *Fees for 2025 fiscal year and beyond.*

(1) Fees for the 2025 and later fiscal years will be adjusted on a three-year cycle by multiplying the fees in paragraph (c) of this section by the current PPI index value with a base year of 2023 using the following formula:

$$FA = F \times I$$

Where:

FA = the inflation-adjusted future year fee amount.

F = the fee specified in paragraph (c) of this section.

I = Producer Price Index for Chemicals and Allied Products inflation value with 2023 as a base year.

(2) Updated fee amounts for PMNs, SNUNs, MCANs, exemption notices, exemption applications, and manufacturer-requested risk evaluation requests apply to submissions received by the Agency on or after October 1 of every three-year fee adjustment cycle beginning in fiscal year 2023 (October 1, 2022). Updated fee amounts also apply to test rules, test orders, enforceable consent agreements and EPA-initiated risk evaluations that are ''noticed'' on or after October 1 of every three-year fee adjustment cycle, beginning in fiscal year 2025.

(3) The Agency will initiate public consultation through notice-and-comment rulemaking prior to making fee adjustments beyond inflation. If it is determined that no additional adjustment is necessary beyond for inflation, EPA will provide public notice of the inflation-adjusted fee amounts through posting to the Agency's web page by the beginning of each three-year fee adjustment cycle (October 1, 2025, October 1, 2028, etc.). If the Agency determines that adjustments beyond inflation are necessary, EPA will provide public notice of that determination and the process to be followed to make those adjustments.

* * * * *

(f) * * *

(2) * * *

(i) The consortium must identify a principal sponsor and provide notification to EPA that a consortium has formed. The notification must be accomplished within 90 days of the publication date of a test rule under section 4 of the Act, or within 90 days of the effective date of a test order under section 4 of the Act, or within 90 days of the signing of an enforceable consent agreement under section 4 of the Act. EPA may permit additional entities to join an existing consortium after the expiration of the notification period if the principal sponsor provides updated notification.

* * * * *

(3) * * *

(i) Notification must be provided to EPA that a consortium has formed. The notification must be accomplished within 90 days of the publication of the final scope of a chemical risk evaluation under section 6(b)(4)(D) of the Act or within 90 days of EPA providing notification to a manufacturer that a manufacturer-requested risk evaluation has been granted. EPA may permit additional entities to join an existing consortium after the expiration of the notification period if the principal sponsor provides updated notification.

* * * * *

(4) If multiple persons are subject to fees triggered by section 4 or 6(b) of the Act and no consortium is formed, EPA will determine the portion of the total applicable fee to be remitted by each person subject to the requirement.

(i) Each person's share of the applicable fees triggered by section 4 of the Act specified in paragraph (c) of this section shall be in proportion to the total number of manufacturers and/or processors of the chemical substance, with lower fees for small businesses:

$$P_s = 0.2 \text{ x } \left[\frac{F}{M_t}\right]$$

$$P_o = \frac{F - [0.2 \text{ x } \left[\frac{F}{M_t}\right] \text{x } M_s]}{(M_t - M_s)}$$

Where:

P_s = the portion of the fee under paragraph (c) of this section that is owed by a person who qualifies as a small business concern under § 700.43 of this chapter.

P_o = the portion of the fee owed by a person other than a small business concern.

F = the total fee required under paragraph (c) of this section.

M_t = the total number of persons subject to the fee requirement.

M_s = the number of persons subject to the fee requirement who qualify as a small business concern.

(ii) Each person's share of the applicable fees triggered by section 6(b) of the Act specified in paragraph (c) of this section shall be in proportion to the total number of manufacturers and their reported production volume as described in § 700.45(b)(v) of the chemical substance, with lower fees for small businesses:

$$P_s = 0.2 \text{ x } \left[\frac{F}{M_t}\right]$$

$$F_o = F - [0.2 \text{ x } \left[\frac{F}{M_t}\right] \text{x } M_s]$$

(iii) Remaining manufacturers (*i.e.,* those that do not qualify as a small business concern) are then ranked in ascending order (from lowest to highest) based on reported production volume as described in § 700.45(b)(v). Each remaining manufacturer is assigned a number with 1 for lowest production volume, 2 for second lowest production volume, etc.

TABLE 1—EXAMPLE OF PLACING MANUFACTURERS THAT DO NOT QUALIFY AS A SMALL BUSINESS CONCERN IN ASCENDING ORDER

Manufacturer(s)	Assigned No. (N)
Manufacturer with lowest production volume	1
Manufacturer with 2nd lowest production volume	2
Manufacturer with 3rd lowest production volume	3
* * * etc	

$$N_{20th} = [0.8 \text{ x } [M_t - M_s]]$$

$$P_{\geq 20th} = \frac{0.8 \text{ x } F_o}{M_{\geq 20th}}$$

$$P_{<20th} = \frac{[F_o - [0.8 \text{ x } F_o]]}{M_{<20th}}$$

Where:

P_s = the portion of the fee under paragraph (c) of this section that is owed by a person who qualifies as a small business concern under § 700.43 of this chapter.

$P_{\geq 20th}$ = the portion of the fee owed by a person other than a small business concern in the top 20th percentile.

$P_{<20th}$ = the portion of the fee owed by a person other than a small business concern not in the top 20th percentile.

F = the total fee required under paragraph (c) of this section.

M_t = the total number of persons subject to the fee requirement.

M_s = the number of persons subject to the fee requirement who qualify as a small business concern.

N_{20th} = The assigned number as illustrated in Table 1 to the manufacturer(s) with a production volume as described in § 700.45(b)(v) at which the manufacturers with production volume greater than or equal to are in the top 20th percentile.

$M_{\geq 20th}$ = the total number of persons with production volume as described in § 700.45(b)(v) greater than or equal to the manufacturer(s) with a production volume as N_{20th}.

$M_{<20th}$ = the total number of persons with production volume as described in § 700.45(b)(v) less than the manufacturer(s) with a production volume as N_{20th}.

F_o = the total fee required under paragraph (c) of this section by all person(s) other than a small business concern.

(vi) In the event there are three or less manufacturers identified for a chemical substance, EPA will distribute the fee evenly among those three or less fee payers, regardless of production volume.

(v) In the event the number assigned to the top 20th percentile is not an integer, EPA will round to the nearest integer to determine the manufacturer(s) with the reported production volume as described in § 700.45(b)(v) greater than or equal to the top 20th percentile.

(vi) In the event multiple manufacturers report the same production volume as described in § 700.45(b)(v) and are greater than or equal to the top 20th percentile, EPA will include all manufacturers with that same production volume in the fee calculation for the top 20th percentile group.

(5) If multiple persons are subject to fees triggered by section 4 of the Act and some inform EPA of their intent to form a consortium while others choose not to associate with the consortium, EPA will take the following steps to allocate fee amounts:

(i) Count the total number of manufacturers, including the number of manufacturers within any consortia; divide the total fee amount by the total number of manufacturers; and allocate equally on a per capita basis to generate a base fee;

(ii) Provide all small businesses who are either not associated with a consortium, or associated with an all-small business consortium, with an 80% discount from the base fee referenced previously;

(iii) Calculate the total remaining fee and total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified;

(iv) Reallocate the remaining fee across those remaining individuals and groups in equal amounts, counting each manufacturer in a consortium as one person; and

(v) Inform consortia and individuals of their requisite fee amount. Small businesses in a successfully-formed consortium, other than a consortium of all small businesses, will not be afforded the 80% discount by EPA, but consortia managers are strongly encouraged to provide a discount for small business concerns.

(6) If multiple persons are subject to fees triggered by section 6(b) of the Act and some inform EPA of their intent to form a consortium while others choose not to associate with the consortium, EPA will take the following steps to allocate fee amounts:

(i) Count the total number of manufacturers, including the number of manufacturers within any consortia; divide the total fee amount by the total number of manufacturers; and allocate equally on a per capita basis to generate a base fee;

(ii) Provide all small businesses who are either not associated with a consortium, or associated with an all-small business consortium, with an 80% discount from the base fee referenced previously;

(iii) Calculate the total remaining fee and total number of remaining manufacturers by subtracting out the discounted fees and the number of small businesses identified;

(iv) Place remaining manufacturers in ascending order (from lowest to highest) based on reported production volume as described in § 700.45(b)(v). Assign each remaining manufacturer a number with 1 for lowest production volume, 2 for second lowest production volume, etc.;

(v) Determine the manufacturer(s) in the top 20th percentile by multiplying the total number of remaining manufacturers by 0.8. then comparing that number to the manufacturer(s) with that assigned number as described in paragraph (iv) of this section;

(vi) Reallocate 80% of the total remaining fee evenly across that manufacturer(s) with a production volume amount equal to or larger than that manufacturer(s) (the top 20th percentile), counting each manufacturer in a consortium as one person;

(vii) Reallocate the remaining fee evenly across the remaining manufacturers, counting each manufacturer in a consortium as one person; and

(v) Inform consortia and individuals of their requisite fee amount. Small businesses in a successfully-formed consortium, other than a consortium of all small businesses, will not be afforded the 80% discount by EPA, but consortia managers are strongly encouraged to provide a discount for small business concerns.

* * * * *

(g) * * *

(3) * * *

(i) *Test orders and test rules.* The applicable fee specified in paragraph (c) of this section shall be paid in full not later than 180 days after the effective date of a test rule or test order under section 4 of the Act.

* * * * *

(iv) *Risk evaluations.* (A) For EPA-initiated risk evaluations, the applicable fee specified in paragraph (c) of this section shall be paid in two installments, with the first payment of 50% due 180 days after publishing the final scope of a risk evaluation and the second payment for the remainder of the fee due 545 days after publishing the final scope of a risk evaluation under section 6(b)(4)(D) of the Act.

(B) For manufacturer-requested risk evaluations under section 6(b)(4)(C)(ii) of the Act, the applicable fees specified

in paragraph (c) of this section shall be paid as follows:

(1) The applicable fee specified in paragraph (c) of this section shall be paid in three installments. The first payment shall be due no later than 180 days after EPA provides the submitting manufacture(s) notice that it has granted the request.

(2) The second payment shall be due no later than 545 days after EPA provides the submitting manufacturer(s) notice that it has granted the request.

(3) The final payment shall be due no later than 30 days after EPA publishes the final risk evaluation.

* * * * *

(5) *Small business certification.* (i) Each person who remits the fee identified in paragraph (c)(1) of this section for a PMN, consolidated PMN, or SNUN shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $7,880 in accordance with 40 CFR 700.45(c).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits the fee identified in paragraph (c)(1) of this section for a LVE, LoREX, TERA, TME, or Tier II exemption request under TSCA section 5 shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $2,650 in accordance with 40 CFR 700.45(c).'' in the exemption application.

(iii) Each person who remits the fee identified in paragraph (c)(1) of this section for an exemption notice under § 723.175 of this chapter shall include the words, ''The company or companies identified in this notice is/are a small business concern under 40 CFR 700.43 and has/have remitted a fee of $2,650 in accordance with 40 CFR 700.45(c).'' in the certification required in § 723.175(i)(1)(x) of this chapter.

(iv) Each person who remits the fee identified in paragraph (c)(1) of this section for a MCAN or consolidated MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A is a small business concern under 40 CFR 700.43 and has remitted a fee of $7,880 in accordance with 40 CFR 700.45(c).'' in the certification required in § 725.25(b) of this chapter.

(6) *Payment certification statement.* (i) Each person who remits a fee identified in paragraph (c)(2) of this section for a PMN, consolidated PMN, or SNUN shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $45,000 specified in 40 CFR 700.45(c).'' under ''CERTIFICATION'' on page 2 of the Premanufacture Notice for New Chemical Substances (EPA Form 7710–25).

(ii) Each person who remits a fee identified in paragraph (c)(2) of this section for a LVE, LoREX, TERA, TME, or Tier II exemption request under TSCA section 5 shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $13,230 specified in 40 CFR 700.45(c).'' in the exemption application.

(iii) Each person who remits the fee identified in paragraph (c)(2) of this section for an exemption notice under § 723.175 of this chapter shall include the words, ''The company or companies identified in this notice has/have remitted a fee of $13,230 in accordance with 40 CFR 700.45(c).'' in the certification required in § 723.175(i)(1)(x) of this chapter.

(iv) Each person who remits the fee identified in paragraph (c)(2) of this section for a MCAN for a microorganism shall insert a check mark for the statement, ''The company named in part 1, section A has remitted the fee of $45,000 in accordance with 40 CFR 700.45(c).'' in the certification required in § 725.25(b) of this chapter.

* * * * *

(i) *Partial fee refunds.*

(1) If a TSCA section 5 notice is withdrawn during the first 10 business days after the beginning of the applicable review period under § 720.75(a) of this chapter, the Agency will refund all but 25% of the fee as soon as practicable.

(2) If a TSCA section 5 notice is withdrawn during the period beginning 10 business days after the beginning of the applicable review period under § 720.75(a) of this chapter and ending 5 business days after EPA has provided the submitter notice that the risk assessment on the chemical substance(s) has concluded, the Agency will refund all but 80% of the fee as soon as practicable.

(3) Once withdrawn, any future submission related to the TSCA section 5 notice must be submitted as a new notice.

(4) If EPA determines that the initial payment for a manufacturer-requested risk evaluation exceeds the applicable fee in paragraph (c) of this section, EPA will refund the difference.

* * * * *

[FR Doc. 2022–24137 Filed 11–15–22; 8:45 am]

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Notices

Federal Register

Vol. 87, No. 220

Wednesday, November 16, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Gallatin Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Gallatin Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Custer Gallatin National Forest, consistent with the Federal Lands Recreation Enhancement Act. General information and meeting details can be found at the following website: *https://www.fs.usda.gov/detail/custergallatin/workingtogether/advisorycommittees/?cid=STELPRDB5304491.*

DATES: The meeting will be held on December 2, 2022, from 1 p.m. to 5 p.m., Mountain Standard Time.

All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: This meeting is open to the public and will be held at the Bozeman Ranger District Office, 3710 Fallon Street, Suite C, Bozeman, MT 59718. The public may also join virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Kathy Minor, Designated Federal Officer (DFO), by phone at 406–587–6776 or email at *kathleen.minor@usda.gov* or

Kat Barker, RAC Coordinator, at 406–522–2536 or email at *kathryn.barker@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Hear from Title II project proponents and discuss Title II project proposals; and
2. Make funding recommendations on Title II projects.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Kat Barker, RAC Coordinator, 3710 Fallon Street Suite C, Bozeman, MT 59718 or by email to *kathryn.barker@usda.gov.* Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: November 10, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–24975 Filed 11–15–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Trinity County Resource Advisory Committee

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice of meeting.

SUMMARY: The Trinity County Resource Advisory Committee (RAC) will hold a public meeting according to the details shown below. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act as well as to make recommendations on recreation fee proposals for sites on the Shasta-Trinity National Forest consistent with the Federal Lands Recreation Enhancement Act. General information and meeting

details can be found at the following website: *https://www.fs.usda.gov/detail/stnf/workingtogether/advisorycommittees/?cid=fseprd931588.*

DATES: The meeting will be held on November 28, 2022, 4:30 p.m. to 7 p.m., Pacific Standard Time. All RAC meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting is open to the public and will be held virtually via telephone and/or video conference. Virtual meeting participation details can be found on the website listed under **SUMMARY** or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

Written comments maybe submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

FOR FURTHER INFORMATION CONTACT: Monique Rea, RAC Coordinator, at 530–623–2121 or email at *monique.rea@usda.gov or* Tara Jones, Designated Federal Officer (DFO), by phone at 530–623–2121 or email at *tara.jones@usda.gov.*

Individuals who use telecommunication devices for the deaf and hard of hearing (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION: The agenda of the meeting includes:

1. Roll call;
2. Comments from the DFO;
3. Discussion & voting of RAC proposals;
4. Reminder about next meeting;
5. Public comment period;
6. Closing comments; and
7. Meeting adjournment.

The meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Monique Rea, 360 Main Street, Weaverville, CA 96093 or by email to *Monique.Rea@usda.gov.*

Persons with disabilities who require alternative means of communication for program information (*e.g.,* Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at 202–720–2600 (voice and TTY) or contact USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken in account the needs of the diverse groups served by USDA, membership shall include to the extent possible, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. USDA is an equal opportunity provider, employer, and lender.

Dated: November 10, 2022.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2022–24974 Filed 11–15–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

[Docket No. NRCS–2022–0014]

Determination of the Primary Purpose of the New York Suffolk County Septic Improvement Program (SIP)

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice.

SUMMARY: USDA is providing public notice that the Secretary of Agriculture has determined that cost share payments made by the New York Suffolk County SIP are primarily for the purpose of conserving soil and water resources or protecting and restoring the environment. The Natural Resources Conservation Service (NRCS) was assigned technical and administrative responsibility for reviewing the New York Suffolk County SIP and for making appropriate recommendations for the Secretary's determination of primary purpose. The Secretary's determination permits recipients of cost share payments to exclude such payments from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Ronnie Maurer; telephone (202) 720–9733; or email: *Ronnie.Maurer@usda.gov.* Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and text telephone (TTY)) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone).

SUPPLEMENTARY INFORMATION:

Background

Under Section 126(a)(8) of the Internal Revenue Code of 1954, as amended (26 U.S.C. 126) gross income does not include the ''excludable portion'' of payments received under any program of a State, or a political subdivision of a State, under which payments are made to individuals primarily for the purpose of protecting or restoring the environment. In general, a cost share payment for selected conservation practices is exempt from Federal taxation if it meets three tests:

(1) It was for a capital expense;

(2) It does not substantially increase the operator's annual income from the property for which it is made; and

(3) The Secretary of Agriculture certified that the payment was made primarily for conserving soil and water resources, protecting, or restoring the environment, improving forests, or providing habitat for wildlife.

The Secretary of Agriculture evaluates a conservation program on the basis of criteria specified in 7 CFR part 14 and makes a ''primary purpose'' determination for the payments made under the conservation program. The objective of the determination made under part 14 is to provide maximum conservation, environmental, forestry improvement, and wildlife benefits to the general public from the operation of applicable programs. Final determinations are made on the basis of program, category of practices, or individual practices.

NRCS was assigned technical and administrative responsibility for reviewing the New York Suffolk County SIP and for making appropriate

recommendations for the Secretary's determination of primary purpose.

Following a primary purpose determination by the Secretary of Agriculture, the Secretary of the Treasury determines if the payments made under the conservation program substantially increases the annual income derived from the property benefited by the payments.

Environmental Review

From this Federal action, approving tax deferral will not result in impacts to the environment, therefore, no further National Environmental Policy Act (NEPA) documentation will be prepared.

Determination

As provided for by Section 126 of the Internal Revenue Code, the Secretary examined the authorizing legislation, regulations, and operating procedures regarding the New York Suffolk County SIP. In accordance with the criteria specified in 7 CFR part 14, the Secretary has determined the primary purpose of cost share payments made under the New York Suffolk County SIP is conserving soil and water resources or protecting and restoring the environment.

A current residential property owner residing in any area of Suffolk County may apply for a SIP grant to design, purchase, or install an Innovative and Alternative Onsite Wastewater Treatment System (I/A OWTS). The I/A OWTS must be approved for use by the Suffolk County Department of Health. All residential property owners are eligible because nitrogen loading does not affect just the property on which it occurs, but instead affects the entire regional area. However, since there are properties in areas that are even more susceptible to damage, the Suffolk County Commissioner of Health Services may authorize preferential review of an application for a grant if the grant application is for a residence in an area specified by Health Services as environmentally sensitive.

Rules were developed that allow for a priority order on the issuance of grants, based on the environmental sensitivity of the area (for example, groundwater travel time to surface water in the home's geographic area). Suffolk County executes a grant contract with the property owner, which is recorded, but Suffolk County directly pays the designer, installer, or manufacturer of the I/A OWTS from a list established by the County. The amount of the grant award is based on actual eligible costs, up to $20,000, with the property owner incurring any additional expenses for the design, purchase, and installation costs over the grant amount.

A ''Record of Decision'' for the New York Suffolk County SIP to provide grants to homeowners to design, purchase, or install an I/A OWTS has been prepared and is available upon request from the Acting Director, Financial Assistance Programs Division, NRCS, 1400 Independence Avenue SW, Room 4529 South Building, Washington, DC 20250.

The Secretary's determination is in accordance with section 126 of the Internal Revenue Code, and permits recipients of cost share payments to exclude those payments from gross income to the extent allowed by the Internal Revenue Service.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720–2600 (voice and text telephone (TTY) or dial 711 for Telecommunications Relay Service (both voice and text telephone users can initiate this call from any telephone). Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD–3027, found online at *https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint* and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632–9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410 or email: *OAC@usda.gov.*

USDA is an equal opportunity provider, employer, and lender.

Terry Cosby,

Chief, Natural Resources Conservation Service.

[FR Doc. 2022–24937 Filed 11–15–22; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Virgin Islands Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Virgin Islands Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a web meeting via Zoom at 12:00 p.m. AST (11:00 a.m. ET) on Thursday, December 1, 2022, for the purpose of reviewing potential project proposals and voting to examine a civil rights topic for the Committee's first project.

DATES: The meeting will take place on Thursday, December 1, 2022, at 12:00 p.m. AST (11:00 a.m. ET).

Meeting Link (Audio/Visual): https://tinyurl.com/25rr3v3c.

Telephone (Audio Only): Dial: 1–833–568–8864; Meeting ID: 161 405 9732.

FOR FURTHER INFORMATION CONTACT: Barbara Delaviez, DFO, at *ero@usccr.gov* or 1–202–529–8246.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the meeting link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations,

please email *ero@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Sarah Villanueva at *svillanueva@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit at 1–202–376–7533.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Virgin Islands Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above email or street address.

Agenda

I. Welcome
II. Project Planning—review/vote draft project proposal
III. Next Steps
IV. Other Business
V. Public Comment, if applicable
VI. Adjournment

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24946 Filed 11–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a virtual business meeting via Zoom on Wednesday, February 8, 2023, from 3:00 p.m.–4:00 p.m. Pacific Time. The purpose of the meeting is to plan upcoming panels on physical accessibility in the state of Washington.

DATES: The meeting will take place on Wednesday, February 8, 2023, from 3:00 p.m.–4:00 p.m. Pacific Time.

Register at: *https://www.zoomgov.com/meeting/register/vJItdu2vpzsuEkPBbGIqzTX3wYhm0Vyu7Ik.*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24942 Filed 11–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Tennessee Advisory Committee

AGENCY: Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA) that a meeting of the Tennessee Advisory Committee to the Commission will convene by Zoom on Tuesday, December 6, 2022, at 12 p.m. (CT). The purpose of the meeting is to discuss the report for their project on voting rights.

DATES: The meeting will take place on Tuesday, December 6, 2022, from 12 p.m.–1 p.m. (CST).

Registration Link (Audio/Visual): https://bit.ly/3Efq6Jz.

Telephone (Audio Only): Dial (833) 568–8864 USA Toll Free; Access Code: 160 196 6411.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno at *vmoreno@usccr.gov* or by phone at 434–515–0204.

SUPPLEMENTARY INFORMATION: This meeting is available to the public through the Zoom link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Victoria Moreno at *vmoreno@usccr.gov*. All written comments received will be available to the public.

Persons who desire additional information may contact the Regional Programs Unit at (202) 809–9618. Records and documents discussed during the meeting will be available for

public viewing as they become available at the *www.facadatabase.gov*. Persons interested in the work of this advisory committee are advised to go to the Commission's website, *www.usccr.gov,* or to contact the Regional Programs Unit at the above phone number or email address.

Agenda

Tuesday, December 6, 2022; 12:00 p.m. (CT)

1. Welcome & Roll Call
2. Chair's Comments
3. Discussion of report for the project on voting rights
4. Next Steps
5. Public Comment
6. Adjourn

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24969 Filed 11–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a virtual business meeting via Zoom on Friday, December 9, 2022, from 12:00 p.m.–1:30 p.m. Pacific Time. The purpose of the meeting is to plan upcoming panels on physical accessibility in the state of Washington.

DATES: The meeting will take place on Friday, December 9, 2022, from 12:00 p.m.–1:30 p.m. Pacific Time.

Register at: *https://www.zoomgov.com/meeting/register/vJIsduCvqzwuHFAn3Zx5FVKTHTGNN8jSIoE*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376..

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ*.

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24944 Filed 11–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Washington Advisory Committee

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of Virtual Business Meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Washington Advisory Committee (Committee) will hold a virtual business meeting via Zoom on Tuesday, January 24, 2023, from 10:00 a.m.–11:30 a.m. Pacific Time. The purpose of the meeting is to plan upcoming panels on physical accessibility in the state of Washington.

DATES: The meeting will take place on Tuesday, January 24, 2023, from 10:00 a.m.–11:30 a.m. Pacific Time.

Register at: *https://www.zoomgov.com/meeting/register/vJIsc-CrrToiHbWSSbzhZEg0Pd9mqfqG0IM*.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or by phone at (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery at *bpeery@usccr.gov*. Persons who desire additional information may contact the Regional Programs Unit Office/Advisory Committee Management Unit at (202) 701–1376.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/*

FACAPublicViewCommitteeDetails?id=a10t0000001gzkZAAQ.

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or you may contact the Regional Programs Unit office at the above email address.

Agenda

I. Welcome & Roll Call
II. Approval of Minutes
III. Committee Discussion
IV. Public Comment
V. Adjournment

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24943 Filed 11–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the Texas Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act (FACA) that the Texas Advisory Committee (Committee) will hold a series of virtual briefings via ZoomGov on the following dates and times for the purpose of hearing testimony about mental health care in the juvenile justice system in Texas.

DATES: These virtual briefings will take place on:

- Wednesday, December 7, 2022, from 1 p.m.–3 p.m. Central Time
- Wednesday, December 14, 2022, from 1 p.m.–3 p.m. Central Time

Registration Link:*https://www.zoomgov.com/meeting/register/vJItduqupj0tG3_mbDx3ZH0dvLE2hOZwe_s.*

FOR FURTHER INFORMATION CONTACT:

Brooke Peery, Designated Federal Officer (DFO) at *bpeery@usccr.gov.* or by phone at (202) 701–1376. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the meeting. Written comments may be emailed to Brooke Peery (DFO) at *bpeery@usccr.gov.*

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzkoAAA.*

Please click on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's website, *https://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

I. Welcoming Remarks and Roll Call
II. Panelists Remarks
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24970 Filed 11–15–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meetings of the New Mexico Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual briefings.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the New Mexico Advisory Committee (Committee) will hold a series of virtual briefings via ZoomGov on the following dates and times for the purpose of hearing testimony on education adequacy for Native American students.

DATES: These virtual briefings will take place on:

- Thursday, December 8, 2022, from 10 a.m.–12 p.m. MT
- Thursday, December 15, 2022, from 10 a.m.–12 p.m. MT

Registration Link: *https://www.zoomgov.com/meeting/register/vJItcemhrTssHMHPJxMVAhiPuoCzUTDhSIo..*

FOR FURTHER INFORMATION CONTACT: Brooke Peery, Designated Federal Officer (DFO), at *bpeery@usccr.gov* or (202) 701–1376.

SUPPLEMENTARY INFORMATION: Members of the public may listen to the discussion. This meeting is available to the public through the public registration link listed above. An open comment period will be provided to allow members of the public to make a statement as time allows. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–877–8339 and providing the Service with the conference call number and conference ID number.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be mailed to the Regional Programs Unit Office, U.S. Commission on Civil Rights, 300 N Los Angeles St., Suite 2010, Los Angeles, CA 90012 or emailed to Brooke Peery at *bpeery@usccr.gov*

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available at: *https://www.facadatabase.gov/FACA/FACAPublicViewCommitteeDetails?id=a10t0000001gzlGAAQ.*

Please click on the ''Meeting Details'' and ''Documents'' links. Persons interested in the work of this Committee are also directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Unit office at the above email or street address.

Agenda

I. Welcoming Remarks and Roll Call
II. Panelist Remarks
III. Committee Q&A
IV. Public Comment
V. Adjournment

Dated: November 10, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–24971 Filed 11–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Economic Development Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Regional Economic Development Data Collection Instrument

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice of Information Collection, request for comment.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before January 17, 2023).

ADDRESSES: Interested persons are invited to submit written comments by mail to Bernadette Grafton, Research and National Technical Assistance (RNTA) Coordinator, Performance Research and National Technical Assistance Division, U.S. Department of Commerce, at *bgrafton1@eda.gov* or to *PRAcomments@doc.gov.* Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Bernadette Grafton, Research and National Technical Assistance (RNTA) Coordinator, Performance Research and National Technical Assistance Division, U.S. Department of Commerce, at *bgrafton1@eda.gov* or 202–482–2917.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Economic Development Administration (EDA) leads the Federal economic development agenda by promoting innovation and competitiveness, preparing American regions for growth and success in the worldwide economy. Guided by the basic principle that sustainable economic development should be driven locally, EDA works directly with communities and regions to help them build the capacity for economic development based on local business conditions and needs. The Public Works and Economic Development Act of 1965 (PWEDA) (42 U.S.C. 3121 *et seq.*) is EDA's organic authority and is the primary legal authority under which EDA awards financial assistance. Under PWEDA, EDA provides financial assistance to both rural and urban distressed communities by fostering entrepreneurship, innovation, and productivity through investments in infrastructure development, workforce development, capacity building, and business development to attract private capital investments and new and better jobs to regions experiencing economic distress. Further information on EDA programs and financial assistance opportunities can be found at *https://eda.gov/www.eda.gov.*

To effectively administer and monitor its economic development assistance programs, EDA collects certain information from applications for, and recipients of, EDA investment assistance. The purpose of this notice is to seek comments from the public and other Federal agencies on a request for a new information collection for recipients of awards under the EDA American Rescue Plan Act (ARPA) Build Back Better Regional Challenge.

The proposed information collection will employ an innovative mixed methods approach to gather traditional metrics in addition to qualitative data on all regions participating in the Build Back Better Regional Challenge program. Secondary data will be gathered and monitored for each of the regions/awardees. A quarterly questionnaire will be sent to each of the BBBRC coalition leads which will gather the relevant data and stories for each of the 21 BBBRC coalitions, resulting in coalition regional impact evaluation, resources, and tools for regional economic development decision-makers.

This collection will explore several thematic areas for the Build Back Better Regional Challenge, where each of the following areas are based on survey scope of work themes:

1. Accelerating innovation in emerging technologies to gain an understanding of the long-term impact on economic and social sectors;
2. Helping workers access information on new job opportunities, job placement, and job training and prepare for and be hired into good jobs;
3. Increasing new business growth and entrepreneurial activity within the industry sectors;
4. Building critical infrastructure such as roads, water and sewer miles, business and industries to allow for economic development and growth; and
5. Helping businesses adopt new technologies so that they may enter new markets, increasing their economic capacity and overall sustainability.

Within each of the categories of questions, organized by thematic area noted above, there will be equity-based questions to support greater understanding of how equity is being implemented throughout regional economic development projects.

Coalition leads will respond to the appropriate thematic area, answering questions related to the following categories:

- Reflections and updates on the coalition implementation process and progress;
- The ability to secure additional non-federal investments;
- Detailing the programs, trainings, and curricula developed/launched for job training/workforce development;
- Development and growth surrounding infrastructure; and
- Job creation, wage growth, and existing employee growth and development

The collection instrument also includes questions related to the overall programmatic experience such Community of Practice support.

II. Method of Collection

Data will be collected electronically.

III. Data

OMB Control Number: None: new information collection.

Form Number(s): None: new information collection.

Type of Review: Regular submission: new information collection.

Affected Public: Recipients of ARPA Build Back Better Regional Challenge awards, which may include a(n): District Organization; Indian Tribe or a consortium of Indian Tribes; State, county, city, or other political subdivision of a State, including a special purpose unit of a state or local government engaged in economic or infrastructure development activities or a consortium of political subdivisions; Institution of Higher Education or a consortium of institutions of higher education; or Public or private non-profit organization or association,

including labor unions, acting in cooperation with officials of a political subdivision of a State.

Estimated Number of Respondents: 21 respondents, responding quarterly.

Estimated Time per Response: 2.5 hours/per respondent.

Estimated Total Annual Burden Hours: 210 hours.

Estimated Total Annual Cost to Public: $12,768 (cost assumes application of U.S. Bureau of Labor Statistics second quarter 2022 mean hourly employer costs for employee compensation for professional and related occupations of $60.80).

Respondent's Obligation: Mandatory.

Legal Authority: The Public Works and Economic Development Act of 1965 (42 U.S.C. 3121 et seq).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer,Office of the Chief Information Officer,Commerce Department.

[FR Doc. 2022–24977 Filed 11–15–22; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–159–2022]

Approval of Subzone Status; Great Plains Manufacturing, Incorporated Salina, Kipp, Assaria, Abilene, Enterprise, Ellsworth, Lucas and Tipton, Kansas

On September 6, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Board of County Commissioners of Sedgwick County, Kansas, grantee of FTZ 161, requesting subzone status subject to the existing activation limit of FTZ 161, on behalf of Great Plains Manufacturing, Incorporated, in Salina, Kipp, Assaria, Abilene, Enterprise, Ellsworth, Lucas and Tipton, Kansas.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 55780–55781, September 12, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval.

Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR Sec. 400.36(f)), the application to establish Subzone 161E was approved on November 9, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 161's 2,000-acre activation limit.

Dated: November 9, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–24912 Filed 11–15–22; 8:45 am]

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DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–138–2022]

Approval of Subzone Status; Burger Boat Company, Manitowoc, Wisconsin

On August 8, 2022, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by Brown County, Wisconsin, grantee of FTZ 167, requesting subzone status subject to the existing activation limit of FTZ 167, on behalf of Burger Boat Company, in Manitowoc, Wisconsin.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (87 FR 49579, August 11, 2022). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to establish Subzone 167F was approved on November 10, 2022, subject to the FTZ Act and the Board's regulations, including Section 400.13, and further subject to FTZ 167's 2,000-acre activation limit.

Dated: November 10, 2022.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2022–24938 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–897]

Large Diameter Welded Pipe From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Hyundai RB Co., Ltd. (Hyundai RB) made sales of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea) at prices below normal value (NV), and that Hyundai Steel Company (Hyundai Steel) did not make sales of the subject merchandise at prices below NV during the period of review (POR), May 1, 2020, through April 30, 2021. Commerce further determines that sales by the non-individually examined companies were made at prices below NV.

DATES: Applicable November 16, 2022.

FOR FURTHER INFORMATION CONTACT: Katherine Johnson or Samantha Kinney, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–2285, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2022, Commerce published the preliminary results of this

administrative review.[1] The review covers 20 producers or exporters of subject merchandise. We invited interested parties to comment on the *Preliminary Results.* A summary of the events that occurred since Commerce published the *Preliminary Results,* as well as a full discussion of the issues raised by parties for these final results, are included in the Issues and Decision Memorandum.[2] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [3]

The merchandise covered by the *Order* is welded carbon and alloy steel pipe (other than stainless steel pipe), more than 406.4 mm (16 inches) in nominal outside diameter (large diameter welded pipe), regardless of wall thickness, length, surface finish, grade, end finish, or stenciling. Imports of the product are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 7305.11.1030, 7305.11.1060, 7305.11.5000, 7305.12.1030, 7305.12.1060, 7305.12.5000, 7305.19.1030, 7305.19.1060, 7305.19.5000, 7305.31.4000, 7305.31.6090, 7305.39.1000 and 7305.39.5000. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive. For a complete description of the scope of the *Order,* see the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the parties' case and rebuttal briefs are addressed in the Issues and Decision Memorandum and are listed in Appendix I to this notice.[4] The Issues and Decision Memorandum is a public document and is on-file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on the comments received from interested parties and record information, we made no changes to our preliminary weighted-average dumping margin calculations for Hyundai RB and Hyundai Steel.

Rate for Non-Examined Respondents

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally an amount 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 on the basis of facts available. For these final results of review, we calculated a weighted-average dumping margin for Hyundai RB that is not zero, *de minimis,* or based entirely on facts available. Therefore, consistent with our practice, we have assigned the companies not selected for individual examination the weighted-average dumping margin calculated for Hyundai RB.

Final Results of Review

As a result of this review, we determine the following weighted-average dumping margins exist for the POR:

Exporter or producer	Weighted-average dumping margin (percent)
Hyundai RB Co., Ltd	2.67
Hyundai Steel Company	0.00
Non-Examined Companies [5]	2.67

Disclosure

Normally, Commerce discloses to the parties in a proceeding the calculations that it performed in connection with the final results of review in accordance with 19 CFR 351.224(b). However, because we made no changes to our preliminary weighted-average dumping margin calculations for Hyundai RB and Hyundai Steel, there are no revised margin calculations to disclose.

Assessment Rates

Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in this review, in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b). Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Pursuant to 19 CFR 351.212(b)(1), where the respondent reported the entered value of its U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent did not report entered value, we calculated importer-specific per-unit duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of those sales. To determine whether an importer-specific per-unit duty assessment rate is *de minimis,* we calculated an estimated entered value.

Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without regard to antidumping duties. Because the weighted-average dumping margin for Hyundai Steel is zero percent, we intend to instruct CBP to liquidate the

[1] *See Large Diameter Welded Pipe from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Partial Rescission; 2020–2021,* 87 FR 33723 (June 3, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results in the 2020–2021 Antidumping Duty Administrative Review: Large Diameter Welded Pipe from the Republic of Korea,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[3] *See Large Diameter Welded Pipe from the Republic of Korea: Amended Final Affirmative Antidumping Determinations and Antidumping Duty Orders,* 84 FR 18767 (May 2, 2019) (*Order*); *see also Large Diameter Welded Pipe from the Republic of Korea: Final Results of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews,* 85 FR 51679 (August 21, 2020).

[4] *See* Appendix I.

[5] *See* Appendix II.

appropriate entries without regard to antidumping duties.[6]

Consistent with Commerce's clarification of its assessment practice, for entries of subject merchandise during the POR produced by any of the above-referenced respondents for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate in the original less-than-fair-value (LTFV) investigation of 7.08 percent *ad valorem*[7] if there is no rate for the intermediate company(ies) involved in the transaction.[8]

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in these final results; (2) for previously investigated or reviewed companies not subject to this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the company participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 7.08 percent *ad valorem,* the all-others rate established in the LTFV investigation.[9] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: November 9, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Issues
  Hyundai RB Co., Ltd. (Hyundai RB)
  Comment 1: Smoothing of Costs
  Comment 2: Scrap Adjustment
  Comment 3: Raw Material Discount
  Comment 4: Pre-POR Direct Cost Adjustment
  Comment 5: General and Administrative (G&A) Expense
  Comment 6: Interest Expense Ratio Adjustment
  Hyundai Steel Company (Hyundai Steel)
  Comment 7: Interest Expense Calculation
  Comment 8: Short-Term Interest Income Offset
  Comment 9: G&A Expenses
  SeAH Steel Corporation (SeAH)
  Comment 10: Voluntary Respondent Status for SeAH Steel Corporation
V. Recommendation

Appendix II

Companies Not Selected for Individual Examination

1. AJU Besteel Co., Ltd.
2. Chang Won Bending Co., Ltd.
3. Daiduck Piping Co., Ltd.
4. Dong Yang Steel Pipe Co., Ltd.
5. Dongbu Incheon Steel Co., Ltd.
6. EEW KHPC Co., Ltd.
7. EEW Korea Co., Ltd.
8. Histeel Co., Ltd.
9. Husteel Co., Ltd.
10. Kiduck Industries Co., Ltd.
11. Kum Kang Kind. Co., Ltd.
12. Kumsoo Connecting Co., Ltd.
13. Nexteel Co., Ltd.
14. SeAH Steel Corporation
15. Seonghwa Industrial Co., Ltd.
16. SIN–E B&P Co., Ltd.
17. Steel Flower Co., Ltd.
18. WELTECH Co., Ltd.

[FR Doc. 2022–24939 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–DS–P

[6] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012).

[7] *See Order.*

[8] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[9] *See Order.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073]

Common Alloy Aluminum Sheet From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Antidumping Administrative Review; 2021–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that all companies subject to this review are part of the China-wide entity because they did not establish eligibility for a separate rate. Additionally, Commerce is rescinding this review with respect to Yinbang Clad Material Co., Ltd. (Yinbang Clad). Interested parties are invited to comment on these preliminary results of this review.

DATES: Applicable November 16, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt, 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) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 2019, Commerce published the antidumping duty order on common alloy aluminum sheet from the People's Republic of China (China).[1] On February 8, 2022, we published a notice of opportunity for interested parties to request that Commerce conduct an administrative review of the

[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019) (*Order*).

Order.[2] On February 28, 2022, we received requests for an administrative review from Valeo North America, Inc (Valeo),[3] and the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group and its individual members [4] (the domestic industry).[5] On April 12, 2022, Commerce published the initiation notice of an administrative review of the *Order* with respect to Alcha International Holdings Limited (Alcha International), Jiangsu Alcha Aluminum Co., Ltd.,[6] and Yinbang Clad.[7] On April 25, 2022, the domestic industry withdrew its request for review with respect to Yinbang Clad.[8] On May 12, 2022, Jiangsu Alcha and Alcha International submitted a letter stating that neither company was entitled to a separate rate, due to changes in the companies' government control status.[9]

On October 26, 2022, we extended the deadline for these preliminary results of review, until November 8, 2022.[10] The period of review (POR) is February 1, 2021, through January 31, 2022.

For details regarding the events that occurred subsequent to the initiation of the review, *see* the Preliminary Decision Memorandum.[11] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public 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 Order

The merchandise covered by the *Order* is common alloy aluminum sheet from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.213.

Partial Recission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested a review withdraw their requests within 90 days of the publication date of the notice of initiation of the requested review. The domestic industry withdrew its request for administrative review of Yinbang Clad within 90 days of the date of the publication of the *Initiation Notice,*[12] and no other interested parties requested a review of Yinbang Clad. Accordingly, Commerce is rescinding this review with respect to Yinbang Clad, in accordance with 19 CFR 351.213(d)(1).

Separate Rates

None of the companies within the Alcha entity submitted a separate rate application or certification. Further, Jiangsu Alcha and Alcha International submitted a letter stating they are not entitled to submit a separate rate application in this administrative review due to a change in their government control status.[13] Accordingly, we preliminarily find that Alcha has not established its eligibility for a separate rate.[14] For additional information, *see* the Preliminary Decision Memorandum.

China-Wide Entity

In accordance with Commerce's policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the China-wide entity.[15] Because no party requested a review of the China-wide entity, the China-wide entity is not under review and the weighted-average dumping margin for the China-wide entity is not subject to change (*i.e.,* 59.72 percent).[16] Because Alcha did not demonstrate its eligibility for a separate rate, we preliminarily consider Alcha [17] to be part of the China-wide entity.

Disclosure and Public Comment

Normally, Commerce discloses the calculations used in its analysis to parties in a review within five days of the date of publication of the notice of preliminary results, in accordance with 19 CFR 351.224(b). However, in this case, there are no calculations on the record to disclose.

Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review and Join Annual Inquiry Service List,* 87 FR 7112 (February 8, 2022).

[3] *See* Valeo's Letter, ''Common Alloy Aluminum Sheet from the People's Republic of China: Request for Administrative Review,'' dated February 28, 2022.

[4] The individual members of the Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group are: Arconic Corporation, Commonwealth Rolled Products, Inc., Constellium Rolled Products Ravenswood, LLC, Jupiter Aluminum Corporation, JW Aluminum Company, and Novelis Corporation.

[5] *See* Domestic Industry's Letter, ''3rd Administrative Review of the Antidumping Order on Common Alloy Aluminum Sheet from the People's Republic of China—Domestic Industry's Request for 2021/2022 Administrative Review,'' dated February 28, 2022.

[6] Commerce previously determined that the following companies should be treated as a single entity: Alcha International; Jiangsu Alcha Aluminum Co., Ltd.; and Baotou Alcha Aluminum Co., Ltd. (Baotou Alcha). Additionally, Commerce previously determined that Jiangsu Alcha Aluminum Group Co., Ltd. (Jiangsu Alcha) is the successor-in-interest to Jiangsu Alcha Aluminum Co., Ltd. *See Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-In-Interest Determination, and Final Determination of No Shipments; 2018–2020,* 86 FR 74066, 74067 (December 29, 2021), unchanged in *Common Alloy Aluminum Sheet from the People's Republic of China: Amended Final Results of Antidumping Duty Administrative Review, 2018–2020,* 87 FR 6504 (February 4, 2022); *see also Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 54975 (September 8, 2022), as corrected by *Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021; Correction,* 87 FR 59059 (September 29, 2022). Accordingly, we are treating the single entity of Alcha International, Jiangsu Alcha, and Baotou Alcha (collectively, Alcha) as the companies under review in this proceeding.

[7] *See Initiation of Antidumping and Countervailing Duty Administrative Review,* 87 FR 21619 (April 12, 2022) (*Initiation Notice*).

[8] *See* the Domestic Industry's Letter, ''3rd Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China—Domestic Industry's Partial Withdrawal of Review Request,'' dated April 25, 2022 (Domestic Industry's Partial Withdrawal of Review).

[9] *See* Jiangsu Alcha and Alcha International's Letter, ''Common Alloy Aluminum Sheet from the People's Republic of China: Notice Regarding Alcha,'' dated May 12, 2022 (Alcha International's May 12th Submission).

[10] *See* Memorandum, ''2021–2022 Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China: Extension of Deadline for Preliminary Results,'' dated October 26, 2022.

[11] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2021–2022 Antidumping Duty Administrative Review of Common Alloy Aluminum Sheet from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[12] *See* Domestic Industry's Partial Withdrawal of Review.

[13] *See* Alcha International's May 12th Submission.

[14] *See Initiation Notice* (''All firms listed below that wish to qualify for separate rate status in the administrative reviews involving NME countries must complete, as appropriate, either a separate rate application or certification, as described below.'').

[15] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[16] *See Order.*

[17] Including Alcha International, Jiangsu Alcha, and Baotou Alcha.

results of review in the **Federal Register**.[18] Rebuttal briefs may be filed no later than seven days after case briefs are filed, all rebuttal briefs must be limited to comments raised in the case briefs.[19] A table of contents, list of authorities used, and an executive summary of issues should accompany any briefs submitted to Commerce. The summary should be limited to five pages total, including footnotes.[20]

Interested parties who wish to request a hearing, 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**.[21] Requests should contain the party's name, address, and telephone number, the number of individuals from the requesting party's firm that will attend the hearing, and a list of the issues the party intends to discuss at the hearing. Oral arguments at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[22] Parties should confirm by telephone the date and time of the hearing two days before the scheduled date of the hearing.

All submissions must be filed electronically using ACCESS.[23] An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time (ET) on the due date.[24] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information until further notice.[25]

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, which will include the results of its analysis of issues raised in any briefs, within 120 days of publication of these preliminary results of review in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

[18] *See* 19 CFR 351.309(c)(2).

[19] *See* 19 CFR 351.309(d).

[20] *See* 19 CFR 351.309(c)(2), (d)(2).

[21] *See* 19 CFR 351.310(c).

[22] *See* 19 CFR 351.310(d).

[23] *See generally* 19 CFR 351.303.

[24] *See* 19 CFR 351.303 (for general filing requirements); *see also Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

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

Assessment Rates

Upon issuance of the final results, Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review, in accordance with 19 CFR 351.212(b)(1). If the preliminary results are unchanged for the final results, we will instruct CBP to apply an *ad valorem* assessment rate of 59.72 percent to all entries of subject merchandise during the POR which were exported by Alcha.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

Commerce will instruct CBP to require a cash deposit for antidumping duties equal to the weighted-average amount by which the normal value exceeds U.S. price. The following cash deposit requirements will be effective for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice in the **Federal Register**, as provided by section 751(a)(2)(C) of the Act: (1) for previously investigated or reviewed Chinese and non-Chinese exporters that have separate rates, the cash deposit rate will continue to be the exporter-specific rate established in the most recently completed segment of this proceeding; (2) for all Chinese exporters of subject merchandise which have not been found to be entitled to a separate rate, including Alcha, the cash deposit rate will be the rate for the China-wide entity (*i.e.,* 59.72 percent)[26] and (3) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the China exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties and/or countervailing duties has occurred, and the subsequent assessment of double antidumping duties and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

[26] *See Order.*

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: November 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Sections in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Partial Rescission of Administrative Review
V. Discussion of the Methodology
VI. Recommendation

[FR Doc. 2022–24915 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–842]

Prestressed Concrete Steel Wire Strand From the Republic of Turkey: Final Results of Antidumping Duty Administrative Review; 2020–2022

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that the sole producer/exporter subject to this administrative review, Celik Halat ve Tel Sanayi A.S. (Celik Halat), made sales of the subject merchandise at less than normal value during the period of review September 30, 2020, through January 31, 2022.

DATES: Applicable November 16, 2022.

FOR FURTHER INFORMATION CONTACT: Ajay Menon or Macey Mayes, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone:

(202) 482–0208 or (202) 482–4473, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 1, 2022, Commerce published the *Preliminary Results* and invited comments from interested parties.[1] No interested party submitted comments. Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [2]

The merchandise covered by this *Order* is prestressed concrete steel wire strand (PC strand) from Turkey. The PC strand subject to this *Order* is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the *Order* is dispositive.[3]

Final Results of Review

We received no comments from interested parties on the *Preliminary Results* and, therefore, are making no changes to our calculations in the final results of this review. Accordingly, as a result of this review, we determine that the following weighted-average dumping margin exists for Celik Halat for the period September 30, 2020, through January 31, 2022:

Producer/exporter	Weighted-average dumping margin (percent)	Cash deposit rate adjusted for subsidy offset (percent) [1]
Celik Halat ve Tel Sanayi A.S	53.65	53.16

[1] We subtracted 0.49 percent, the amount of export subsidies Commerce calculated in the most recently completed segment of the companion countervailing duty proceeding, from the dumping margin of 53.65 percent. *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Notice of Court Decision Not in Harmony With the Final Determination of Countervailing Duty Investigation; Notice of Amended Final Determination,* 87 FR 34653 (June 7, 2022); *see also Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Notice of Court Decision Not in Harmony With the Final Determination of Antidumping Investigation; Notice of Amended Final Determination,* 87 FR 34241 (June 6, 2022) (*Amended Final Determination*).

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. We also intend to instruct CBP to take into account the ''provisional measures deposit cap,'' in accordance with 19 CFR 351.212(d).

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review or the less-than-fair-value investigation, but the producer is, then the cash deposit rate will be the rate established for the most recent segment for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 17.39 percent, the all-others rate established in the *Amended Final Determination,* adjusted for export subsidies.[4] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

[1] *See Prestressed Concrete Steel Wire Strand from the Republic of Turkey: Preliminary Results of Antidumping Duty Administrative Review; 2020–2022,* 87 FR 53723 (September 1, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See Prestressed Concrete Steel Wire Strand from Argentina, Colombia, Egypt, the Netherlands, Saudi Arabia, Taiwan, the Republic of Turkey, and the United Arab Emirates: Antidumping Duty Orders,* 86 FR 7703 (February 1, 2021 (*Order*).

[3] For a full description of the scope of the order, *see* the *Preliminary Results* PDM at 2–3.

[4] *See Amended Final Determination,* 87 FR at 34241.

and terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–24913 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–813]

Citric Acid and Certain Citrate Salts From Belgium: Final Results of Antidumping Duty Administrative Review; 2020–2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Citribel nv (Citribel), formerly S.A. Citrique Belge N.V. (Citrique Belge), a producer/exporter of citric acid and certain citrate salts (citric acid) from Belgium, did not sell subject merchandise at prices below normal value during the period of review (POR), July 1, 2020, through June 30, 2021.

DATES: Applicable November 16, 2022.

FOR FURTHER INFORMATION CONTACT: David Lindgren or Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1671 or 202–482–4521, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 29, 2022, Commerce published the *Preliminary Results* of the 2020–2021 administrative review of the antidumping duty order on citric acid from Belgium.[1] This review covers one producer/exporter of the subject merchandise, Citribel (formerly Citrique Belge).[2] We invited parties to comment on the *Preliminary Results.* No party submitted comments. Accordingly, the final results remain unchanged from the *Preliminary Results.*

Scope of the Order [3]

The merchandise covered by this *Order* includes all grades and granulation sizes of citric acid, sodium citrate, and potassium citrate in their unblended forms, whether dry or in solution, and regardless of packaging type. The scope also includes blends of citric acid, sodium citrate, and potassium citrate; as well as blends with other ingredients, such as sugar, where the unblended form(s) of citric acid, sodium citrate, and potassium citrate constitute 40 percent or more, by weight, of the blend.

The scope also includes all forms of crude calcium citrate, including dicalcium citrate monohydrate, and tricalcium citrate tetrahydrate, which are intermediate products in the production of citric acid, sodium citrate, and potassium citrate.

The scope includes the hydrous and anhydrous forms of citric acid, the dihydrate and anhydrous forms of sodium citrate, otherwise known as citric acid sodium salt, and the monohydrate and monopotassium forms of potassium citrate. Sodium citrate also includes both trisodium citrate and monosodium citrate which are also known as citric acid trisodium salt and citric acid monosodium salt, respectively.

The scope does not include calcium citrate that satisfies the standards set forth in the United States Pharmacopeia and has been mixed with a functional excipient, such as dextrose or starch, where the excipient constitutes at least 2 percent, by weight, of the product.

Citric acid and sodium citrate are classifiable under 2918.14.0000 and 2918.15.1000 of the Harmonized Tariff Schedule of the United States (HTSUS), respectively. Potassium citrate and crude calcium citrate are classifiable under 2918.15.5000 and, if included in a mixture or blend, 3824.99.9295 of the HTSUS. Blends that include citric acid, sodium citrate, and potassium citrate are classifiable under 3824.99.9295 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Final Results of Review

As a result of this administrative review, Commerce determines that the following dumping margin exists for the POR:

Producer/exporter	Weighted-average dumping margin (percent)
Citribel nv (formerly S.A. Citrique Belge)	0.00

Disclosure

Normally, Commerce will disclose to the parties in a proceeding the calculations performed in connection with a final results of review within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, Commerce made no adjustments to the margin calculation methodology used in the *Preliminary Results;* therefore, there are no calculations to disclose for the final results.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Because the rate assigned to Citribel (formerly Citrique Belge) is zero, Commerce will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[4]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a

[1] *See Citric Acid and Certain Citrate Salts from Belgium: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 45751 (July 29, 2022) (*Preliminary Results*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 50034 (September 7, 2021) (*Initiation Notice*). The *Initiation Notice* included the company name ''S.A. Citrique Belge N.V.'' (Citrique Belge). Subsequently, we determined that Citribel is the successor-in-interest to Citrique Belge. *See Citric Acid and Certain Citrate Salts from Belgium: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstance Review,* 87 FR 35738 (June 13, 2022), and accompanying Preliminary Decision Memorandum, unchanged in *Citric Acid and Certain Citrate Salts from Belgium: Final Results of Antidumping Duty Changed Circumstances Review,* 87 FR 45750 (July 29, 2022) (*Citric Acid Belgium CCR*).

[3] *See Citric Acid and Certain Citrate Salts from Belgium, Colombia and Thailand: Antidumping Duty Orders,* 83 FR 35214 (July 25, 2018) (*Order*).

[4] As explained above, we determined that Citribel is the successor-in-interest to Citrique Belge. *See Citric Acid Belgium CCR.* Accordingly, we intend to issue assessment instructions covering entries produced and exported by Citrique Belge during the POR at the rate established in these final results.

statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of these final results for all shipments of citric acid from Belgium entered, or withdrawn from warehouse, for consumption on or after the date of publication provided by section 751(a)(2) of the Act: (1) the cash deposit rate for Citribel will be zero; (2) for merchandise exported by producers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer and/or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation but the producer is, then the cash deposit rate will be the rate established for the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 19.30 percent, the all-others rate established in the less-than-fair-value investigation.[5] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: November 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–24914 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–DS–P

[5] *See Order.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC522]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Atlantic Surfclam and Ocean Quahog Committee will hold a public meeting.

DATES: The meeting will be held on Friday, December 2, 2022, from 10 a.m. to 12 p.m. For agenda details, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The meeting will be held via webinar. Connection information will be posted to the Council's calendar prior to the meeting at *www.mafmc.org.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331; *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Atlantic Surfclam and Ocean Quahog Committee will meet Friday, December 2, 2022, from 10 a.m. to 12 p.m. The purpose of this meeting is to review public comment received on the draft Amendment to address species separation requirements in the Atlantic surfclam and ocean quahog fisheries. The Committee may also develop recommendations to the Council, to be presented to the full Council later in December.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden, (302) 526–5251 at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–24885 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC549]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: This webinar will be held on Friday, December 2, 2022, at 9:30 a.m. Webinar registration URL information: *https://attendee.gotowebinar.com/register/7021382725170021643.*

ADDRESSES: *Council address:* New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Agenda

The Committee will receive recommendations from the Groundfish Advisory Panel, Recreational Advisory Panel, and Groundfish Plan Development Team, They will discuss draft alternatives and draft impacts analysis in Framework Adjustment 65/Specifications & Management Measures, and make preferred recommendations to the Council for final action to include:

status determination criteria, rebuilding plan for Gulf of Maine (GOM) cod, FY2023–FY2024 US/CA total allowable catches, FY2023–FY2024 specifications: Georges Bank (GB) yellowtail flounder and GB cod (including a catch target for the recreational fishery), FY2023–FY2025 specifications for 14 stocks, additional measures to promote stock rebuilding for GB cod and GOM cod, and revised acceptable biological catch (ABC) control rules, in consultation with the Scientific and Statistical Committee. The Committee will discuss the development of a draft white paper on potential approaches to allocate ''Georges Bank cod'' to the recreational fishery delivered in 2022 to inform the 2023 priorities discussion and make recommendations to the Council. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465–0492, at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–24884 Filed 11–15–22; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Application Package for Voucher and Payment Request Form

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 17, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) By mail sent to: AmeriCorps, Attention Nahid Jarrett, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Nahid Jarrett, 202–606–6753, or by email at *njarrett@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Voucher and Payment Request Form.

OMB Control Number: 3045–0014.

Type of Review: Renewal.

Respondents/Affected Public: Individuals (AmeriCorps members and alumni that request payment on qualified student loans) and businesses (qualified student loan servicers).

Total Estimated Number of Annual Responses: 34,385.

Average Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 2,865.

Abstract: The *National Service Trust AmeriCorps Voucher and Payment Form/National Service Trust AmeriCorps—Manual Payment Request Form* is used to make payments to repay qualified student loans and to pay for the cost of attending eligible post-secondary educational institutions and approved School-to-Work programs. Prior to making the payments, CNCS will review information from the forms and compare it to information taken from the AmeriCorps members' education award account(s) to ensure that the payments meet the requirements of the law. This information collection is not required to be considered for obtaining grant funding support. The currently approved information collection is due to expire on January 31, 2023.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Nahid Jarrett,

Deputy Director, National Service Trust.

[FR Doc. 2022–24968 Filed 11–15–22; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Interest Accrual Form

AGENCY: Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 16, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method).

(2) *By mail sent to:* AmeriCorps, Attention Nahid Jarrett, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov*. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Nahid Jarrett, 202–606–6753, or by email at *njarrett@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Interest Accrual Form.

OMB Control Number: 3045–0053.

Type of Review: Renewal.

Respondents/Affected Public: Individuals and Households OR Businesses and Organizations OR State, Local or Tribal Governments.

Total Estimated Number of Annual Responses: 320.

Average Time per Response: 5 minutes.

Total Estimated Number of Annual Burden Hours: 27.

Abstract: AmeriCorps seeks to renew the currently approved information collection, which is due to expire on January 31, 2023. The National Service Trust Interest Payment Form is used by AmeriCorps members to request a payment of accrued interest on qualified student loans and to authorize the release of loan information to the National Service Trust; schools and lenders verify eligibility for the payments; and both parties verify certain legal requirements. AmeriCorps uses the information from the form to ensure that the accrued interest payment is allowable under law.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov*.

Nahid Jarrett,

Deputy Director, National Service Trust.

[FR Doc. 2022–24966 Filed 11–15–22; 8:45 am]

BILLING CODE 6050–28–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Agency Information Collection Activities; Comment Request; Forbearance Request National Service Form

AGENCY: The Corporation for National and Community Service.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Corporation for National and Community Service (operating as AmeriCorps) is proposing to renew an information collection.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by January 17, 2023.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) Electronically through *www.regulations.gov* (preferred method)

(2) *By mail sent to:* AmeriCorps, Attention Nahid Jarrett, 250 E Street SW, Washington, DC 20525.

(3) By hand delivery or by courier to the AmeriCorps mailroom at the mail address given in paragraph (2) above, between 9 a.m. and 4 p.m. Eastern Time, Monday through Friday, except Federal holidays.

Comments submitted in response to this notice may be made available to the public through *regulations.gov.* For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comment that may be made available to the public, notwithstanding the inclusion of the routine notice.

FOR FURTHER INFORMATION CONTACT: Nahid Jarrett, 202–606–6753, or by email at *njarrett@cns.gov.*

SUPPLEMENTARY INFORMATION:

Title of Collection: Forbearance Request of National Service Form.

OMB Control Number: 3045–0030.

Type of Review: Renewal.

Respondents/Affected Public: Individuals (AmeriCorps members and alumni that wish to request forbearance on qualified student loans) and businesses (qualified student loan servicers).

Total Estimated Number of Annual Responses: 13,182.

Frequency: One or more per education award.

Average Time per Response: 10 minutes.

Total Estimated Number of Annual Burden Hours: 2,197.

Abstract: The National Service Trust AmeriCorps Forbearance Request for National Service Form or its electronic versions, is used to certify that AmeriCorps members are eligible for forbearance based on their enrollment in a national service position. AmeriCorps members use the form, or its electronic equivalents, to request forbearance from their loan. This information collection is not required to be considered for obtaining grant funding support. The currently approved information collection is due to expire on January 31, 2022.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information. All written comments will be available for public inspection on *regulations.gov.*

Dated: November 7, 2022.

Nahid Jarrett,

Deputy Director, National Service Trust.

[FR Doc. 2022–24967 Filed 11–15–22; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

DATES: Comments regarding this proposed information collection must be received on or before January 16, 2023. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to the Office of Workforce Development for Teachers and Scientists (SC 3.3), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or by email to *sc.wdts@science.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Ping Ge, Office of Workforce Development for Teachers and Scientists (SC 3.3), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; 202–287–6490; *sc.wdts@science.doe.gov.*

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–NEW.

(2) *Information Collection Request Titled:* Office of Workforce Development for Teachers and Scientists (WDTS) Workforce Development Highlights.

(3) *Type of Review:* New.

(4) *Purpose:* The WDTS Workforce Development Highlights will provide insight into the experience of participants in WDTS laboratory-based programs. Edited versions of the information submitted by respondents will be published on the WDTS website for prospective applicants to read and learn what it would be like to participate in WDTS laboratory-based programs.

(5) *Annual Estimated Number of Respondents:* 100.

(6) *Annual Estimated Number of Total Responses:* 100.

(7) *Annual Estimated Number of Burden Hours:* 100.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $6,122.

Statutory Authority: Energy and Water Development Appropriations Bill, 2022.

Signing Authority

This document of the Department of Energy was signed on November 7, 2022, by Asmeret Asefaw Berhe, Director, Office of Science, 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 November 10, 2022.

Treena V. Garrett,

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

[FR Doc. 2022–24948 Filed 11–15–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1776–004; ER10–2824–004; ER10–2825–005; ER10–2957–005; ER10–2995–005; ER10–2996–004; ER10–2999–004; ER10–3000–004; ER10–3009–006; ER10–3013–005; ER10–3029–004; ER16–1250–014; ER19–2360–003; ER21–2272–002; ER21–2748–002; ER21–2847–002; ER22–2173–001; ER22–2174–001.

Applicants: Daybreak Solar, LLC, Bakeoven Solar, LLC, Montague Solar, LLC, Lund Hill Solar, LLC, Bracewell LLP, Golden Hills Wind Farm, LLC, Montague Wind Power Facility, LLC, Avangrid Renewables, LLC, Klondike Wind Power III LLC, Star Point Wind Project LLC, Pebble Springs Wind LLC, Klondike Wind Power II LLC, Klondike Wind Power LLC, Klamath Energy LLC, Juniper Canyon Wind Power LLC, Hay Canyon Wind LLC, Big Horn II Wind Project LLC, Big Horn Wind Project LLC, Leaning Juniper Wind Power II LLC.

Description: Notice of Change in Status of Leaning Juniper Wind Power II LLC, et al.

Filed Date: 11/8/22.

Accession Number: 20221108–5166.

Comment Date: 5 p.m. ET 11/29/22.

Docket Numbers: ER22–2643–000.

Applicants: Three Corners Solar, LLC.

Description: Refund Report: Refund Report to be effective N/A.

Filed Date: 11/9/22.

Accession Number: 20221109–5043.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER22–2914–000; ER22–2916–000.

Applicants: Mesquite Solar 5, LLC, Mesquite Solar 4, LLC.

Description: Supplement to September 22, 2022, Mesquite Solar 4, LLC, et al., tariff filing.

Filed Date: 11/4/22.

Accession Number: 20221104–5153.

Comment Date: 5 p.m. ET 11/14/22.

Docket Numbers: ER23–394–000.

Applicants: Pacific Gas and Electric Company.

Description: Tariff Amendment: Termination of AltaGas San Joaquin Energy GSFA and GIA—Henrietta (TO SA 46) to be effective 1/9/2023.

Filed Date: 11/9/22.

Accession Number: 20221109–5000.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–395–000.

Applicants: Lightsource Renewable Energy Development, LLC.

Description: Petition for Limited Tariff Waiver and Request for Shortened Comment Period and Expedited Commission Approval of Lightsource Renewable Energy Development, LLC.

Filed Date: 11/8/22.

Accession Number: 20221108–5163.

Comment Date: 5 p.m. ET 11/18/22.

Docket Numbers: ER23–396–000.

Applicants: New England Power Company.

Description: § 205(d) Rate Filing: 2022–11–09 Filing of Cost Reimbursement Agreement with Holden Muni. Light Dept. to be effective 10/10/2022.

Filed Date: 11/9/22.

Accession Number: 20221109–5051.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–397–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA and ICSA, SA Nos. 5564 and 5565; Queue No. AA2–161 (amend) to be effective 1/16/2020.

Filed Date: 11/9/22.

Accession Number: 20221109–5059.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–398–000.

Applicants: Cove Mountain Solar, LLC.

Description: Tariff Amendment: Cancellation of Rate Schedule Tariff to be effective 11/10/2022.

Filed Date: 11/9/22.

Accession Number: 20221109–5070.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–399–000.

Applicants: Cove Mountain Solar 2, LLC.

Description: Tariff Amendment: Cancellation of Rate Schedule Tariff to be effective 11/10/2022.

Filed Date: 11/9/22.

Accession Number: 20221109–5071.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–400–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Certificate of Concurrence for PacifiCorp Transmission Interconnection Agreement to be effective 1/7/2023.

Filed Date: 11/9/22.

Accession Number: 20221109–5077.

Comment Date: 5 p.m. ET 11/30/22.

Docket Numbers: ER23–401–000.

Applicants: CED Timberland Solar, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization and Request for Waivers to be effective 1/9/2023.

Filed Date: 11/9/22.

Accession Number: 20221109–5083.

Comment Date: 5 p.m. ET 11/30/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES23–6–000.

Applicants: Mountrail-Williams Electric Cooperative.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Mountrail-Williams Electric Cooperative.

Filed Date: 11/9/22.

Accession Number: 20221109–5049.

Comment Date: 5 p.m. ET 11/30/22.

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: November 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24935 Filed 11–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14981–001]

Lock+™ Hydro Friends Fund XXIX, LLC; Notice of Surrender of Preliminary Permit

Take notice that Lock+™ Hydro Friends Fund XXIX, LLC, permittee for the proposed Curwensville Dam Hydropower Project, has requested that its preliminary permit be terminated. The permit was issued on January 3, 2020 and would have expired on December 31, 2023.[1] The project would have been located at the U.S. Army Corps of Engineers' (Corps)

[1] 170 FERC ¶ 62,001 (2020).

Curwensville Dam on the West Branch Susquehanna River in Tioga County, Pennsylvania.

The preliminary permit for Project No. 14981 will remain in effect until the close of business, December 9, 2022. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: November 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24932 Filed 11–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14979–001]

Lock+™ Hydro Friends Fund XXVII, LLC; Notice of Surrender of Preliminary Permit

Take notice that Lock+™ Hydro Friends Fund XXVII, LLC, permittee for the proposed Cowanesque Dam Hydropower Project, has requested that its preliminary permit be terminated. The permit was issued on January 2, 2020 and would have expired on December 31, 2023.[1] The project would have been located at the U.S. Army Corps of Engineers' (Corps) Cowanesque Dam on the Cowanesque River in Tioga County, Pennsylvania.

The preliminary permit for Project No. 14979 will remain in effect until the close of business, December 9, 2022. But, if the Commission is closed on this day, then the permit remains in effect until the close of business on the next day in which the Commission is open.[2] New applications for this site may not be submitted until after the permit surrender is effective.

Dated: November 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24931 Filed 11–15–22; 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 in Existing Proceedings

Docket Numbers: RP23–76–001.
Applicants: National Grid LNG, LLC.
Description: Compliance filing: 2022–11–08 Correction of Tariff Record to be effective 11/28/2022.
Filed Date: 11/8/22.
Accession Number: 20221108–5146.
Comment Date: 5 p.m. ET 11/15/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP23–176–000.
Applicants: Stagecoach Pipeline & Storage Company LLC.
Description: § 4(d) Rate Filing: Stagecoach Pipeline & Storage Company LLC—Castleton SP377546 & SP377547 to be effective 1/1/2023.
Filed Date: 11/9/22.
Accession Number: 20221109–5038.
Comment Date: 5 p.m. ET 11/21/22.

Docket Numbers: RP23–177–000.
Applicants: Southern Natural Gas Company, L.L.C.
Description: Compliance filing: Annual Report on Operational Transactions 2022 to be effective N/A.
Filed Date: 11/9/22.
Accession Number: 20221109–5056.
Comment Date: 5 p.m. ET 11/21/22.

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: November 9, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–24933 Filed 11–15–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: November 17, 2022, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

1095TH—MEETING; OPEN MEETING

[November 17, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD23–1–000	Agency Administrative Matters.

[2] 18 CFR 385.2007(a)(2) (2021).

[1] 170 FERC ¶ 62,002 (2020).

[2] 18 CFR 385.2007(a)(2) (2021).

1095TH—MEETING; OPEN MEETING—Continued

[November 17, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
A–2	AD23–2–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD07–13–016	FY2022 Report on Enforcement.
	ELECTRIC	
E–1	RD22–4–000	Registration of Inverter-based Resources.
E–2	RM22–12–000	Reliability Standards to Address Inverter-Based Resources.
E–3	RD22–5–000	North American Electric Reliability Corporation.
E–4	OMITTED	
E–5	ER21–58–001	TransAlta Energy Marketing (U.S.) Inc.
E–6	ER21–2462–000	Sempra Gas & Power Marketing, LLC.
E–7	ER21–2457–000	Tri-State Generation and Transmission Association, Inc.
E–8	ER21–61–003	El Paso Electric Company.
E–9	ER21–2370–000	Brookfield Renewable Trading and Marketing LP.
E–10	ER21–2456–000	Rainbow Energy Marketing Corporation.
E–11	ER21–56–001	Guzman Energy LLC.
E–12	ER22–2516–000	Chaves County Solar II, LLC.
E–13	EL22–34–000	Office of the Ohio Consumers' Counsel v. American Electric Power Service Corporation, American Transmission Systems, Inc., and Duke Energy Ohio, LLC.
E–14	EC22–91–000	CID Solar, LLC, Cottonwood Solar, LLC, Onward Solar Gen-Tie, LLC, and RE Columbia, LLC.
E–15	EL21–56–000	Lousiana Public Service Commission, Arkansas Public Commission, and Council of the City of New Orleans, Louisiana v. System Energy Resources, Inc., Entergy Services, LLC, Entergy Operations, Inc., and Entergy Corporation.
E–16	EL19–96–000	Cimarron Windpower II, LLC v. Southwest Power Pool, Inc.
E–17	EL19–93–000	Western Farmers Electric Cooperative v. Southwest Power Pool, Inc.
E–18	ER18–2404–001	Southwest Power Pool, Inc.
	EL21–68–000	Nebraska Public Power District.
E–19	EL19–77–000	Oklahoma Gas and Electric Company v. Southwest Power Pool, Inc.
E–20	EL19–75–000	EDF Renewables, Inc., Enel Green Power North America, Inc., NextEra Energy Resources, LLC, and Southern Power Company v. Southwest Power Pool, Inc.
E–21	EL22–74–000	Ameresco, Inc.
E–22	ER18–1182–002	System Energy Resources, Inc.
	EL17–41–000	Arkansas Public Service Commission Mississippi Public Service Commission v. System Energy Resources, Inc.
	EL18–142–000	Louisiana Public Service Commission v. System Energy Resources, Inc. Entergy Services, Inc.
	EL18–204–000, EL18–204–001 (consolidated).	Louisiana Public ion v. System Eergy Resources, Inc. Entergy Services, Inc.
	EL18–152–000	Louisiana Public Service Commission v. System Energy Resources, Inc. Entergy Services, Inc.
	ER18–1182–000	System Energy Resources, Inc.
	EL20–72–000	Louisiana Public Service Commission Arkansas Public Service Commission Council of the City of New Orleans, Louisiana Mississippi Public Service Commission v. System Energy Resources, Inc. Entergy Services, LLC
	ER21–117–000, ER21–129–000, EL21–24–000, ER21–748–000, EL21–46–000, (consolidated).	System Energy Resources, Inc.
	EL21–56–000	Louisiana Public Service Commission Arkansas Public Service Commission Council of the City of New Orleans, Louisiana v. System Energy Resources, Inc. Entergy Services, LLC Entergy Operations, Inc.
	ER22–958–000	Entergy Corporation System Energy Resources, Inc.
	GAS	
G–1	RM21–18–000	Revised Filing and Reporting Requirements for Interstate Natural Gas Company Rate Schedules and Tariffs.
G–2	RP21–1187–008	Eastern Gas Tranmission and Storage, Inc.
	HYDRO	
H–1	P–2082–063, P–14803–001	PacifiCorp, Klamath River Renewal Corporation, State of Oregon, and State of California.
H–2	P–15236–000	Norton Pump Storage, LLC.
	CERTIFICATES	
C–1	RM22–8–000	Updating Regulations for Engineering and Design Materials for Liquefied Natural Gas Facilities Related to Potential Impacts Caused by Natural Hazards.
C–2	CP19–502–000, CP19–502–001	Commonwealth LNG, LLC.
C–3	CP15–490–003	Delfin LNG LLC.

1095TH—MEETING; OPEN MEETING—Continued

[November 17, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
C–4	CP22–161–000	Gulf South Pipeline Company, LLC.
C–5	Omitted..	

A free webcast of this event is available through the Commission's website. Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters but will not be telecast.

Issued: November 10, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–25043 Filed 11–14–22; 4:15 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2022–0869; FRL–10393–01–OW]

Proposed Information Collection Request; Comment Request; Chrome Finishing Industry Data Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), ''U.S. Environmental Protection Agency Chrome Finishing Industry Data Collection'' (EPA ICR No. 2723.01, OMB Control No. 2040–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before January 17, 2023.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OW–2022–0869, online using *www.regulations.gov* (our preferred method), by email to *OW-Docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Dr. Phillip Flanders, Engineering and Analysis Division, Office of Science and Technology, (4303T), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–566–8323; email address: *Flanders.Phillip@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501 et seq), EPA is soliciting comments and information to enable it to: (i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under the Clean Water Act (CWA), EPA develops effluent limitations guidelines (ELGs) to limit pollutants discharged from industrial point source categories. EPA initially promulgated the Metal Finishing ELGs in 1983 and amended the regulations in 1984 and 1986. The current regulation covers wastewater discharges from facilities performing various metal finishing operations. Metal finishing is the process of changing the surface of an object, for the purpose of improving its appearance and/or durability. Metal finishing is related to electroplating, which is the production of a thin surface coating of a metal upon another by electrodeposition. EPA first promulgated the Electroplating ELGs in 1974, with amendments in 1977, 1979, 1981, and 1983. Together, the Metal Finishing and Electroplating ELGs apply to thousands of facilities which perform one or more of the following operations and discharge process wastewater directly to surface waters or indirectly to surface waters through publicly owned treatment works (POTWs): electroplating, electroless plating, anodizing, coating (including phosphating, chromating, and coloring), chemical etching and milling, and printed circuit board manufacture.

As announced in the Preliminary Effluent Guidelines Program Plan 15, published in September 2021, EPA plans to conduct a rulemaking to address Per- and Polyfluoroalkyl Substances (PFAS) discharges from a

subset of facilities in the Metal Finishing and Electroplating point source categories. Based on information and data collected during the Multi-Industry PFAS Study, EPA determined PFAS are used by some metal finishing and electroplating facilities to control hexavalent chromium emissions, a known human carcinogen and inhalation hazard. EPA determined facilities performing certain chromium operations (hereafter referred to as ''chrome finishing facilities''), including chromium plating, chromium anodizing, chromic acid etching, and chromate conversion coating operations, are the predominant sources of PFAS discharges by the Metal Finishing and Electroplating point source categories.

Publicly available data on metal finishing and electroplating facilities, including whether they perform chromium finishing operations and potential use and discharge of PFAS, are limited. EPA reviewed information on metal finishing and electroplating facilities that potentially conduct one or more chromium finishing operations available in national EPA data sets, including the Chromium Electroplating and Anodizing National Emissions Standards for Hazardous Air Pollutants (NESHAP) codified at 40 CFR part 63 subpart N, 2017 National Emissions Inventory (NEI), Compliance and Emissions Data Reporting Interface (CEDRI), Environmental Compliance History Online (ECHO), and Integrated Compliance Information System (ICIS), as well as data collected from several state environmental agencies. However, none of these data sources define a complete population of chromium finishing facilities in the United States nor do they provide detailed information on specific facility operations (including use of hexavalent chromium or PFAS), generation and management of wastewater, or wastewater characteristics—factors essential to EPA's review and development of ELGs to address PFAS discharges. Therefore, a questionnaire and wastewater sampling program for the Metal Finishing and Electroplating point source categories are essential portions of the rulemaking process, necessary for EPA to determine if the current regulations remain appropriate and, if warranted, develop new regulations. If new regulations are deemed to be warranted, the questionnaire and sampling activities are essential for EPA to complete the detailed technical and economic analysis for the entire industry necessary for the rulemaking process. EPA has identified and compiled mailing addresses for approximately 1,815 potential chromium finishing facilities in the United States. All active metal finishing and electroplating facilities that conduct or have conducted one or more of the specified chromium finishing operations will be required to complete the questionnaire. The objectives of the questionnaire will be to confirm the population of facilities that engage or have engaged in chromium finishing operations, as well as gather facility-specific information and data relevant to generation and discharge of PFAS-containing wastewater by the industry.

Confidential Business Information (CBI) may be collected. In accordance with 40 CFR, part 2, subpart B, section 2.203, the survey informs respondents of their right to claim information as confidential. Each survey provides instructions for claiming confidentiality and informs respondents of the terms and rules governing the protection of CBI under the Clean Water Act and 40 CFR 2.203(B). Survey respondents are able to and are requested to mark any claimed confidential responses as CBI. EPA and its contractors will follow EAD's existing procedures to protect data labeled as CBI.

Form Numbers: None.

Respondents/affected entities: All chrome finishing facilities in the U.S. facilities will receive the questionnaire (1,815 facilities) and no more than 20 facilities will be asked to conduct specific wastewater sampling.

Respondent's obligation to respond: Mandatory (Clean Water Act section 308) (citing authority).

Estimated number of respondents: 1,815 (total).

Frequency of response: One-time data collection.

Total estimated respondent burden: 35,858 hours. Burden is defined at 5 CFR 1320.03(b).

Total estimated respondent cost: $1,696,682.83 one-time cost.

Changes in Estimates: This is a new data collection request and is a one-time temporary increase to the agency's burden.

Deborah Nagle,

Director, Office of Science and Technology, Office of Water.

[FR Doc. 2022–24924 Filed 11–15–22; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[Docket No. EEOC–2022–0004]

Notice of Availability and Request for Comment: EEOC's Draft Strategic Plan 2022–2026

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice of availability and request for comment.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is announcing the availability of its Draft Strategic Plan for Fiscal Years 2022–26 for public comment.

DATES: Comments must be received on or before December 5, 2022.

ADDRESSES: You may submit written comments through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All comments received must include the agency name and docket number EEOC–2022–0004. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. However, the EEOC reserves the right to refrain from posting libelous or otherwise inappropriate comments, including those that contain obscene, indecent, or profane language; that contain threats or defamatory statements; that contain hate speech directed at race, color, sex, national origin, age, religion, disability, or genetic information; or that promote or endorse services or products.

FOR FURTHER INFORMATION CONTACT: Shelley Kahn, Acting Executive Officer, Executive Secretariat, 202–921–306, *shelley.kahn@eeoc.gov.*

SUPPLEMENTARY INFORMATION: Background: The EEOC is seeking public comments on its Draft Strategic Plan for Fiscal Years 2022–2026 (Draft Strategic Plan). The Draft Strategic Plan establishes a framework for achieving the EEOC's mission to ''prevent and remedy unlawful discrimination and enforce civil rights in the workplace,'' so that the nation might realize the Commission's vision of ''fair and inclusive workplaces with equal opportunity for all.'' The Draft Strategic Plan includes the following strategic goals and objectives:

1. Combat and prevent employment discrimination through the strategic application of the EEOC's law enforcement authorities;

2. Prevent employment discrimination and advance equal employment opportunities through education and outreach;

3. Strive for organizational excellence through our people, practices, and technology.

The Draft Strategic Plan also presents clear and realistic strategies for achieving each of the three strategic goals and identifies performance measures to track the EEOC's progress as it approaches FY 2026.

The Draft Strategic Plan serves as a draft of the Commission's intended Strategic Plan for 2022–2026. The Commission seeks comments on all aspects of this Draft Strategic Plan. The Draft Strategic Plan is available for viewing at *https://www.regulations.gov* under docket number EEOC–2022–0004, ''Supporting and Related Material.'' Please provide comments as directed in the **ADDRESSES** section of this notice.

Cynthia Pierre,

Chief Operating Officer, Equal Employment Opportunity Commission.

[FR Doc. 2022–24972 Filed 11–15–22; 8:45 am]

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FEDERAL RESERVE SYSTEM

[Docket No. OP–1788]

Guidelines for Evaluating Account and Services Requests

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice and request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is issuing a request for comment on proposed amendments to its Guidelines for Evaluating Account and Services Requests (Account Access Guidelines or Guidelines) that would require the Federal Reserve Banks (Reserve Banks) to publish a periodic list of depository institutions with access to Reserve Bank accounts and/or financial services.

DATE: Comments must be received on or before January 17, 2023.

FOR FURTHER INFORMATION CONTACT: Jason Hinkle, Deputy Associate Director (202–912–7805), Division of Reserve Bank Operations and Payment Systems, or Gavin Smith, Senior Counsel (202–452–3474), Legal Division, Board of Governors of the Federal Reserve System. For users of TTY–TRS, please call 711 from any telephone, anywhere in the United States.

ADDRESSES: You may submit comments, identified by Docket No. OP–1788, by any of the following methods:

Agency website: http://www.federalreserve.gov. Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

Email: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.

FAX: (202) 452–3102.

Mail: Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments are available from the Board's website at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, and will not be modified to remove confidential, contact or any identifiable information. Public comments may also be viewed in-person in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. during Federal business weekdays.

SUPPLEMENTARY INFORMATION:

I. Background

On August 15, 2022, the Board adopted final Account Access Guidelines that establish a transparent, risk-based, and consistent set of factors for Reserve Banks to use in reviewing requests from depository institutions to access Federal Reserve Bank accounts and/or financial services (accounts and services).[1 2 3] The final Guidelines provide a process to evaluate requests for accounts and services (access requests) in order to support a safe, inclusive, and innovative payment system. The final Guidelines also include a tiered review framework to provide additional clarity on the level of due diligence and scrutiny that Reserve Banks will apply when reviewing access requests from different types of institutions.

The longstanding practice of both the Board and the Reserve Banks has been to not disclose account-related information to the general public on the basis that such information is considered confidential business information.[4] However, the development and publication of the Account Access Guidelines prompted the Board to consider the potential benefits of expanding the disclosure of the names of institutions that have access to accounts and services. For example, the Board received comments and inquiries from a range of stakeholders calling for greater public disclosure of account-related information.

As a result, the Board has decided to reevaluate the Federal Reserve's current disclosure practices and to propose an account disclosure process that would balance the relevant benefits and risks.

II. Discussion

The Board considered a range of benefits, risks, and other factors in developing the proposal. On the one hand, some information that Reserve Banks use to evaluate access requests clearly is confidential, such as trade secrets, private personal information, or confidential supervisory information submitted in connection with an access request. In addition, the Board acknowledges that institutions could face the risk of reputational harm if they are denied access to accounts and services, even if the denial is due to a Reserve Bank's evaluation of information that is publicly available (*e.g.,* information about an institution's business model). The Board believes that, to the greatest extent possible, the Account Access Guidelines should not discourage institutions from requesting access to accounts and services by subjecting requestors to the potential disclosure of confidential information or risk of reputational harm.

At the same time, some institutions may not consider the fact that they have access to accounts and services to be confidential business information. Many institutions self-disclose such information, and certain types of institutions generally have access to accounts and services (*e.g.,* federally-insured depository institutions). Moreover, Reserve Banks currently provide disclosure of the identity of account holders to financial institutions and other authorized users of the E-Payments Routing Directory. Subject to the directory's terms and conditions, authorized users can search for an institution by name, routing number, city, or state and to determine whether the institution uses the Fedwire® Funds Service (which requires a master

[1] 87 FR 51099 (Aug. 19, 2022).

[2] Information on the Federal Reserve Banks' financial services, including a list of such services, can be found at *https://www.frbservices.org/.*

[3] The Guidelines do not apply to accounts provided under fiscal agency authority or to accounts authorized pursuant to the Board's Regulation N (12 CFR 214), joint account requests, or account requests from designated financial market utilities, since existing rules or policies already set out the considerations involved in granting these types of accounts.

[4] *See* the preamble to the **Federal Register** notice adopting the final Account Access Guidelines for further discussion of this practice. The preamble notes that institutions may choose to self-disclose their access to accounts and services. 87 FR 51099–51102 (Aug. 19, 2022).

account), the Fedwire Securities Service, and/or FedACH®.[5]

In balancing these factors, the Board believes that the names of institutions with access to accounts and services could be disclosed in a more accessible, transparent way to the general public without causing harm to these institutions or the Federal Reserve. The Board therefore proposes to establish a requirement for Reserve Banks to periodically publish a consolidated list of depository institutions with access to accounts and services (whether the institution settles its transactions directly in its own master account or settles its transactions in its correspondent institution's master account).[6] This proposal would greatly expand public access to key account- and service-related information. The Board proposes to establish this requirement by adding a new section 3 to the Account Access Guidelines entitled ''Public Disclosure.''

The key features of the proposed requirement would be:

(1) On a quarterly basis, the Reserve Banks would produce a single, Federal Reserve System-wide report with two lists: (1) a list of federally-insured depository institutions with access to accounts and services, and (2) a list of non-federally-insured depository institutions with access to accounts and services. The report would be posted to a Federal Reserve System public website shortly after the end of the quarter. The quarterly cadence would be intended to balance providing timely public transparency with reducing potential reputational harm to institutions that have had their access to accounts and services removed since the previous report.

(2) The report would include two data elements for each institution with access to accounts and services: (1) institution name, and (2) the Reserve Bank district in which the institution is located.

(3) In a separate section, the report also would identify (1) the institutions that have received access to accounts and services since the publication of the previous report, and (2) the institutions that no longer have access to accounts and services since the publication of the previous report.[7]

III. Request for Comment

The Board requests comment on all aspects of the proposed new Public Disclosure section of the Account Access Guidelines. In particular, the Board requests comment on the following questions:

1. Would the two data elements in the proposed Public Disclosure section appropriately balance providing public transparency with protecting information that institutions consider to be confidential?

2. Would the proposed publication schedule (quarterly cadence) appropriately balance providing timely transparency with reducing potential reputational harm to institutions that no longer have access to accounts and services? Would a less frequent cadence, such as semi-annual publication, strike that balance more effectively?

3. Are there additional data elements for each institution with access to accounts and services that the Federal Reserve should consider publishing to provide greater transparency to the public (such as the date on which access was provided, to extent known, or removed, location of the institution, etc.)? Are there additional data elements that the Federal Reserve should avoid publishing to prevent potential harm to these depository institutions?

4. Are there additional actions that the Board or Reserve Banks should take to provide transparency with respect to accounts and services? For example, should the Board establish a requirement for the Reserve Banks to publish a list of institutions that have requested an account or access to services (including the date on which the request was submitted, rejected, or withdrawn, etc.)?

5. Should categories of private sector institutions with access to accounts and services that are not covered by the Guidelines, such as designated financial market utilities, be scoped into the proposed Public Disclosure section?

IV. Account Access Guidelines—Proposed Section 3

Guidelines Covering Access to Accounts and Services at Federal Reserve Banks (Account Access Guidelines)

Section 3: Public Disclosure

The Board expects the Reserve Banks, working together, to produce a single, quarterly Federal Reserve System-wide report with two lists: (1) a list of federally-insured depository institutions with access to accounts and/or services, and (2) a list of non-federally-insured depository institutions with access to accounts and/or services.[8] This report should be posted to a Federal Reserve System public website with a short time lag after the end of each quarter. The report should include two data elements: (1) institution name, and (2) the Reserve Bank district in which the institution is located. In addition, the report should identify (1) the institutions that have received access to accounts and/or services since the publication of the previous report, and (2) the institutions that no longer have access accounts and/or services since the publication of the previous report.

By order of the Board of Governors of the Federal Reserve System.

Ann Misback,

Secretary of the Board.

[FR Doc. 2022–24929 Filed 11–15–22; 8:45 am]

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[5] *See https://www.frbservices.org/resources/routing-number-directory.*

[6] The Board discussed two options for the method of disclosing accounts and services information to the general public: (1) an online, searchable database and (2) a sortable list posted to a public website operated by the Federal Reserve System (either the Federal Reserve Banks or the Board). Analysis concluded that, on balance, an online, searchable database would offer a slightly easier method for the public to determine if a specific depository institution has access to a Reserve Bank account and/or services. However, the Board estimated that constructing an online searchable database that provides validated data in a secured platform would likely have a longer time to launch than producing a sortable list published on our public website. As a result, the proposal recommends the publication of a sortable list posted to a Federal Reserve public website in the near term while continuing to research the technical requirements of an online, searchable database.

[7] The list of depository institutions that no longer have access to accounts and/or services would include both institutions that lost access to accounts and services and those that gave up their access to accounts and services voluntarily.

[8] The proposed list would include all institutions that access Reserve Bank priced financial services directly via a master account and those that access services indirectly via a master account of its correspondent bank.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–0850]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Laboratory Response Network'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on March 28, 2022 to obtain comments from the public and affected agencies. CDC received one comment related to the previous notice. This notice serves to

allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Laboratory Response Network (LRN) (OMB Control No. 0920–0850)—Reinstatement with Change—National Center for Emerging and Zoonotic Infectious Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This is a request for Reinstatement with Change of a previously approved collection. Previous requests only included the biological side of the Laboratory Response Network (LRN), this request also includes the chemical side of the LRN. Additionally, there is a decrease in the estimated burden from 2,064,660 to 422,716 annual hours.

The information collected is used to ensure that the Laboratory Response Network Program Office can determine the ability of the Network to respond to a biological or chemical terrorism event. The LRN was established by the Department of Health and Human Services (HHS), Centers for Disease Control and Prevention (CDC) in accordance with Presidential Decision Directive 39, which outlined national anti-terrorism policies and assigned specific missions to federal departments and agencies. The LRN's mission is to maintain an integrated national and international network of laboratories that can respond to suspected acts of biological, chemical, or radiological terrorism and other public health emergencies. Federal, state and local public health laboratories join the LRN voluntarily. When laboratories join, they assume specific responsibilities and are required to provide information to the LRN Program Office at CDC. Each laboratory must submit and maintain complete information regarding the testing capabilities of the laboratory. Biennially, laboratories are required to review, verify and update their testing capability information. This information is needed so that the LRN Program Office can determine the ability of the LRN to respond to a biological or chemical terrorism event. The sensitivity of all information associated with the LRN requires that CDC obtain personal information about all individuals accessing the LRN website. Since CDC must be able to contact all laboratory personnel during an event, each laboratory staff member who obtains access to the restricted LRN website must provide his or her contact information to the LRN Program Office.

CDC requests OMB approval for an estimated 422,716 annual burden hours. Data collection is voluntary and there is no cost to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Public Health Laboratories	Biennial Requalification	130	1	2
Public Health Laboratories	Routine Testing Results (LRN–B)	130	25	4
Public Health Laboratories	Challenge Panel/Validation Testing Results (LRN–B)	130	2	12
Public Health Laboratories	Surge Event Testing Results (LRN–B)	130	625	4
Public Health Laboratories	BioFire Inventory Records (LRN–B)	16	1	2
Public Health Laboratories	Proficiency Testing/Characterization Results (LRN–C)	44	4	392
Public Health Laboratories	Surge Event Testing Results/Exercises (LRN–C: SPaSE, Surge, ERE).	57	3	72

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24916 Filed 11–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23AP; Docket No. CDC–2022–0128]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a new proposed information collection project titled TRANSCEND: Transgender status-neutral community-to-clinic models to end the HIV epidemic. This project is designed to collect standardized program evaluation data from the clinics and community-based organizations who receive federal funds for HIV prevention and care activities.

DATES: CDC must receive written comments on or before January 17, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0128 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;
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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

TRANSCEND: Transgender status-neutral community-to-clinic models to end the HIV epidemic—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Transgender (TG) persons, especially transgender women (TGW), have a high prevalence of HIV and lifetime risk of acquiring HIV. In the 2019–2020 National HIV Behavioral Surveillance Trans cycle, 42% of TGW tested positive for HIV. Racial/ethnic disparities were also found, with HIV positivity rates of 62% among Black/African American TGW and 35% among Hispanic/Latina TGW compared to 17% among White TGW. Despite the disproportionate burden of HIV among TGW, receipt of HIV prevention and care services have been suboptimal. Among TG persons, 92% reported that they were aware of pre-exposure prophylaxis (PrEP) but only 32% had used it. In 2019, viral suppression among persons with diagnosed HIV was 67% among TGW. Large proportions of TG persons experience poverty, homelessness, abuse, and have substance use or mental health disorders, which impact access to and utilization of HIV prevention and care services. Many TG persons seek gender-affirming care, including hormone therapy, at transgender healthcare organizations (TG clinics), and these encounters provide opportunities for HIV testing and status-neutral HIV services.

In the proposed demonstration project, TG clinics and transgender-serving community-based organizations (CBOs) will work collaboratively to develop and evaluate community-to-clinic models to provide integrated status-neutral HIV prevention and care services, gender-affirming services including hormone therapy, and primary healthcare, as well as to ensure access to mental health, substance use, and social support services. All services will be culturally and linguistically responsive for TG persons to ensure that they feel welcomed, heard, and cared for. The recipients will also participate in a national learning collaborative to share lessons learned and best practices for TG clinic and TG CBO partnerships to provide status-neutral, community-to-clinic services for TG persons.

This collection of deidentified data will allow CDC to assist TG clinics and CBOs in monitoring and evaluating their programs and to identify best practices for providing status-neutral HIV services and comprehensive healthcare for TG persons and for community-to-clinic models of service provision. Longitudinal person-level data collection will occur through the clinic's electronic health record (EHR) and a database shared between clinic and CBOs, and additional program evaluation data will be collected through client surveys.

CDC requests OMB approval for an estimated 329 annual burden hours for the recipients to collect, enter or upload, and report client demographic and behavioral characteristics, client data from the EHR, and client surveys. There are no other costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
TRANSCEND Recipient Data Manager.	Electronic Health Record Data Form	4	2	8	64
TRANSCEND Recipient Data Manager.	Client Info Form	4	2	2	16
TRANSCEND Clients	Client Info Form	1,000	1	5/60	83
TRANSCEND CBO Staff	Client Info Form	8	100	5/60	67
TRANSCEND Clients	Client Program Evaluation Survey	1,000	1	5/60	83
TRANSCEND Recipient Data Manager.	Client Program Evaluation Survey	4	2	2	16
Total					329

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24918 Filed 11–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–23–1233]

Agency Forms Undergoing Paperwork Reduction Act Review

In accordance with the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) has submitted the information collection request titled ''Paul Coverdell National Acute Stroke Program (PCNASP) 2021–2024 Evaluation'' to the Office of Management and Budget (OMB) for review and approval. CDC previously published a ''Proposed Data Collection Submitted for Public Comment and Recommendations'' notice on May 23, 2022 to obtain comments from the public and affected agencies. CDC did not receive comments related to the previous notice. This notice serves to allow an additional 30 days for public and affected agency comments.

CDC will accept all comments for this proposed information collection project. The Office of Management and Budget is particularly interested in comments that:

(a) 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;

(b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(d) Minimize the burden of the collection of information on those who are to respond, including, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses; and

(e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570. 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. Direct written comments and/or suggestions regarding the items contained in this notice to the Attention: CDC Desk Officer, Office of Management and Budget, 725 17th Street NW, Washington, DC 20503 or by fax to (202) 395–5806. Provide written comments within 30 days of notice publication.

Proposed Project

Paul Coverdell National Acute Stroke Program (PCNASP) (DP21–2102) Evaluation (OMB Control No. 0920–1233)—Reinstatement with Change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Centers for Disease Control and Prevention (CDC), Division for Heart Disease and Stroke Prevention (DHDSP), requests OMB approval for a Reinstatement of a previously approved data collection. The CDC is the primary federal agency for protecting health and promoting quality of life through the prevention and control of disease, injury, and disability. CDC is committed to programs that reduce the health and economic consequences of the leading causes of death and disability, thereby ensuring a long, productive, healthy life for all people.

Stroke remains a leading cause of serious, long-term disability and is the fifth leading cause of death in the United States after heart disease, cancer, chronic lower respiratory diseases, and accidents. Estimates indicate that approximately 795,000 people suffer a first-ever or recurrent stroke each year with more than 146,000 deaths annually. Although there have been significant advances in preventing and treating stroke, the rising prevalence of heart disease, diabetes, and obesity has increased the relative risk for stroke, especially in African American populations. Moreover, stroke's lifetime direct cost of health care and indirect cost of lost productivity is staggering and imposes a substantial societal economic burden. There is a critical need to improve access to and quality of care for those at highest risk for events and stroke patients among the continuum of care, particularly among high burden populations. Coverdell-funded state programs are in the forefront of developing and implementing system-change efforts to improve stroke systems of care using strategies like linking and using data, using team based approaches to coordinate stroke care, and providing community resources to reach the

general populations and specifically those at highest risk of stroke events, and reduce disparities in access to quality care for high burden populations.

When Congress directed CDC to establish the Paul Coverdell National Acute Stroke Program (PCNASP) in 2001, CDC intended to monitor trends in stroke and stroke care, with the ultimate mission of improving the quality of care for stroke patients in the United States. Since 2021, CDC has funded and provided technical assistance to 13 recipients to develop comprehensive stroke systems of care. A comprehensive system of care improves quality of care by creating seamless transitions for individuals experiencing stroke. In such a system, pre-hospital providers, in-hospital providers, and early post-hospital providers coordinate patient hand-offs and ensure continuity of care. While PCNASP has existed since 2001, the goal and mission of the program has evolved with each funding cycle. The 2021–2024 funding cycle is the first such initiative to focus on addressing health equity specifically and understanding efforts to impact stroke outcomes for those at highest risk of stroke. CDC contracted with RTI International to conduct a national evaluation to assess program implementation as well as short term and intermediate outcomes of the 13 funded recipients.

CDC and RTI International propose to collect information from all PCNASP recipients to gain insight into the effectiveness of implementation approaches, including linking and using data, using team-based approaches to coordinate stroke care, and providing community resources in order to reach the general population and those at highest risk of stroke events, and reduce disparities in access to quality care for high burden populations. The information collection will focus on describing PCNASP specific contributions to effective state-based stroke systems of care and the costs associated with this work. Two components of the information collection include: (1) program implementation cost data collection from program recipients using a cost collection tool; and (2) interviews using Zoom, Skype, Teams or a similar technology with key program and partner staff. Cost data collection will focus on recipients' cumulative spending to support PCNASP activities, spending by reporting period, and spending associated with specific PCNASP strategies related to building comprehensive state-wide stroke systems of care and strategies focusing on high-risk populations. Interview questions will focus on how each recipient implemented its strategies to increase access to and quality of healthcare overall as well as for patients at highest risk of stroke events. The data collection will identify challenges encountered and how they were overcome, factors that facilitated implementation, lessons learned along the way, and observed outcomes and improvements. The information to be collected does not currently exist for large scale, statewide programs that employ multiple combinations of strategies to build comprehensive stroke systems of care. The insights to be gained from this data collection will be critical to improving immediate efforts and achieving the goals of spreading and replicating state-level strategies that are proven programmatically and are cost-effective in contributing to a higher quality of care for stroke patients.

OMB approval is requested for two years. The total estimated annualized burden hours are 117. There are no costs to the respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
Program Manager	Cost Collection Tool	13	1	2
Program Director	Interviews using Zoom, Skype, Teams	13	1	1
Quality Improvement Specialist	Interviews using Zoom, Skype, Teams	13	1	1
Partner Staff	Interviews using Zoom, Skype, Teams	52	1	1

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24917 Filed 11–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–23AQ; Docket No. CDC–2022–0129]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a proposed information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled Understanding HIV/STD Risk and Enhancing PrEP Implementation Messaging in a Diverse Community-Based Sample of Gay, Bisexual, and Other Men Who Have Sex with Men in a Transformational Era (MIC–DROP). This project is a prospective cohort study to understand men who have sex with men's (MSM) strategies to prevent HIV and sexually transmitted infections (STIs), including pre-exposure prophylaxis (PrEP) use and adherence, condom use, sexual risk-taking behavior and substance-using behaviors.

DATES: CDC must receive written comments on or before January 17, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0129 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without

change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7118; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;
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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

Understanding HIV/STD Risk and Enhancing PrEP Implementation Messaging in a Diverse Community-Based Sample of Gay, Bisexual, and Other Men Who Have Sex with Men in a Transformational Era (MIC–DROP)—New—National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The National Center for HIV, Viral Hepatitis, STD, and TB Prevention (NCHHSTP) is requesting approval for 36 months of data collection entitled Understanding HIV/STD Risk and Enhancing PrEP Implementation Messaging in a Diverse Community-Based Sample of Gay, Bisexual, and Other Men Who Have Sex with Men in a Transformational Era (MIC–DROP). The purpose of this study is to enroll a prospective cohort of men who have sex with men (MSM) in Atlanta, Detroit, and San Diego to understand men's strategies to prevent HIV and other STIs including PrEP use and adherence, condom use, sexual risk-taking behavior, and substance-using behaviors. This study also proposes to assess men's use and preferences for prevention modalities and assess men's awareness, knowledge, beliefs, and perceptions about HIV/STI prevention products.

The information collected in this study will be used to: (1) describe real-world HIV and STI prevention strategies including PrEP use and adherence and condom use; (2) better understand men's use, preferences, knowledge, and perceptions about prevention modalities; (3) develop rapid reports that will allow for summary recommendations concerning gaps in prevention protection; and (4) provide timely new information to public health programs and decision makers.

The study will be carried out in three cities, Atlanta, GA; Detroit, MI; and San Diego, CA. Participants will include 1275 HIV-negative men ages 18 and older. Participants will identify as cisgender male; report male at birth; report sex with a man in the last six months; live in or near Atlanta, Detroit, or San Diego; own a cell phone with data service; be willing to download a health-related app as part of the study; be able to provide two or more means of contact; be fluent in written/spoken English or Spanish; and not currently be enrolled in another HIV prevention clinical trial. We will use purposive sampling to ensure that 60% of participants will be PrEP users at baseline, and 40% will not be using PrEP. We will also oversample Black and Hispanic MSM to ensure that a minimum of 30% each are represented in the cohort sample. Participants will be recruited using a combination of approaches including social media, referral, and in-person outreach.

Quantitative and qualitative assessments will be used to collect information from participants. A quarterly quantitative survey will assess use of prevention modalities, awareness, knowledge, beliefs, and perceptions about HIV/STI prevention products and prevention messages. The SMaRT app study management platform allows for scheduling, reminders, survey administration, and communication by email and text messaging. HIV and STI test results will allow the study team to assess HIV and STI risk throughout the study period. A subset of the participants will be invited to further participate in qualitative data collection activities including focus groups and in-depth interviews. The focus groups will assess the participants' awareness of PREP messages, preferences for PrEP messages, and perceived impact/efficacy of HIV prevention and PrEP messages. The in-depth interviews will assess men's PrEP experiences, their preferences for PrEP and other HIV prevention products, and further explore their reactions to prevention messages.

The screening process is estimated to take five minutes to complete. We estimate that the contact information gathering and the SMaRT app installation will take five minutes each to complete. The quantitative assessment is estimated to take 45 minutes to complete and will be delivered quarterly for a total eight times over the two-year follow up period. Participants will be asked to collect specimens for both HIV and STI testing at six-month intervals for a total of four times over the two-year follow up period. The specimen kit for HIV testing will take approximately 15 minutes to complete. The specimen kit for STI testing will take approximately 30 minutes to complete. A subset of the 1,275 enrolled participants will be invited to participate in qualitative data activities: 270 participants will engage in a focus group that is estimated to take 90 minutes to complete, and 30 participants will be invited to participate in three in-depth interviews to be delivered at six-month intervals over the two-year follow up period. The interviews will take approximately 90 minutes to complete.

CDC requests OMB approval for an estimated 2,214 annual burden hours. There are no costs to the respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hr)	Total burden (in hr)
General Public—Adults	Eligibility Screener	850	1	5/60	68
General Public—Adults	Contact Information	425	1	5/60	34
General Public—Adults	SMaRT App Installation	425	1	5/60	34
General Public—Adults	Quantitative Survey	425	4	45/60	1,275
General Public—Adults	Sample Collection for HIV Test	425	2	15/60	213
General Public—Adults	Sample Collection for STI Test	425	2	30/60	425
General Public—Adults	Focus Group Guide	90	1	90/60	135
General Public—Adults	In-Depth interview Guide	10	2	90/60	30
Total					2,214

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24919 Filed 11–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0215; Docket No. CDC–2022–0131]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled the National Death Index (NDI). The goal of NDI and the services it provides allows NCHS to collect mortality data to support epidemiological research and to furnish mortality information to approved public health and medical investigators.

DATES: CDC must receive written comments on or before January 17, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0131 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;
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 submissions of responses; and
5. Assess information collection costs.

Proposed Project

Application Form and Related Forms for the Operation of the National Death Index (NDI) (OMB Control No. 0920–0215, Exp. 3/31/2023)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C.), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on the extent and nature of illness and disability of the population of the United States. The National Death Index (NDI) is a database containing identifying death record information submitted annually to NCHS by all the jurisdiction (states and territories) vital statistics offices, beginning with deaths in 1979. Searches against the NDI file provide the jurisdictions and dates of

death, and the death certificate numbers of deceased study subjects.

Using the NDI Plus service, researchers have the option of also receiving cause of death information for deceased subjects, thus reducing the need to request copies of death certificates from the jurisdictions. The NDI Plus option currently provides the International Classification of Disease (ICD) codes for the underlying and multiple causes of death for the years 1979–2021. Health researchers must complete administrative forms in order to apply for NDI services, and submit records of study subjects for computer matching against the NDI file. A three-year Revision request is submitted to continue the use of the two administrative forms (the Application form and Transmittal form) utilized in the operation of the National Death Index (NDI) program, along with worksheets used to calculate related fees. These forms are submitted by NDI users when applying for use of the NDI and when actually using the service. In addition, this request includes the electronic versions that replace the three paper documents, one of which will include a minor reduction in the number of data collection items.

The total estimated annual burden hours are 1,276. This represents an increase of 210 hours from 1,066 due primarily to the increase in applications, and transmittal forms. There is no cost to respondents except for their time.

ESTIMATES OF ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Researcher	Application Form—Electronic	282	1	150/60	705
Researcher	Transmittal Form—Paper/Electronic	400	3	18/60	360
Researcher	Early Transmittal Form—Paper/Electronic.	100	3	18/60	90
Researcher	Fee Worksheet	450	1	15/60	113
Researcher	Early Release Fee Worksheet	100	1	5/60	8
Total					1,276

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24920 Filed 11–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–23–0728; Docket No. CDC–2022–0130]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing effort to reduce public burden and maximize the utility of government information, invites the general public and other federal agencies the opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a proposed information collection project titled National Notifiable Diseases Surveillance System. The purpose of this data collection is to provide the official source of statistics in the United States for nationally notifiable conditions.

DATES: CDC must receive written comments on or before January 17, 2023.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2022–0130 by either of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. CDC will post, without change, all relevant comments to *www.regulations.gov.*

Please note: Submit all comments through the Federal eRulemaking portal (*www.regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact Jeffrey M. Zirger, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H21–8, Atlanta, Georgia 30329; Telephone: 404–639–7570; Email: *omb@cdc.gov.*

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. In addition, the PRA also requires federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to the OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

The OMB is particularly interested in comments that will help:

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;

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 submissions of responses; and

5. Assess information collection costs.

Proposed Project

National Notifiable Diseases Surveillance System (NNDSS) (OMB Control No. 0920–0728, Exp. 7/31/2025)—Revision—Center for Surveillance, Epidemiology and Laboratory Services (CSELS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Public Health Services Act (42 U.S.C. 241) authorizes CDC to disseminate nationally notifiable condition information. The National Notifiable Diseases Surveillance System (NNDSS) is based on data collected at the state, territorial and local levels because of legislation and regulations in those jurisdictions that require health care providers, medical laboratories, and other entities to submit health-related data on reportable conditions to public health departments. These reportable conditions, which include infectious and non-infectious diseases, vary by jurisdiction depending upon each jurisdiction's health priorities and needs. Each year, the Council of State and Territorial Epidemiologists (CSTE), supported by CDC, determines which reportable conditions should be designated nationally notifiable or under standardized surveillance.

CDC requests a three-year approval for a Revision for the NNDSS (OMB Control No. 0920–0728, Exp. 07/31/2025). This Revision includes requests for approval to: (1) receive case notification data for Carbapenemase-Producing Organisms, a new notifiable condition (NC); (2) receive case notification data for Strongyloidiasis, a new condition under standardized surveillance (CSS); and (3) receive new disease-specific data elements for Carbapenemase-Producing Organisms, *Candida auris,* Melioidosis, Leptospirosis, Brucellosis, Carbon Monoxide Poisoning, and Hepatitis.

The NNDSS currently facilitates the submission and aggregation of case notification data voluntarily submitted to CDC from 60 jurisdictions: public health departments in every U.S. state, New York City, Washington, DC, five U.S. territories (American Samoa, the Commonwealth of Northern Mariana Islands, Guam, Puerto Rico, and the U.S. Virgin Islands), and three freely associated states (Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau). This information is shared across jurisdictional boundaries and both surveillance and prevention and control activities are coordinated at regional and national levels.

Approximately 90% of case notifications are encrypted and submitted to NNDSS electronically from already existing databases by automated electronic messages. When automated transmission is not possible, case notifications are faxed, emailed, uploaded to a secure network or entered into a secure website. All case notifications that are faxed or emailed are done so in the form of an aggregate weekly or annual report, not individual cases. These different mechanisms used to send case notifications to CDC vary by the jurisdiction and the disease or condition. Jurisdictions remove most personally identifiable information (PII) before data are submitted to CDC, but some data elements (*e.g.,* date of birth, date of diagnosis, county of residence) could potentially be combined with other information to identify individuals. Private information is not disclosed unless otherwise compelled by law. All data are treated in a secure manner consistent with the technical, administrative, and operational controls required by the Federal Information Security Management Act of 2002 (FISMA) and the 2010 National Institute of Standards and Technology (NIST) Recommended Security Controls for Federal Information Systems and Organizations. Weekly tables of nationally notifiable diseases are available through CDC WONDER and *data.cdc.gov.* Annual summaries of finalized nationally notifiable disease data are published on CDC WONDER and *data.cdc.gov* and disease-specific data are published by individual CDC programs.

The burden estimates include the number of hours that the public health department uses to process and send case notification data from their jurisdiction to CDC. Specifically, the burden estimates include separate burden hours incurred for automated and non-automated transmissions, separate weekly burden hours incurred for modernizing surveillance systems as part of CDC's Data Modernization Initiative (DMI) implementation, separate burden hours incurred for annual data reconciliation and submission, and separate one-time burden hours incurred for the addition of new diseases and data elements. The burden estimates for the one-time burden for reporting jurisdictions are for the addition of case notification data for Carbapenemase-Producing Organisms, a new notifiable condition (NC); Strongyloidiasis, a new condition under standardized surveillance (CSS); and receive new disease-specific data elements for Carbapenemase-Producing Organisms, *Candida auris,* Melioidosis, Leptospirosis, Brucellosis, Carbon Monoxide Poisoning, and Hepatitis.

The estimated annual burden for the 257 respondents is 18,354 hours, and has increased slightly from 18,294 to 18,354 due to the additional disease-specific data elements added in this Revision. There are no costs to respondents other than their time to participate.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
States	Weekly (Automated)	50	52	20/60	867
States	Weekly (Non- automated)	10	52	2	1,040
States	Weekly (DMI Implementation)	50	52	4	10,400
States	Annual	50	1	75	3,750
States	One-time Addition of Diseases and Data Elements.	50	1	2	100
Territories	Weekly (Automated)	5	52	20/60	87
Territories	Weekly, Quarterly (Non-automated)	5	56	20/60	93
Territories	Weekly (DMI Implementation)	5	52	4	1,040
Territories	Annual	5	1	5	25

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden (in hours)
Territories	One-time Addition of Diseases and Data Elements.	5	1	2	10
Freely Associated States	Weekly (Automated)	3	52	20/60	52
Freely Associated States	Weekly, Quarterly (Non-automated)	3	56	20/60	56
Freely Associated States	Annual	3	1	5	15
Freely Associated States	One-time Addition of Diseases and Data Elements.	3	1	2	6
Cities	Weekly (Automated)	2	52	20/60	35
Cities	Weekly (Non-automated)	2	52	2	208
Cities	Weekly (DMI Implementation)	2	52	4	416
Cities	Annual	2	1	75	150
Cities	One-time Addition of Diseases and Data Elements.	2	1	2	4
Total					18,354

Jeffrey M. Zirger,

Lead, Information Collection Review Office, Office of Scientific Integrity, Office of Science, Centers for Disease Control and Prevention.

[FR Doc. 2022–24921 Filed 11–15–22; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Evaluation of LifeSet (OMB #0970–0577)

AGENCY: Office of Planning, Research, and Evaluation; Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) at the U.S. Department of Health and Human Services is proposing additional information collection activities to assess the implementation of LifeSet, a program that provides services and supports to young adults ages 17 to 21 with previous child welfare involvement. Current data collection activities are approved under this same Office of Management and Budget (OMB) #: 0970–0577.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: The proposed information collection activities are part of the second phase of a study that intends to assess the impact and implementation of LifeSet, a program that provides services and supports to young adults ages 17 to 21 with previous child welfare involvement. The program aims to support young adults in their transition from foster care to independent living in the areas of education, employment and earnings, housing and economic well-being, social support, well-being, health and safety, and criminal involvement. It focuses on helping young adults identify and achieve their goals while developing the skills necessary for independent living.

The evaluation is part of a larger project to help ACF build the evidence base in child welfare through rigorous evaluation of programs, practices, and policies. The activities and products from this project will contribute to evidence building in child welfare and help to determine the effectiveness of a program for youth formerly in foster care on young adult outcomes.

The implementation study will collect information through video conferences and site visits to the participating program and child welfare agency. Data collection activities for the implementation study began, as previously approved by OMB. Additional protocols are proposed as part of the implementation study. Proposed information collection activities include interviews and focus groups with administrators and staff from the program developer, child welfare agency, and program providers; online survey of program staff; interviews with youth who participated in the program; and focus groups with youth who participated in the program and who received services as usual.

Respondents: Program participants, young adults receiving services as usual, agency and program administrators and staff, other program stakeholders.

ANNUAL BURDEN ESTIMATES

Instrument	Respondents	Number of respondents (total over request period)	Number of responses per respondent (total over period)	Avgerage burden per response (in hours)	Total burden (in hours)	Annual burden (in hours)
Burden for previously approved, ongoing data collection						
Baseline Youth Survey	Youth Formerly in Foster Care.	470	1	0.6	282	141
Administrative data file	Agency and Program Staff	12	1	5	60	30
Burden for newly requested information collection						
Site Visit 3 Interview Guide for Administrators.	Child Welfare Agency Administrators. Licensed LifeSet Experts Provider Agency Administrators LifeSet Developer Administrators	22	1	1	22	11
Site Visit 3 Focus Group Guide for Staff.	LifeSet Specialists ..... LifeSet Team Supervisors .. Child Welfare Agency Caseworkers.	28	1	1.5	42	21
LifeSet Specialist Survey	LifeSet Specialists	16	1	.3	5	2.5
Interview Guide for Youth ...	LifeSet Program Youth	12	1	1	12	6
Focus Group Guide for Youth.	LifeSet Program Youth ..... Services As Usual Youth	64	1	1.5	96	48
Screening Recruitment Phone Call Script.	LifeSet Program Youth ..... Services As Usual YouthServices As Usual Youth.	90	1	0.25	22.5	11

Estimated Total Annual Burden Hours: 270.5.

Authority: 42 U.S.C. 677.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–24976 Filed 11–15–22; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2673]

Safety and Effectiveness of Certain Naloxone Hydrochloride Drug Products for Nonprescription Use; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is announcing our preliminary assessment that certain types of naloxone hydrochloride (''naloxone'') drug products may be approvable as safe and effective for nonprescription use. It is our preliminary opinion at this time that naloxone nasal spray up to 4 milligrams (mg), and naloxone autoinjector for intramuscular (IM) or subcutaneous (SC) use up to 2 mg, have the potential to be safe and effective for use as directed in nonprescription drug labeling without the supervision of a healthcare practitioner. We believe the prescription requirement for these naloxone products might not be necessary for the protection of the public health. However, we need additional data such as product-specific data on the nonprescription user interface design, including packaging and labeling, to make a conclusive determination in this respect. The Federal Food, Drug, and Cosmetic Act (FD&C Act) does not permit the simultaneous marketing of the same drug with the same active ingredient as both a prescription and nonprescription product, absent a clinically meaningful difference between them. Therefore, if and when FDA has sufficient data to support approval of a nonprescription naloxone product (*e.g.,* through submission and approval of an application for a nonprescription naloxone product or a supplemental application to switch an FDA-approved naloxone product from prescription to nonprescription status), currently marketed naloxone products labeled as ''Rx only'' with no clinically meaningful difference from the approved nonprescription products will be considered misbranded.

DATES: Either electronic or written comments on the notice must be submitted by January 17, 2023.

ADDRESSES: You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of January 17, 2023. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or

anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

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

Written/Paper Submissions

Submit written/paper submissions as follows:

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

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

Instructions: All submissions received must include the Docket No. FDA–2022–N–2673 for ''Safety and Effectiveness of Certain Naloxone Hydrochloride Drug Products for Nonprescription Use; Request for Comments.'' Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

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

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

FOR FURTHER INFORMATION CONTACT:

Ayako Sato, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6206, Silver Spring, MD 20993, 240–402–4191.

SUPPLEMENTARY INFORMATION:

I. Background

A. FDA's Current Regulatory Framework

Two regulatory pathways to bring a nonprescription drug product to market in the United States are: (1) the over-the-counter (OTC) drug review process under section 505G of the FD&C Act (21 U.S.C. 355h) with respect to OTC monograph drugs and (2) the application process under section 505 of the FD&C Act (21 U.S.C. 355) or, for a biological product, under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262).

Under the OTC drug review process, a nonprescription drug product may be marketed without an application approved under section 505 of the FD&C Act if the nonprescription drug product meets the requirements of section 505G of the FD&C Act, and other applicable requirements. In addition, FDA approves drugs under section 505 of the FD&C Act and, for biological products, under section 351 of the PHS Act, as either prescription or nonprescription drug products.

An applicant may submit a new drug application (NDA) for a nonprescription drug product using the pathways described in section 505(b)(1) or (2) of the FD&C Act to market a new drug product. A section 505(b)(1) NDA includes full reports of investigations to demonstrate that the proposed drug product is safe and effective under the conditions prescribed, recommended, or suggested in its proposed labeling (see sections 505(d) and (b)(1) of the FD&C Act). An NDA submitted pursuant to section 505(b)(2) of the FD&C Act also includes information to demonstrate that the proposed drug product is safe and effective under the conditions prescribed, recommended, or suggested in its proposed labeling, but at least some of the information required for approval comes from studies not conducted by or for the applicant and for which the applicant has not obtained a right of reference or use. An NDA for a nonprescription drug product must include, among other things, information to demonstrate that consumers can appropriately self-select [1] the proposed drug product and use the drug product safely and effectively without the supervision of a healthcare practitioner.

Applicants may submit an abbreviated new drug application (ANDA) using the pathway described in section 505(j) of the FD&C Act for a drug product that is a generic version of a previously approved drug product (typically an approved brand-name drug). An ANDA for a nonprescription drug product generally references a nonprescription drug product previously approved under section 505(c) of the FD&C Act (known as the reference listed drug (''RLD'')) and relies on the Agency's finding that the RLD is safe and effective. An ANDA generally must contain information to show that the proposed generic product: (1) is the same as the RLD with respect to the active ingredient(s), route of administration, dosage form, strength, labeling (with certain permissible differences) and (2) is bioequivalent to the RLD. The procedures and requirements for the submission and approval of NDAs, ANDAs, and supplements to those applications are set forth in 21 CFR part 314.

Section 503(b)(1) of the FD&C Act (21 U.S.C. 353(b)(1)) requires that certain drug products be dispensed only upon prescription of a practitioner licensed to administer such drug product. The

[1] *E.g.,* 21 CFR 201.5. Because nonprescription drugs are available to consumers without the supervision of a healthcare provider, nonprescription labeling must on its own be able to effectively communicate to a general consumer the information required for the safe and effective use of the product. Therefore, ''self-select'' means that a consumer can apply the label information to their personal medical situation and make correct decisions about whether it is appropriate for them to use or not use the drug product. In some cases, nonprescription products may be selected and purchased by someone else, such as a family member or caregiver and administered to another family member or individual, such as to a child or elderly person.

prescription requirement applies to any drug product which: (1) because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to dispense such drug product or (2) is limited by an approved application under section 505 of the FD&C Act to use under the professional supervision of a practitioner licensed by law to administer such drug product. If the approved drug product does not meet the criteria for prescription-only dispensing, it may be marketed as nonprescription, provided other applicable requirements are met.

Under section 503(b)(4)(A) of the FD&C Act, the label of a drug product that is subject to the prescription dispensing provisions of section 503(b)(1) (*i.e.,* a prescription drug product) must bear, at a minimum, the ''Rx only'' symbol, or else it is misbranded. Section 503(b)(4)(B) of the FD&C Act provides that a drug product to which the prescription provisions of the FD&C Act do not apply (*i.e.,* a nonprescription drug product) will be deemed to be misbranded if at any time before dispensing, the label of the drug product bears the ''Rx only'' symbol. FDA has interpreted the language in section 503(b)(4) of the FD&C Act to allow simultaneous marketing of drug products with the same active ingredient as prescription in one case and nonprescription in another if some clinically meaningful difference, such as a difference in indication, strength, route of administration, dosage form, or patient population, exists between the drug products that makes the prescription product safe and effective only under the supervision of a healthcare practitioner licensed by law to administer the drug product (see 83 FR 13994, April 2, 2018; see also 70 FR 52050, September 1, 2005). This effectively means that, absent a clinically meaningful difference between the products that makes the prescription product safe and effective only under the supervision of a licensed healthcare practitioner, simultaneous marketing of two drug products with the same active ingredient as, respectively, a prescription and a nonprescription drug product, would result in the prescription drug product being misbranded.

Although the OTC drug review process under section 505G of the FD&C Act and the application process under section 505 of the FD&C Act or, for a biological product regulated as a drug, under section 351 of the PHS Act, are the primary ways in which an applicant brings a nonprescription drug product to market, a drug originally approved as a prescription drug may be switched to nonprescription status if FDA finds that prescription requirement for such drug is not necessary for the protection of the public health.[2] For a drug product to switch from prescription to nonprescription status, FDA must also determine there are sufficient data demonstrating that the drug product can be used safely and effectively by consumers without the supervision of a licensed healthcare practitioner.[3]

As discussed below, such information may include evidence from a range of studies (*e.g.,* label comprehension study, human factors study, and/or actual use study). Usually, manufacturers seeking authorization to market such a prescription product as nonprescription are responsible for conducting these studies to show that their product can be used safely and effectively without the supervision of a healthcare practitioner. Generally, manufacturers of nonprescription drug products must also label and package their products such that the consumer can use the drug product safely for the purposes for which it is intended. This includes complying with applicable labeling requirements under 21 CFR part 201, including the format and content requirements for nonprescription drug product labeling under § 201.66 (21 CFR 201.66). Labeling created to satisfy the requirements in § 201.66 is commonly referred to as the Drug Facts labeling (DFL). The DFL is intended to enable consumers to self-select appropriately and use the nonprescription drug product safely and effectively. In addition to the DFL, for a nonprescription drug product that requires an approved application under section 505, FDA may approve additional labeling to help ensure safe and appropriate use.

B. Naloxone

1. General Background on Naloxone

The opioid crisis, which encompasses misuse, abuse, and overdose deaths involving illicit and prescription opioids, was declared a public health emergency (Opioid PHE) in 2017 (Ref. 1). Since 2017, the Opioid PHE declaration has been renewed multiple times. More than 80,000 people died of opioid-involved overdose deaths in the 12-month period ending in January 2022, representing 75 percent of all drug overdose deaths. The number of opioid-involved overdose deaths increased from 71,000 deaths in the preceding year (Ref. 2).[4]

Naloxone is a critical tool to help reduce opioid overdose deaths and address this public health crisis. Opioid overdose is characterized by life threatening respiratory and central nervous system (CNS) depression that, if not immediately treated, may lead to significant morbidity and mortality. Naloxone is a nonselective opioid receptor antagonist that reverses the effects of respiratory depression and sedation by displacing opioids from the mu-opioid receptor in the CNS. Timely administration of naloxone, usually within minutes of the first signs of an opioid overdose, can counter the overdose effects.

a. Approval history for prescription naloxone products. There are currently no naloxone products approved by FDA for nonprescription use. Naloxone is available as a prescription drug in several strengths, dosage forms, and routes of administration. It was first approved in the United States in 1971 with the tradename NARCAN. NARCAN, as originally approved, was an injectable naloxone product that could be delivered via the intravenous (IV), IM, or SC routes of administration, and was available in vials or ampules.[5] It was widely used by both hospital and first responder personnel. As opioid use and overdoses increased, naloxone was increasingly used by non-healthcare professionals. Multiple initiatives across the United States provided naloxone and instructions for its use to populations at risk of opioid overdose and their family, friends and/or caregivers. These programs were effective at getting naloxone into the hands of those who might witness an overdose (see section C of this document). However, because the injectable naloxone products at the time were only available in glass vials and ampules, they needed to be distributed with syringes and needles for manual injection, or with syringes and atomizers for nasal administration. These products required additional preparation or assembly before administration and were sometimes packaged as improvised naloxone kits. Hence, there was a public health need

[2] See 21 CFR 310.200(b).

[3] Id.

[4] Among deaths with drug overdose as the underlying cause, using predicted provisional number of deaths for opioids (ICD–10 multiple cause-of-death codes for illicit and prescription opioids: T40.0–T40.4, T40.6).

[5] NARCAN (naloxone hydrochloride) injection (NDA 016636) for IV, IM, SC use has been discontinued. However, generic naloxone hydrochloride injection products continue to be marketed.

for naloxone products that did not require additional preparation or assembly before administration and could be administered quickly and safely by a layperson.

In 2014, FDA approved EVZIO, a 0.4 milligram (mg) prefilled, single-use auto-injector naloxone drug product for IM or SC use, followed shortly thereafter by FDA approval of NARCAN, a 4 mg, prefilled, single-dose nasal spray in 2015. More recently, two higher dose [6] naloxone products were approved: KLOXXADO, an 8 mg, prefilled, single-dose nasal spray, approved on April 29, 2021, and ZIMHI, a 5 mg single-dose, prefilled syringe with an integrated needle for IM or SC use, approved October 15, 2021. These prescription naloxone products do not need additional supplies or additional assembly prior to use (*e.g.,* the drug product is already prefilled in the device for administration), and they represent an effort to develop and market products that could potentially be administered by individuals without medical training (*i.e.,* laypersons) in community settings (*i.e.,* ''community-use'' naloxone products) in the interest of public health.

b. Approval standard for prescription naloxone products. [7] Applicants proposing novel naloxone products (including nonprescription naloxone products) need to demonstrate sufficient systemic absorption of naloxone as well as rapidity of onset compared to an approved naloxone product, particularly in the early critical period after drug administration. This is in addition to any other studies needed to support approval of the product (*e.g.,* human factors study).

FDA has determined that it is not necessary for applicants to conduct clinical efficacy trials with novel naloxone products, as effective doses have already been established (Ref. 3). Clinical efficacy trials present significant logistical and ethical challenges, as approved naloxone products are already available for treatment of opioid overdose, which, if not immediately treated, could result in substantial morbidity and mortality. Therefore, historically, efficacy has been based on information known about other naloxone products and supported by a relative bioavailability study conducted in healthy volunteers. In addition to the bioavailability studies conducted by applicants to support their proposed naloxone doses/products, applicants may also need to provide additional data, such as literature reviews, to support the safety and effectiveness of their products if the exposure is different. As newer products with higher doses and/or exposures have been proposed, the importance of such literature support has increased.

c. Layperson use of naloxone: ''community-use'' naloxone products and improvised naloxone kits. Since 2014, FDA has approved several prescription naloxone drug-device combination products for the emergency treatment of a known or suspected opioid overdose, including EVZIO, NARCAN, KLOXXADO, and ZIMHI. These specific FDA-approved prescription products are referred to in this notice as ''community-use'' naloxone products. ''Community-use'' products are specifically designed to facilitate use by laypersons, without the need for additional supplies or assembly before use. Because ''community-use'' naloxone products, such as prefilled auto-injectors (Ref. 9), nasal sprays (Ref. 10), and syringes with an integrated needle presentation, do not require other medical supplies prior to administration, safe and effective use by laypersons in the community may be facilitated. In addition, as part of the approval process, data were required to demonstrate that these ''community use'' naloxone products administered using the integrated device can achieve naloxone blood levels appropriate to reverse an opioid overdose.

In addition to ''community-use'' naloxone products, other naloxone formulations may be used by laypersons in community settings (*e.g.,* naloxone in vial, ampule, and some prefilled syringe presentations). However, these products were not specifically designed to be used in the community setting. Nevertheless, it is important to emphasize that all FDA-approved prescription naloxone products, regardless of whether they were specifically designed to be ''community-use'' naloxone products, may be considered options for community distribution to laypersons for use outside of the healthcare setting (Ref. 4).[8]

Because some naloxone products in vial, ampule, and some prefilled syringe presentations may require other medical supplies and additional preparation prior to administration (*e.g.,* transfer to a syringe, measurement of a specific dose, attachment to an atomizer or needle, etc.), there may be added complexity to administration of the products and increased risk for medication errors when used by laypersons. When distributed by community-based naloxone distribution programs, for example, additional items are often packaged along with the naloxone in improvised naloxone kits, and these kits may contain a syringe, needle, or atomizer, as well as, but not limited to, alcohol pads, bag valve masks, rubber gloves, and instructional or educational materials on naloxone use and overdose prevention (Ref. 5). Even with these additional materials, these improvised naloxone kits may be difficult for some laypersons to use, and there are reports of administration and dosing errors associated with laypersons using improvised naloxone kits (Refs. 6 to 8). In addition, the blood levels of naloxone achieved with administration using various improvised naloxone kits may not be known (see Ref. 11).

d. Recent naloxone sales and prescription data. Since the introduction of ''community-use'' naloxone products EVZIO, NARCAN, KLOXXADO, and ZIMHI to the market, the opioid epidemic has evolved and naloxone use has increased. Based on FDA's analyses using proprietary databases, nationally estimated sales [9] and dispensed prescriptions [10] for naloxone products increased across all healthcare settings from 2017 to 2021, largely due to a substantial increase in naloxone nasal spray distribution. The estimated number of naloxone units sold increased by 81 percent from approximately 5.1 million units in 2017 to approximately 9.3 million units in 2021. Injectable and nasal spray sales to hospitals increased by more than 50 percent, and sales to retail pharmacies tripled during this time period. In 2017, approximately half of naloxone sales to retail pharmacies were for the nasal spray, and by 2021 over 90 percent of sales were for the nasal spray. The volume of naloxone products sold to

[6] For this notice, ''higher dose'' naloxone products refer to products with dosage strengths above 4 mg for IM naloxone products and above 2 mg for IM/SC/IV.

[7] The approval standard for prescription naloxone products as described in this section was discussed extensively at the October 5, 2016, joint meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee. See website at *https://wayback.archive-it.org/7993/20170111202120/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/AnestheticAndAnalgesicDrugProductsAdvisoryCommittee/ucm486848.htm.*

[8] FDA has previously stated that all FDA-approved naloxone products ''may be considered as options for community distribution and use by individuals with or without medical training to stop or reverse the effects of an opioid overdose'' (Ref. 4).

[9] IQVIA. National Sales Perspectives™. Data extracted January 2022. Sales were measured in volume of ''units'' sold, representing the number of vials, auto-injectors, nasal sprays, and syringes.

[10] Symphony Health. Metys™. Data extracted January 2022.

other healthcare settings (*e.g.,* to clinics or in prisons and universities) also increased. Similar to sales to healthcare settings, the estimated number of naloxone prescriptions dispensed from pharmacies increased from under half a million prescriptions in 2017 to 1.5 million prescriptions in 2021. In 2021, over 95 percent of naloxone prescriptions dispensed from U.S. outpatient retail, mail-order, and long-term care pharmacies were for the nasal spray.

It is important to note that the proprietary databases used for these analyses underestimate total availability and distribution of naloxone products in the United States because donations from manufacturers and most direct sales to community-based naloxone distribution programs are not well represented in the data above. These donations and direct sales may be a substantial source of naloxone to individuals with opioid use. Some sources cite that community-based naloxone distribution programs received over 2 million injectable naloxone doses donated by manufacturers or purchased in bulk at low cost between 2017 and 2021 (Refs. 12 and 13). While the analyses showed a decrease in injectable naloxone dispensed from retail pharmacies from 2017 to 2021, distribution patterns by product formulation from community-based naloxone distribution programs may differ from the FDA analyses using data from proprietary databases. Furthermore, some naloxone sold to hospitals may also be distributed to settings such as outpatient clinics and emergency medical services (EMS). Although the analyses show an increased number of prescriptions dispensed from retail pharmacies and an overall increase in naloxone sales over the past 5 years, the increases in overdose deaths reflect a need for increased access and availability of naloxone products particularly for non-healthcare settings.

2. Benefit-Risk Considerations for Naloxone Products

FDA-approved prescription naloxone products have a favorable benefit-risk profile. Naloxone is not a controlled substance and has no known abuse potential. Naloxone is a potentially life-saving treatment when used together with other appropriate measures (*e.g.,* calling 911).[11] Current evidence suggests that increasing access to naloxone has the potential to reduce opioid overdose deaths. Results from multiple observational studies show that naloxone distribution and overdose education targeted to populations likely to observe an overdose is an effective intervention strategy (Refs. 14 to 17). For example, studies of community-based overdose education and naloxone distribution programs report high rates of successful opioid overdose reversal attempts, reflecting numerous lives saved (Refs. 15 and 16). Similarly, results from modeling efforts (Refs. 18 to 21) suggest that increased distribution and use of naloxone could contribute to a decrease in overall deaths related to opioid overdose. A systems modeling study funded by FDA estimates that nearly 20,000 deaths were averted due to layperson naloxone administration from 1999 to 2020, particularly in more recent years (Ref. 20). This modeling research also projects that increasing naloxone distribution (beyond EMS providers) would have among the largest and most immediate future effects on reducing opioid overdose deaths among 11 broad strategies tested (Ref. 21). Although there are important limitations to each study, results consistently show overall lives saved with increased naloxone distribution and use, especially when distributed to those most likely to observe an opioid overdose.

As with all drugs, the risks associated with naloxone use also need to be considered. It is well-known that among patients with physical dependence to opioids, naloxone use may result in acute-onset, precipitated opioid withdrawal (precipitated withdrawal),[12] referred to in the labeling for currently marketed naloxone products as ''Precipitation of Severe Opioid Withdrawal'' (Refs. 22 to 25). As noted in the labeling for currently approved naloxone products, naloxone-induced precipitated withdrawal may also be associated with other clinically serious adverse events such as pulmonary edema, cardiac arrythmias, and agitation—these and other adverse events are labeled in the context of postoperative opioid reversal (Refs. 22 to 25) but could also occur among opioid-dependent populations (Refs. 24 to 28). The incidence of such naloxone-induced adverse events in the community setting may be influenced by factors such as naloxone dose, underlying patient comorbidities, and concomitant medications or co-exposures, including intentional or unintentional polysubstance use. In situations involving multiple substance exposure, naloxone use may result in unmasking the effects of non-opioid substance(s), such as other sedating drugs or stimulants (Refs. 29 and 30). The rise in intentional polysubstance use and unintentional exposure to contamination in the illicit drug supply (Ref. 31) make reversing overdoses in the current environment more complex than in previous times. Furthermore, respiratory and CNS depression may recur after the first dose of naloxone because of the difference in duration of action between naloxone and the opioid. Hence, it is highly important that users of naloxone products activate emergency medical services.

Despite these potential risks, the benefit of broader use of naloxone in reversing potentially fatal events is significant, even as surveillance for and mitigation of risks are important. We believe that the public health impacts associated with a serious adverse reaction to naloxone, as concerning as they may be, are still far less than the public health impacts of opioid overdose death. The public health benefits of FDA-approved prescription naloxone products in preventing overdose deaths clearly outweigh potential serious adverse reactions associated with naloxone administration.

As we consider how the favorable benefit-risk profile for prescription naloxone products may translate to nonprescription naloxone products, FDA will need to ensure that products developed for nonprescription use are appropriately designed to support intended users' needs for their intended use in intended environments without the supervision of a healthcare practitioner.

Additionally, we would encourage community programs and other stakeholders to offer training to help further reduce the risks described above with administration of naloxone to further benefit the public health. Such programs could communicate critical information and educate on topics such as:

[11] It is imperative that individuals administering naloxone call 911 for prompt assistance. Naloxone is a temporary treatment, so repeat doses may be required. Management options for overdose or any naloxone adverse events may be different in non-healthcare settings (*e.g.,* verbal deescalation, rescue breathing, chest compressions) than they are in healthcare settings (*e.g.,* medications for specific adverse events, supplemental oxygen, cardiac defibrillator).

[12] Precipitated withdrawal, resulting from administration of an opioid antagonist, should be considered mechanistically and clinically distinct from withdrawal resulting from cessation, or significant reduction in opioid use. In an adult opioid-dependent person, precipitated withdrawal would be expected to result in more rapid onset signs and symptoms of greater severity, while withdrawal resulting from cessation would be expected to occur more gradually, with symptoms that, while uncomfortable, may not necessarily require urgent medical attention.

- Prompt activation of EMS (*e.g.,* calling 911)
- Opioid overdose recognition
- Alternate etiologies of unresponsiveness
- Respiratory support prior to naloxone administration and onset if naloxone is not immediately available
- Naloxone administration
- Awareness of possible adverse events related to naloxone administration
- Dose titration to the lowest effective dose for appropriate clinical endpoints
- Appropriate interventions supplemental to naloxone administration (*e.g.,* physical stimulus, positioning, rescue breathing, chest compressions, defibrillation)

3. FDA's Efforts To Increase Naloxone Availability and Accessibility

In light of the important role that naloxone can play in reversing opioid overdose, FDA is committed to increasing access and broadening distribution of naloxone products as one strategy to help address the current opioid overdose crisis. Over the last several years, FDA has taken a number of steps to improve availability of naloxone products, including: encouraging manufacturers to pursue development of nonprescription naloxone products; requiring drug manufacturers for all opioid pain relievers and medicines to treat opioid use disorder to add new recommendations about naloxone to the prescribing information of their respective opioid products; approving new naloxone products, including generics; approving the extension of the shelf life of naloxone nasal spray from 24 months to 36 months; and issuing an immediately-in-effect guidance to industry clarifying the scope of the public health emergency exclusion and exemption under the Drug Supply Chain Security Act as they apply to the distribution of FDA-approved naloxone products.

FDA has also held public meetings to solicit scientific and regulatory input on naloxone. On October 5, 2016, the Agency held a joint meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee to discuss what is known about the safety of using naloxone and the risk of precipitating an acute opioid withdrawal syndrome, issues specific to dosing in pediatric patients, the clinical pharmacology of naloxone, and information about the use of naloxone.[13] We asked the advisory committee members for advice on whether the pharmacokinetic standard for the approval of naloxone products based on a demonstration of comparable or greater naloxone levels compared to 0.4 mg of naloxone given intramuscularly is sufficient, and if higher doses are recommended, how to weigh the need for effectiveness against the risk of precipitating an acute withdrawal syndrome. The Agency also sought feedback about naloxone dosing for pediatric patients as well as whether there is benefit in having different doses for the same or different products and how a clinician can determine which product to prescribe.

On December 17 and 18, 2018, the Agency also held a joint meeting of the Anesthetic and Analgesic Drug Products Advisory Committee and the Drug Safety and Risk Management Advisory Committee (December 2018 AC Meeting) to discuss ways in which the Agency could increase the availability of naloxone products intended for use outside of the healthcare setting (see Ref. 3). The topic of nonprescription naloxone was also discussed at this meeting, and participants suggested switching prescription naloxone to nonprescription status. Some participants stated that FDA approval of a nonprescription naloxone product would increase access to and availability of naloxone. Others commented that having naloxone available as a nonprescription product and on store shelves would help increase naloxone use because it would overcome the stigma associated with opioid use and the need for interaction with a pharmacist to obtain prescription naloxone for possible opioid overdoses. Others added that even though some States have naloxone access laws that would allow an individual to obtain naloxone without a patient-specific prescription, these State laws have not significantly expanded access to naloxone in the same way that nonprescription naloxone might. A few participants also noted that eliminating the prescription status for naloxone could make it easier to purchase naloxone in bulk and reduce legal and non-legal barriers that exist for distribution programs that require third-party prescribing.

Although the meeting was specifically focused on increasing naloxone availability, pricing and cost concerns over naloxone products were voiced by several commentors. We heard from the public that the retail price of the currently approved naloxone products can be high. Others expressed concern regarding insurance coverage for naloxone products if such products were switched from prescription to nonprescription status.

Echoing some of the comments provided about barriers to naloxone availability and access during the December 2018 AC Meeting, common barriers reported in a limited review of published studies included fear of stigma and discrimination when obtaining naloxone from physicians or pharmacists and cost (Refs. 32 and 33). Studies report participants' past negative experiences at a pharmacy impacting confidence for obtaining naloxone through a pharmacy (Ref. 33) and a feeling of judgment by doctors toward people who use drugs nonmedically (Ref. 32). Studies identified that naloxone nasal spray had high costs, pharmacies did not have naloxone in stock, and, despite State naloxone access laws, naloxone was unavailable without a patient-specific prescription (Refs. 34 to 36).

4. FDA's Efforts To Facilitate Development of Nonprescription Naloxone

In the face of the increasing incidence of opioid overdose in the United States and in an effort to increase potential naloxone availability in the community, FDA developed an innovative strategy to accelerate development of potential nonprescription naloxone products. Sponsors interested in bringing a naloxone drug product to market via a nonprescription development pathway had cited the development of a nonprescription drug label as a major barrier in bringing their products to market. Thus, FDA took the unprecedented steps of developing a model naloxone DFL and assessing consumers' ability to understand it.

Drugs that do not contain adequate directions for safe and effective use are considered misbranded.[14] ''Adequate directions for use'' means directions under which a layperson can use a drug safely and effectively and for the purposes for which it is intended.[15] Prescription drugs, by definition, cannot bear adequate directions for use by a layperson; FDA regulations provide an exemption from the requirement to bear adequate directions for use by a layperson for FDA-approved

[13] Meeting materials are available on the FDA website at *https://wayback.archive-it.org/7993/20170111202120/http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/Drugs/AnestheticAndAnalgesicDrugProductsAdvisoryCommittee/ucm486848.htm.*

[14] 21 U.S.C. 352(f)(1).

[15] 21 CFR 201.5.

prescription drugs that bear their FDA-approved labeling.[16] For prescription products, the prescribing information is written for healthcare professionals. It must include all information necessary for a healthcare professional to evaluate the appropriateness of the drug for a particular patient. For nonprescription products, the labeling needs to be adequately understood by the general public, regardless of prior experience with the drug in question and across a broad range of literacy, including those with limited literacy.[17] Nonprescription drug label development may be time and resource intensive and requires: (1) identifying the essential elements of the prescribing information, which are necessary for the proper and safe use of the medication; (2) using these elements to create a consumer friendly DFL; and (3) verifying with extensive consumer testing that consumers can comprehend the DFL and use the product appropriately without the help of a healthcare professional.

As mentioned above and as previously communicated in a 2019 **Federal Register** notice (84 FR 8728), FDA has taken the unprecedented step of designing and assessing comprehension of two versions of a model naloxone DFL for use by industry to support a nonprescription drug application (Ref. 37). Future sponsors of nonprescription naloxone products using the model DFL without changes to the previously tested portions may avoid performing a comprehensive Label Comprehension Study (LCS) for the portions previously tested. Required testing would be limited to any minor modifications of the DFL and the information necessary to evaluate device-specific information (such as how to use a particular injector or spray device).

As a foundation for creating the model naloxone DFL, FDA used the prescribing information for the two prescription products that had been designed for ''community use'' as of 2016: (1) EVZIO, a prefilled auto-injector and (2) NARCAN, an intranasal spray. FDA clinicians, in consultation with experts on the treatment of addiction, distilled the prescribing information for naloxone into what were deemed to be the critical elements in instructions for emergency use. They took the relatively lengthy prescription labeling and condensed it to fit the succinct content and format of a nonprescription DFL.

An independent research contractor conducted qualitative testing of small segments of the DFL comprising indepth, sequential, one-on-one interviews of 36 subjects to determine the clearest and simplest presentation of important consumer information. This was followed by pilot testing the revised label in another 36 subjects. Enhancement of the label to improve readability included adding white space, boldface type, and ''chunking'' the information (*i.e.,* breaking up information into small units that make it easier to notice). Additionally, pictograms were incorporated adjacent to the written text to clarify the stepwise directions.

The finalized version of the model DFL was tested in a pivotal LCS. The prespecified research design of the pivotal study included structured interviews in over 700 participants (including 33 percent with limited literacy, as defined by a score of 60 or less on the REALM (Rapid Estimate of Adult Literacy in Medicine)) across a wide range of potential nonprescription naloxone users. These participants included three groups: (1) those who had recently used opioids and their family and friends; (2) the general adult population not screened for opioid use; and (3) an adolescent population not screened for opioid use. Comprehension was tested by making sure that participants could answer open-ended questions to apply their understanding of the following elements or ''critical tasks'' necessary for safe use: (1) how to identify a person who might have an opioid overdose; (2) call 911; (3) stay with the person until 911 personnel arrive; and (4) recognize the signs of possible naloxone side effects that are to be expected. An FDA review team that was not involved in the design or conduct of the study reviewed the study report and determined that the model DFL comprehension results were adequate for all groups including those with limited literacy.

If applicants elect to use the model naloxone DFL created by FDA, the main piece of the DFL that would still need to be tested by the applicant are the device-specific instructions. The device-specific instructions may be added to the model DFL and evaluated in a simulated Human Factors (HF) validation study designed to evaluate whether the user interface can be used safely and effectively by intended users for the intended use under expected environment(s) of use. The HF validation study focuses on the collection of qualitative data and generally requires far fewer test participants as compared to a pivotal LCS, which is statistically powered. An applicant who starts with the FDA model naloxone DFL should only make changes to the DFL that are related to device-specific instructions. Assuming that the DFL has not been altered in a substantial fashion, applicants then test just those added device-specific instructions in a simulated HF validation study, and if successful, have the opportunity to shorten the time of development of a potential nonprescription naloxone product. It is important to note that LCS and HF studies address, among other things, labeling and consumer behavior testing requirements; however, an applicant would still need to submit other data (*e.g.,* bioavailability, stability, reliability of drug-device combination, non-clinical, justification for treatment of pediatric population, etc.) to support an application for a nonprescription product.

5. Other Considerations for Nonprescription Naloxone

The Agency is aware of concerns that are not directly related to the safe and effective use of nonprescription naloxone products, such as potential consequences of switching naloxone from prescription to nonprescription status, which have been raised by the public in multiple venues.

It is unclear how a switch to nonprescription naloxone would affect the distribution and supply of naloxone. One study published in 2019 estimates that naloxone pharmacy purchases could increase by 15 to 179 percent with a prescription-to-nonprescription switch of naloxone based on prior experience with nonprescription switches for nicotine gums and patches (Ref. 38). During the December 2018 AC Meeting, committee members discussed that drug shortages may be a problem and that capacity will need to be expanded dramatically to meet the needs of any expansion in naloxone distribution.

The committees also noted that if changes to the market were made, consideration should be given to ensure those who need naloxone are still able to get the drug at a reasonable cost. For example, the committees recommended that FDA ensure that a switch to nonprescription naloxone will not divert supplies away from community-based naloxone distribution programs and hospitals to settings where patients may be at less risk for experiencing an opioid overdose. Further, it is possible that even if the Agency could determine that certain naloxone products would be safe and effective for nonprescription use, which would require all manufacturers of such products to switch their products from prescription to nonprescription absent a clinically

[16] 21 CFR 201.100 and 201.115.

[17] See, *e.g.,* 21 U.S.C. 352(c).

meaningful difference, a firm may opt to stop marketing its product altogether rather than make the nonprescription switch, which could potentially contribute to a drug shortage.

We recognize that these concerns, although they may be outside of the Agency's drug approval considerations, may have significant impacts on naloxone availability and accessibility, and we will continue to work with our Federal partners to address them. We welcome comments from the public on any potential consequences of a switch from prescription to nonprescription status for naloxone products, which we will consider to the extent they may be address within our current authorities.

C. Factors Indicating That the Prescription Requirements for Certain Naloxone Products May Not Be Necessary

At this time, we believe that the prescription requirements for certain naloxone products may not be necessary for the protection of the public health, and we believe that these naloxone products have the potential to be safe and effective for use as directed in nonprescription drug labeling without the supervision of a healthcare practitioner.

Naloxone, as a prescription product, has been used for many years (since 1971) to treat opioid overdose and has a favorable benefit-risk profile. The benefit-risk profile for naloxone takes into account naloxone's effectiveness in helping to reduce opioid overdose deaths. Timely administration of naloxone, usually within minutes of the first signs of an opioid overdose, can counter the overdose effects. Although naloxone administration is not without risks, as discussed above, the risks associated with opioid overdose and overdose-related deaths pose an even greater public health concern.

Moreover, community-based naloxone distribution programs have been providing naloxone to populations at risk of overdose without patient-specific prescriptions. These programs have provided naloxone to people who are likely to witness an opioid overdose and use naloxone (Refs. 15 and 16). In addition, these programs may also provide overdose education or other support for appropriate use of naloxone. Some examples of community-based naloxone distribution programs are the Drug Overdose and Prevention Education (DOPE) program and the Massachusetts Overdose Education and Naloxone Distribution program. The DOPE program in San Francisco distributed 2,500 improvised naloxone kits to participants from 2010 to 2013. Of the 702 overdose reversal attempts reported to the DOPE program, over 95 percent were known to have survived (Ref. 16). In Massachusetts from 2006 to 2010, approximately 4,900 participants received improvised naloxone kits with mucosal atomization devices, and among those reporting use of the naloxone and the outcomes (n=359), 97 percent reported successfully reversing the overdose (Ref. 15). The high percentage of successful reversals in both programs should be interpreted cautiously as they represent reports from a select population reporting back to the program. Targeted naloxone distribution programs, such as distribution to those in opioid treatment programs, have been also shown to be effective methods of distribution (Refs. 39 to 45). Data are less clear on the effectiveness of a ''universal precaution'' approach whereby all patients prescribed opioid analgesics are also prescribed naloxone (Ref. 46).

Naloxone access laws (NAL) provide additional information on the distribution of naloxone to end-users without a patient-specific prescription. As of 2020, all 50 states and the District of Columbia have some form of NAL (Ref. 47). These laws are intended to increase naloxone availability for use in individuals experiencing an opioid overdose. With a prescription drug, a pharmacist would generally dispense the drug pursuant to a patient-specific prescription. However, naloxone differs from other prescription drugs due in part to its approved indication. As an emergency treatment for the reversal of overdose, naloxone may not necessarily be dispensed to the patient who experiences an overdose or administered by the patient who receives the prescription. Because naloxone may be acquired without a patient-specific prescription and may be administered to someone other than the person for whom the naloxone was dispensed, naloxone faces some challenges that may inadvertently hinder wider access to the drug. For example, prescribers may be hesitant to prescribe naloxone to a third party for fear of liability (Ref. 48). NALs are meant to address these challenges by facilitating naloxone access outside of the traditional prescriber-patient relationship.

NALs vary from State to State and have changed over time, but generally, many have one or more of the following features: third-party provisions that allow a prescriber to prescribe naloxone to someone not directly at risk of overdose (*e.g.,* caregiver, family member); standing order provisions that allow for non-patient specific prescriptions; and civil and/or criminal immunity provisions for prescribers and dispensers (Ref. 49). Studies have reported that NALs are associated with favorable public health outcomes (Ref. 13). These studies have reported increased distribution of naloxone, reductions in overdose deaths, and positive outcomes for emergency department events involving opioid overdose (Ref. 49). Naloxone obtained without a patient-specific prescription, as a result of NALs, has been administered by laypersons with little or no professional training and with evidence of some effectiveness at reversing opioid overdose (Refs. 15 to 17 and 50).

Notwithstanding these positive findings, barriers to access (*e.g.,* stigma associated with illicit drug use) continue to persist despite NALs (Ref. 51). For example, based on a preliminary review, knowledge gaps regarding the details of State NALs may be contributing to pharmacies not making naloxone available for dispensing (Refs. 52 to 54). Specifically, some pharmacy staff working in pharmacies participating in State standing order programs did not fully understand the requirements under their State NAL and incorrectly stated that a patient-specific prescription or identification was required to obtain naloxone or that third parties (*i.e.,* individuals other than the person at risk of an opioid overdose) could not obtain naloxone (Refs. 52 to 54). In California, although significant improvement to naloxone access has been achieved since the State's NAL first went into effect, naloxone continues to not be dispensed due to knowledge gaps regarding the State NAL (Ref. 54). The number of pharmacies reporting that they were willing to dispense naloxone without a patient-specific prescription increased by 80 percent from 2018 to 2020 (Ref. 54). However, fewer than half of all pharmacies interviewed were still willing to dispense naloxone without a patient-specific prescription, which indicates that improvements to access could still be realized (Ref. 54). A nonprescription naloxone option may provide another means to further increase naloxone availability (Ref. 54).

In summary, these models (*i.e.,* community-based naloxone distribution programs and NALs) help to inform the potential public health benefit of nonprescription naloxone use by laypersons and have factored into our initial assessment that naloxone may be used safely and effectively for nonprescription use. The current availability of naloxone without a patient-specific prescription represents

some useful general information that a naloxone product could potentially be used safely and effectively on a nonprescription basis.

Despite the useful information obtained through these models, they do not necessarily inform us on whether a layperson could, on their own, safely and effectively administer such product to a person experiencing an overdose without the supervision of a licensed practitioner and relying on the DFL. This is because, as mentioned above, improvised naloxone kits that are distributed by community-based naloxone distribution programs may include other items that accompany the drug (*e.g.,* atomizer, instructions for safe use), and those distributing these improvised naloxone kits directly to the end user may be providing additional counseling on safe naloxone use. We are also aware that some State NALs require pharmacists to provide patient counseling before dispensing naloxone, which may include further information on naloxone safety, risks of opioid overdose, and resources on substance use disorder. We do not know to what extent these factors contribute to the safe and effective use of naloxone without the intervention of a learned intermediary, which may occur if a layperson obtains naloxone through one of these methods.

Moreover, even if such products are accompanied by educational or other materials to facilitate use, naloxone products distributed and dispensed through these models may be more challenging to administer (*e.g.,* requiring assembly). Thus, in order to provide a meaningful expansion in naloxone availability, an FDA-approved nonprescription naloxone product would need to be supported by LCS and HF studies and other data. Additionally, as described above, challenges associated with naloxone distributed through community-based naloxone distribution programs and naloxone acquired through NALs persist and providing another naloxone option—nonprescription naloxone products—with clear and understandable DFL instructions and not hampered by the patient-prescription requirements, may provide important value in addressing opioid overdoses.

D. Scope of the Notice

As discussed in section C of this document, we believe that certain naloxone products have the potential to be safe and effective for use as directed in nonprescription drug labeling without the supervision of a healthcare practitioner. However, more direct, specific data would be needed to support a formal Agency determination that any particular form of naloxone (*e.g.,* 4 mg naloxone nasal spray) is safe and effective as a nonprescription drug, due to factors such as the way naloxone is delivered in combination with a device and its associated DFL. Specific data are usually submitted in an application proposing approval of a nonprescription product, which may include, among other things, a LCS, HF study, and/or actual use study.

While we have defined the scope of this notice as applying to naloxone hydrochloride, nasal spray up to 4 mg and naloxone hydrochloride, autoinjector for IM or SC use up to 2 mg, FDA believes it is also important to consider other naloxone products for nonprescription use and welcomes comments from the public that could provide additional information related to the nonprescription use of these products.

While naloxone has been in use since 1971, two ''community-use'' naloxone products, EVZIO, a 2 mg prefilled auto-injector and NARCAN nasal spray, a 4 mg intranasal spray, have been in use for approximately 6 years, and may provide the best models to inform the public health decisions for layperson use. As discussed above, these products were designed to facilitate use by laypersons, without medical training or the need for additional supplies or assembly before use.

Although two higher dose naloxone products, ZIMHI, a 5 mg single-dose, prefilled syringe with an integrated needle for IM or SC use, and KLOXXADO, an 8 mg nasal spray, are also considered ''community use'' products and have begun marketing more recently (March 2022 and August 2021, respectively), we have limited postmarketing experience to meaningfully inform whether they may be appropriate for nonprescription use. When considering risk, it is biologically plausible that there may be an association between increasing naloxone doses and the severity of precipitated withdrawal. An observational study reported that the initial dose of naloxone patients received for opioid overdose has a positive association with their likelihood to experience opioid withdrawal symptoms (Ref. 55). Causality cannot be established based on the study, however, due to concerns that differences in the opioid-dependence status and severity of opioid overdose between patients receiving a low or high initial naloxone dose were not well adjusted for in the analyses.[18] The available literature does not inform on a threshold naloxone dose above which the risk for severe adverse events would outweigh treatment benefit. Better understanding this dose-response relationship could help inform decisions about specific naloxone formulations and dosages, like higher dose naloxone, to make available for treatment in the nonprescription setting, where naloxone is unlikely to be administered by trained medical personnel. Further, ZIMHI's FDA-approved labeling includes a warning of the risk of accidental needlestick injury after use, because the needle is exposed until the safety guard is deployed (Ref. 24). For these reasons, we do not believe we have sufficient data to support a preliminary assessment that these higher dose naloxone products could be safely used in a nonprescription setting.

With respect to naloxone supplied in other presentations including vials, ampules, or syringes without integrated needles, at this time we do not have enough data or information to support a preliminary assessment that these naloxone products have the potential to be safe and effective for use as directed in nonprescription drug labeling without the supervision of a healthcare practitioner. The Agency is aware that community-based naloxone distribution programs have distributed these presentations of naloxone to laypeople. The availability of naloxone supplied in presentations to include vials, ampules, or syringes without integrated needles[19] for use outside of a healthcare setting through this distribution method cannot be interpreted to mean that these products are safe and effective as a nonprescription product. As discussed above, when community-based naloxone distribution programs provide naloxone to the public, it is often provided in an improvised naloxone kit whose contents can vary from one program to another. These kits may contain additional materials and

[18] The comparison of opioid withdrawal risk between patients who received ''low'' (≤0.15 mg) and ''high'' (≥0.15 mg) initial naloxone dose did not account for whether the patient was opioid-dependent. While the study matched the two groups by respiratory rate before naloxone use and adjusted for Glasgow coma scale (as a categorical variable), overdose severity might still not be well-balanced between the two groups, given that patients in the low-dose group were less likely to have a low Glasgow coma scale (≤8) and they were more likely to receive their initial naloxone dose in the emergency department, instead of having to be treated before arriving to the emergency department.

[19] It is our preliminary view that these presentations generally constitute a clinically meaningful difference from the naloxone hydrochloride, autoinjector for IM or SC use up to 2 mg.

instructions, such as educational materials on naloxone use, which may be a contributing factor to the safe and effective use of these products. We have no data to support that naloxone supplied in vials, ampules, or syringes without integrated needles and not accompanied by such additional materials could be safely and effectively used as directed in nonprescription drug labeling without the supervision of a healthcare practitioner.

FDA's preliminary assessment that naloxone products may be approvable as safe and effective for nonprescription use is limited to the following naloxone products:

- Naloxone hydrochloride, nasal spray up to 4 mg; and
- Naloxone hydrochloride, autoinjector for IM or SC use up to 2 mg.

To help facilitate increased access to and availability of safe and effective naloxone products, FDA believes it is important to consider the safety and effectiveness of all naloxone products for potential nonprescription use. Therefore, we welcome comments from the public (see Section III, Request for Additional Information and Comments) with information that may inform the safe and effective use of naloxone for nonprescription use for the following products:

- Naloxone hydrochloride, injection for IV, IM, or SC use, including products greater than 2 mg; and
- Naloxone hydrochloride, nasal spray greater than 4 mg.

E. Simultaneous Marketing of Prescription and Nonprescription Naloxone

As explained above, FDA has interpreted the language in section 503(b)(4) of the FD&C Act to allow simultaneous marketing of drug products with the same active ingredient as prescription in one case and nonprescription in another only if some clinically meaningful difference, such as a difference in indication, strength, route of administration, dosage form, or patient population, exists between the drug products that makes the prescription product safe and effective only under the supervision of a healthcare practitioner licensed by law to administer the drug. Absent a clinically meaningful difference between the products, simultaneous marketing of two drug products with the same active ingredient as, respectively, a prescription and a nonprescription drug product would result in one of the two products being misbranded.

At this time, we do not believe that any clinically meaningful differences could exist between currently approved prescription and potential nonprescription naloxone nasal spray products (up to 4 mg), or between currently approved prescription and potential nonprescription naloxone autoinjector products (up to 2 mg). For example, we do not believe that a difference in the dosage strengths within naloxone nasal spray products (*i.e.,* 2 mg, 4 mg) by itself would be sufficient to distinguish prescription and nonprescription versions of a naloxone product without further support demonstrating that one (or more) dosage strength(s) should remain prescription because intervention of a healthcare professional is necessary for safe and effective use of the product. Additionally, naloxone nasal spray products with the dosage strengths 2 mg and 4 mg have the same indication and minor, nonmeaningful label differences. We also do not foresee a clinically meaningful distinction between currently approved prescription and potential nonprescription naloxone products based on indication because we do not anticipate that the indication for a nonprescription naloxone product would differ from a prescription naloxone product. Additionally, the Agency does not believe there is a clinically meaningful distinction between currently approved prescription and potential nonprescription naloxone products based on differences in population because in the development of the model DFL, FDA tested the labeling across a wide range of potential nonprescription naloxone users, including adults who have and have not used opioids as well as adolescents.

It is possible that there is a potential clinically meaningful difference based on dosage strength with respect to naloxone nasal spray products (up to 4 mg) or naloxone autoinjector product (up to 2 mg) and higher dose versions of those products that would allow for simultaneous marketing of nonprescription naloxone nasal spray and prescription higher dose naloxone nasal spray, or simultaneous marketing of nonprescription autoinjector naloxone and prescription higher dose autoinjector naloxone. As discussed above, we lack data on the safety of higher dose naloxone products for nonprescription use, and we also noted that there may be an association between higher doses of naloxone and precipitated withdrawal; although at this time, we have found no causal association.

II. Notice to Current Application Holders

In this document, we provide notice of the Agency's preliminarily assessment that prescription requirements for certain naloxone products described above may no longer be necessary for the protection of the public health and that they may be safe and effective for use as directed in nonprescription labeling. As noted above, the Agency needs additional data, including product-specific data on nonprescription user interface design, including packaging and labeling, to make a conclusive determination in this respect. Additionally, we have tentatively determined that it is unlikely that any clinically meaningful differences exist between a prescription and a potential nonprescription naloxone nasal spray product (up to 4 mg) or between a prescription and a potential nonprescription autoinjector naloxone product (up to 2 mg). Section 503(b) of the FD&C Act does not permit the simultaneous marketing of drug products with the same active ingredient as prescription and nonprescription unless there is a clinically meaningful difference between the products. If FDA makes a determination that naloxone products described in this notice are safe and effective for use without a prescription, such products would be misbranded if they bear labeling with the ''Rx only'' symbol. At that time, an efficacy supplement that includes product-specific data to support the nonprescription user interface design, including packaging and labeling, will need to be submitted to an approved application for a prescription naloxone product if an application holder plans to switch its naloxone product covered under the application to nonprescription marketing status in its entirety without a change in the previously approved dosage form or route of administration. The Agency strongly encourages application holders of prescription naloxone products described in this notice to contact FDA as early as possible to initiate a discussion about a possible switch.

III. Request for Additional Information and Comments

In considering additional approaches to facilitate access to naloxone, FDA is soliciting comments and information from the public in the following areas:

(1) Data to support the safe and effective use of nonprescription naloxone hydrochloride injection for IV, IM, or SC use.

(2) Data to support the safe and effective use of higher dose nonprescription naloxone hydrochloride products, such as naloxone hydrochloride, nasal spray greater than 4 mg.

(3) Any potential consequences of a switch from prescription to nonprescription status for naloxone products, and actions that FDA could consider to address them, including but not limited to, impacts on community-based naloxone distribution programs and consumers, drug shortages, and the distribution and supply of naloxone.

IV. References

The following references marked with an asterisk (*) are on display at the Dockets Management Staff (see **ADDRESSES**) and available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday; they also are available electronically at *https://www.regulations.gov.* References without asterisks are not on public display at *https://www.regulations.gov* because they have copyright restriction. Some may be available at the website address, if listed. References without asterisks are available for viewing only at the Dockets Management Staff. FDA has verified the web addresses, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. *''Renewal of Determination that a Public Health Emergency Exists Nationwide as the Result of the Continued Consequences of the Opioid Crisis'' (renewed September 29, 2022), available at *https://www.phe.gov/emergency/news/healthactions/phe/Pages/default.aspx.*
2. *Ahmad, F.B., J.A. Cisewski, L.M. Rossen, and P. Sutton, 2022, ''Provisional Drug Overdose Death Counts,'' National Center for Health Statistics, available at *https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm* (accessed July 7, 2022).
3. *Division of Anesthesia, Analgesia, and Addiction Products (DAAAP) Director Memorandum dated November 19, 2018, for the AADPAC/DSaRM meeting to discuss strategies to increase the availability of naloxone products intended for use in the community, available at *https://www.fda.gov/media/121182/download.*
4. *FDA statement on the continued efforts to increase availability of all forms of naloxone to help reduce opioid overdose deaths (September 20, 2019), available at *https://www.fda.gov/news-events/press-announcements/statement-continued-efforts-increase-availability-all-forms-naloxone-help-reduce-opioid-overdose.*
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Dated: November 9, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–24874 Filed 11–15–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Membership Forms for Organ Procurement and Transplantation Network, OMB No. 0915–0184—Revision

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this notice has closed.

DATES: Comments on this ICR should be received no later than December 16, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer, at

paperwork@hrsa.gov or call (301) 443–9094.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: Membership Forms for Organ Procurement and Transplantation Network, OMB No. 0915–0184—Revision.

Abstract: Membership in the Organ Procurement and Transplantation Network (OPTN) is determined by submission of application materials to the OPTN (not to HRSA) demonstrating that the applicant meets all required criteria for membership and will agree to comply with all applicable provisions of the National Organ Transplant Act, as amended, 42 U.S.C. 273 *et seq.;* the OPTN final rule, 42 CFR part 121; OPTN policies; and OPTN bylaws. Section 1138 of the Social Security Act, as amended, 42 U.S.C. 1320b–8, requires that hospitals in which transplants are performed by members of, and abide by, the rules and requirements of the OPTN (that have been approved by the Secretary of Health and Human Services) as a condition of participation in Medicare and Medicaid.

A 60-day notice was published in the **Federal Register**, 87 FR 52389 (Aug. 25, 2022). There were no public comments.

Need and Proposed Use of the Information: The application materials are needed to ensure that all members and prospective members of the OPTN submit evidence that they meet the required qualifications for membership. These materials provide the OPTN with information to permit the OPTN to confirm and demonstrate that applicants meet OPTN membership application requirements, and to create a record of the application review process and resulting actions for consideration by the Secretary of Health and Human Services if an applicant subsequently appeals a membership rejection by the OPTN.

This is a request to revise the current OPTN data collection associated with transplant hospitals, organ procurement organizations, transplant histocompatibility laboratories, medical/scientific and public organizations, business organizations, and individuals to meet or sustain requirements for OPTN membership to include data collection forms for OPTN member hospitals requesting HIV Organ Policy Equity (HOPE) Act variances as well as the Kidney Paired Donation Pilot Program (KPDPP) contact update form. HRSA is submitting the following changes to the membership forms to clarify requirements and eliminate redundancy while adding more explanatory language and instruction to the applications, which include:

(1) Adding two new data collection forms for HOPE Act Variance Request and KPDPP contact update form. The HOPE Act Variance Request is for any OPTN member transplant program that wishes to start a variance to receive HIV-positive organs for their HIV-positive patients. The KPDPP contact update is a form that indicates contact information for programs participating in the KPDPP.

(2) Adding three standalone forms for data collection: Primary Program Administrator, Primary Data Coordinator, and Additional Surgeon and Physician. All three of these forms include data previously collected on other OMB-approved forms in this package, but now will be standalone forms for greater ease of use for the applicant.

- The Primary Program Administrator data collection form includes data previously collected in each organ-specific application form. Users will only have to complete one form if the proposed Primary Program Administrator serves in that role for multiple programs.
- The Primary Data Coordinator collection form includes data previously collected in each organ-specific application form. This form will be used for organ procurement organizations, histocompatibility lab members, and organ transplant programs so that one standalone form will serve all three member types.
- The Additional Surgeon and Physician data collection form includes data previously collected in the Certificate of Assessment and Program Coverage Plan (COA/PCP) Membership Application form. Users will only have to complete one form if the proposed Surgeon and Physician serve in that role for multiple programs.

The organ-specific application forms have been revised to include the information found in the COA/PCP, which has been embedded into all of the organ-specific application forms, negating the need for an independent data collection form.

Likely Respondents: New and existing transplant hospitals, organ procurement organizations, histocompatibility laboratories, medical/scientific organizations, public organizations, businesses, and individual members.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose, or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

The total burden hours in the OMB inventory increased by 944 hours from the previously OMB-approved data collection package from August 20, 2020. This increase is due in part to including new membership forms.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents [1]	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
OPTN Membership Application for Transplant Hospitals and Programs	251	0.28	71	4.00	284
OPTN Membership Application for Kidney Transplant Programs	234	0.56	132	8.00	1,056
OPTN Membership Application for Liver Transplant Programs	143	0.59	85	13.00	1,105
OPTN Membership Application for Pancreas Transplant Programs	120	0.26	32	13.00	416
OPTN Membership Application for Heart Transplant Programs	145	0.34	50	20.50	1,025

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS—Continued

Form name	Number of respondents [1]	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
OPTN Membership Application for Lung Transplant Programs	72	0.64	47	9.00	423
OPTN Membership Application for Islet Transplant Programs [2]	19	0.00	0	5.00	0
OPTN Membership Application for Vascularized Composite Allograft (VCA) Transplant Programs	43	0.98	43	15.50	667
OPTN Membership Application for Intestine Transplant Programs	21	0.19	4	11.00	44
OPTN Membership Application for Organ Procurement Organizations (OPOs)	57	0.14	8	40.00	320
OPTN Membership Application for Histocompatibility Laboratories	141	0.21	30	2.50	75
OPTN Representative Form	1,760	0.02	36	0.25	9
OPTN Medical/Scientific Membership Application	10	0.30	3	0.75	3
OPTN Public Organization Membership Application	7	0.57	4	0.50	2
OPTN Business Membership Application	11	0.55	7	0.88	7
OPTN Individual Membership Application	8	0.88	8	0.25	2
OPTN Membership Application Surgeon or Physician Log [3]	0	0.00	0	0.00	0
Primary Program Administrator Form	1,562	0.05	79	0.25	20
Primary Data Coordinator Form	1,760	0.03	53	0.13	7
Additional Surgeon and Physician Request Form	1,562	0.08	125	1.17	147
HOPE Act Variance Request Form [4]	68	0.00	0	1.33	0
Kidney Paired Donation Pilot Program (KPDPP) contact update form	159	0.33	53	1.63	87
Total = 22 forms	8,153		870		5,699

[1] The numbers of respondents were updated with the data as of December 31, 2021, and reflect changes in members' statuses.
[2] There were no Islet applications processed in 2021, hence no responses.
[3] The OPTN Membership Application Surgeon or Physician Log is an optional form. The information can also be submitted by the OPTN member using a different format. The burden to complete is built into the organ application data.
[4] There were no HOPE Act Variance Request forms processed in 2021, hence no responses.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–24926 Filed 11–15–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Drug Development.

Date: December 6, 2022.

Time: 11:00 a.m. to 2:00 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: Maureen Shuh, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 480–4097, *maureen.shuh@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: November 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24950 Filed 11–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: HIV/AIDS Interventions and Population and Public Health Approaches.

Date: November 30, 2022.

Time: 10:00 a.m. to 4:00 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: Hoa Thi Vo, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002B2, Bethesda, MD 20892, (301) 594–0776, *voht@csr.nih.gov.*

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. 93.306, 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: November 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24949 Filed 11–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed 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 Mental Health Special Emphasis Panel; HIV/AIDS Review (P30, T32, R25).

Date: December 14, 2022.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: David W. Miller, Ph.D., Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, 301–443–9734, *millerda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: November 10, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–24951 Filed 11–15–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2022–0055]

Faith-Based Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), Department of Homeland Security (DHS).

ACTION: Notice of Partially Closed Federal Advisory Committee meeting.

SUMMARY: The Faith-Based Security Advisory Council (FBSAC) will meet virtually via teleconference on Tuesday, November 29, 2022. The meeting will be partially closed to the public.

DATES: The meeting will take place from 10 a.m. EST to 10:45 a.m. EST on Tuesday, November 29, 2022. The meeting will be closed to the public from 10:15 a.m. to 10:45 a.m. The meeting will be open to the public from 10 a.m. to 10:15 a.m. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The FBSAC meeting will be held via teleconference. The public may register to participate in the open session of this meeting via teleconference through the following procedures. Each person must provide their full legal name and email address no later than 5 p.m. EST on Friday, November 25, 2022 to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. The conference call details will be provided to interested members of the public after the public registration period closes and prior to the start of the meeting. The FBSAC is committed to ensuring all participants have equal access regardless of disability status. If you require reasonable accommodation due to a disability to fully participate, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

At all times during the meeting, the public will be in listen-only mode.

Written comments can be submitted from November 15, 2022 to November 30, 2022. Comments must be identified by Docket No. DHS–2022–0055 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FBSAC@hq.dhs.gov.* Include Docket No. DHS–2022–0055 in the subject line of the message.
- *Mail:* Michael J. Miron, Committee Management Officer, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King, Jr. Ave. SE, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2022–0055,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2022–0055,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Michael Miron at 202–891–2876 or *FBSAC@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. Appendix), which requires a portion of each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Due to the technical reasons, the department was unable to provide the customary 15-day notice of the meeting.

The FBSAC provides organizationally independent, strategic, timely, specific, and actionable advice to the Secretary through the OPE Assistant Secretary, who serves as the DHS Faith-Based Organizations Security Coordinator on security and preparedness matters related to places of worship, faith communities, and faith-based organizations.

The Council will meet in an open session between 10 a.m. to 10:15 a.m. EST. During the open session, the Council will receive new taskings.

The Council will meet in a closed session from 10:15 a.m. to 10:45 a.m. EST to participate in a sensitive discussion with DHS Senior Leadership regarding DHS operations. *Basis for Partial Closure:* In accordance with Section 10(d) of FACA, the Secretary of Homeland Security has determined this meeting must be closed during this session as the disclosure of information relayed would be detrimental to the public interest for the following reasons: The Council will participate in a sensitive operational discussion containing For Official Use Only and Law Enforcement Sensitive information. This discussion will include information regarding threats facing the United States and how DHS plans to address those threats. The session is closed pursuant to 5 U.S.C. 552b(c)(9)(B) because the disclosure of this information could significantly frustrate implementation of proposed agency actions.

Dated: November 9, 2022.

Michael J. Miron,

Committee Management Officer, Department of Homeland Security.

[FR Doc. 2022–24873 Filed 11–15–22; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2728–22; DHS Docket No. USCIS–2019–0020]

RIN 1615–ZB83

Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of continuation of Temporary Protected Status and related documentation for certain TPS beneficiaries.

SUMMARY: Through this notice, the U.S. Department of Homeland Security (DHS) announces actions to ensure its continued compliance with the preliminary injunction order of the U.S. District Court for the Northern District of California in *Ramos, et al.* v. *Nielsen, et al.,* No. 18–cv–01554 (N.D. Cal. October 3, 2018) (''*Ramos*'') and with the order of the U.S. District Court for the Northern District of California to stay proceedings in *Bhattarai* v. *Nielsen,* No. 19–cv–00731 (N.D. Cal. March 12, 2019) (''*Bhattarai*''). Beneficiaries under the existing Temporary Protected Status (TPS) designations for El Salvador, Nicaragua, Honduras, and Nepal, the 2011 designation of Haiti, and the 2013 designation of Sudan will retain their TPS while the preliminary injunction in *Ramos* and the *Bhattarai* orders remain in effect, provided that their TPS is not withdrawn because of individual ineligibility. They may also apply under the more recent designations of Haiti and Sudan in 2021 and 2022, respectively, and if granted, will retain TPS in accordance with their grants regardless of any potential end to the *Ramos* injunction. Other individuals who have been newly granted TPS under the 2021 designation of Haiti and the 2022 designation of Sudan, but who did not have TPS at the time of those designations, are not covered by this litigation compliance notice. Their TPS grants remain valid in accordance with their individual notices of approval from USCIS. This notice further provides information on the automatic extension of the validity of TPS-related Employment Authorization Documents (EADs); Notices of Action (Forms I–797); and Arrival/Departure Records (Forms I–94), (collectively ''TPS-related documentation'') for those beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal.

DATES: DHS is automatically extending the validity of certain TPS-related documentation for beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal through June 30, 2024, from the current expiration date of December 31, 2022.

FOR FURTHER INFORMATION CONTACT: You may contact René Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

For further information on TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.*

If you have additional questions about TPS, please visit *https://uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our U.S. Citizenship and Immigration Services (USCIS) Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *https://www.uscis.gov,* or visit the USCIS Contact Center at *https://uscis.gov/contactcenter.*

Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
EAD—Employment Authorization Document
EOIR—Executive Office for Immigration Review
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Background on TPS

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the Immigration and Nationality Act (INA) or to eligible persons without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work as long as they continue to have TPS. They may apply for and receive EADs as evidence of employment authorization.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at

INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).

- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - ○ The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or been terminated); or
  - ○ Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid on the date TPS terminates.

Purpose of This Action

This notice ensures DHS's continued compliance with various court orders issued by the federal district courts in the *Ramos and Bhattarai* lawsuits that require DHS to maintain the TPS designations for El Salvador, Haiti, Sudan, Nicaragua, Honduras, and Nepal, as well as the TPS and TPS-related documentation for eligible affected beneficiaries.[1] The U.S. Court of Appeals for the Ninth Circuit vacated the district court's preliminary injunction in *Ramos* on September 14, 2020, holding that the decision to designate, extend, or terminate TPS is not subject to judicial review. However, the appellate order is not currently effective because the Ninth Circuit has not issued any directive to carry out the order to the federal district court.[2] Therefore, the *Ramos* preliminary injunction remains in effect. In addition, the order of the district court in *Bhattarai* staying proceedings and approving the parties' stipulated agreement to continue TPS and TPS-related documentation for eligible beneficiaries from Nepal and Honduras remains in effect. Affected TPS beneficiaries from the six countries will retain their status, provided they continue to meet all the individual requirements for TPS eligibility described in INA section 244(c) and 8 CFR 244. As necessary, DHS will publish future information in the **Federal Register** to ensure its compliance with any relevant court orders that may be issued after the date of this notice.

DHS initially published notices to ensure its compliance with the *Ramos* preliminary injunction on October 31, 2018 and March 1, 2019, and the *Bhattarai* order to stay proceedings on May 10, 2019. *See* 83 FR 54764; 84 FR 7103; and 84 FR 20647. The Department later published a notice to ensure its continued compliance with the combined orders in *Ramos, Bhattarai,* and *Saget*[3] on November 4, 2019. That notice automatically extended certain TPS and TPS-related documentation through January 4, 2021 for all eligible TPS beneficiaries covered by the courts' orders. *See* 84 FR 59403. The Department last published a notice to ensure its continued compliance with these combined court orders on September 10, 2021. That notice again automatically extended certain TPS and TPS-related documentation through December 31, 2022 for all eligible TPS beneficiaries covered by the courts' orders. *See* 86 FR 50725. Through this **Federal Register** notice, DHS announces actions to ensure its continued compliance with the district court orders in *Ramos* and *Bhattarai* while those orders remain in effect.

The TPS designations for El Salvador and Nicaragua, and the 2011 designation of Haiti and the 2013 designation of Sudan will remain in effect, as required by the *Ramos* district court order, so long as the preliminary injunction remains in effect. The TPS designations for Honduras and Nepal will remain in effect so long as the *Bhattarai* order staying proceedings and approving the parties' stipulated agreements continues in effect. Affected TPS beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal will retain their TPS and their TPS-related documentation will continue to be valid in accordance with the specific orders that affect the TPS designations regarding their individual countries, provided that the affected beneficiaries continue to meet all the individual requirements for TPS. *See* INA section 244(c)(3). *See also* 8 CFR 244.14. DHS will not terminate TPS for any of the affected countries pending final disposition of the *Ramos* appeal, including through any additional appellate channels in which relief may be sought, or by other orders of the court. Following consideration of current country conditions, the Secretary has newly designated Haiti and Sudan for TPS for 18 months, allowing eligible individuals covered by the *Ramos* and *Saget* injunctions as well as other eligible individuals to register for and maintain TPS through February 3, 2023 and October 19, 2023, respectively.

On August 3, 2021, DHS issued a **Federal Register** Notice implementing the new designation of Haiti for TPS, and on April 19, 2022, DHS issued a **Federal Register** Notice implementing the new designation of Sudan for TPS. In order to secure TPS pursuant to the new Haiti and Sudan designations, eligible individuals must apply before the close of the registration periods on February 3, 2023 and October 19, 2023, respectively. Eligible individuals are strongly encouraged to apply at the earliest practicable date, to ensure that their TPS continues without any gaps in the event that the *Ramos* and *Bhattarai* court orders cease to be effective. *See* Designation of Haiti for Temporary Protected Status, 86 FR 41863 (August 3, 2021) and Designation of Sudan for Temporary Protected Status, 87 FR 23202 (April 19, 2022).

DHS is further announcing it is automatically extending, through June 30, 2024, the validity of certain TPS-related documentation, as specified in this notice, for beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal provided that the affected beneficiaries remain individually eligible for TPS.

Automatic Extension of EADs Issued Under the TPS Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal

Through this **Federal Register** notice, DHS automatically extends the validity of EADs listed in Table 1 below issued to beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. Such beneficiaries may show their EADs to employers to demonstrate they have employment authorization and may choose also to show employers this **Federal Register** notice to explain that their TPS-Related Documentation

[1] *See Ramos, et al.* v. *Nielsen, et al.,* No. 18–cv–01554 (N.D. Cal. Oct. 3, 2018) (district court granted preliminary injunction against terminations of TPS for El Salvador, Haiti, Sudan, and Nicaragua) (''*Ramos*''); and *Bhattarai, et al.* v. *Nielsen, et al.,* No. 19–cv–00731 (N.D. Cal. March 12, 2019) (district court stayed proceedings until *Ramos* appeal decided and approved parties' stipulation for continued TPS and issuance of TPS-related documentation to eligible, affected beneficiaries of TPS for Honduras and Nepal during the stay and pendency of the appeal) (''*Bhattarai*''). In 2019, the federal district court for the Eastern District of New York had also enjoined the termination of the 2011 TPS designation for Haiti in *Saget, et al.,* v. *Trump, et al.,* No. 18–cv–1599 (E.D.N.Y. April 11, 2019) (''*Saget*''), and DHS had cited to that order in previous notices continuing the affected beneficiaries' TPS and documentation. *See, e.g.,* 86 FR 50725, 50726 (Sept. 10, 2021). However, the *Saget* case was dismissed upon the court's approval of the parties' joint Stipulation of Dismissal for mootness following the Secretary's new 18-month designation of Haiti for TPS on Aug. 3, 2021, and DHS' continuation of existing beneficiaries' TPS and related documentation under the *Ramos* injunction through Dec. 31, 2022. *See id.,* Order approving Stipulation of Dismissal, dated Oct. 15, 2021.

[2] *See Ramos, et al.,* v. *Wolf, et al.,* No. 18–16981 (9th Cir., Sept. 14, 2020).

[3] As noted, on Oct. 15, 2021, the parties in *Saget* v. *Trump,* entered into a Stipulation of Dismissal as the case was rendered moot due to the Aug. 3, 2021, FRN implementing the new Haiti designation. *See* 86 FR 41863.

has been automatically extended through June 30, 2024. This notice explains how TPS beneficiaries, their employers, and benefit-granting agencies may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification; E-Verify; and USCIS Systematic Alien Verification for Entitlements (SAVE) processes. Additionally, a beneficiary under the TPS designation for any of these countries who has applied for a new EAD but who has not yet received their new EAD is covered by this automatic extension, provided that the EAD he or she possesses contains one of the expiration dates listed in Table 1 below.

TABLE 1—AFFECTED EADS

If an EAD has a category code of A–12 or C–19 and an expiration date of:	Then the validity of the EAD is extended through:
07/22/2017	06/30/2024
11/02/2017	06/30/2024
01/05/2018	06/30/2024

TABLE 1—AFFECTED EADS—Continued

If an EAD has a category code of A–12 or C–19 and an expiration date of:	Then the validity of the EAD is extended through:
01/22/2018	06/30/2024
03/09/2018	06/30/2024
06/24/2018	06/30/2024
07/05/2018	06/30/2024
11/02/2018	06/30/2024
01/05/2019	06/30/2024
04/02/2019	06/30/2024
06/24/2019	06/30/2024
07/22/2019	06/30/2024
09/09/2019	06/30/2024
01/02/2020	06/30/2024
01/05/2020	06/30/2024
03/24/2020	06/30/2024
01/04/2021	06/30/2024
10/04/2021	06/30/2024
12/31/2022	06/30/2024

Automatic Extension of Forms I–94 and Forms I–797

Also through this **Federal Register** notice, DHS automatically extends the validity periods of the Forms I–94 and Forms I–797 listed in Table 2 below previously issued to beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. These extensions apply only if the TPS beneficiary properly filed for re-registration during either the most recent DHS-announced registration period for their country,[4] or any applicable previous DHS-announced re-registration periods for the beneficiary's country,[5] or has a re-registration application that remains pending. This notice does not extend the validity periods of Forms I–94 or Forms I–797 for any TPS beneficiary who failed to file for TPS re-registration during one of the applicable previous DHS-announced re-registration periods, or for whom a re-registration request has been denied. In addition, the extensions do not apply for any beneficiary from whom TPS has been withdrawn.

TABLE 2—AFFECTED FORMS I–94 AND I–797 [6]

Country	Beginning date of validity:	End date of validity:	Validity of Forms I–94 and I–797 extended through:
El Salvador	Sept. 10, 2016	March 9, 2018	06/30/2024
	March 10, 2018	Sept. 9, 2019	06/30/2024
	Sept. 10, 2019	Oct. 4, 2021	06/30/2024
	Oct. 5, 2021	Dec. 31, 2022	06/30/2024
Haiti	Jan. 23, 2016	July 22, 2017	06/30/2024
	July 23, 2017	Jan. 22, 2018	06/30/2024
	Jan. 23, 2018	July 22, 2019	06/30/2024
	July 23, 2019	Oct. 4, 2021	06/30/2024
	Oct. 5, 2021	Dec. 31, 2022	06/30/2024
Honduras	July 6, 2016	Jan. 5, 2018	06/30/2024
	Jan. 6, 2018	July 5, 2018	06/30/2024
	July 6, 2018	Jan. 5, 2020	06/30/2024
	Jan. 6, 2020	Oct. 4, 2021	06/30/2024
	Oct. 5, 2021	Dec. 31, 2022	06/30/2024
Nepal	Dec. 25, 2016	June 24, 2018	06/30/2024
	June 25, 2018	June 24, 2019	06/30/2024
	June 25, 2019	Oct. 4, 2021	06/30/2024
	Oct. 5, 2021	Dec. 31, 2022	06/30/2024
Nicaragua	July 6, 2016	Jan. 5, 2018	06/30/2024
	Jan. 6, 2018	Jan. 5, 2019	06/30/2024
	Jan. 6, 2019	Oct. 4, 2021	06/30/2024
	Oct. 5, 2021	Dec. 31, 2022	06/30/2024
Sudan	May 3, 2016	Nov. 2, 2017	06/30/2024
	Nov. 3, 2017	Nov. 2, 2018	06/30/2024
	Nov. 3, 2018	Oct. 4, 2021	06/30/2024
	Oct. 5, 2021	Dec. 31, 2022	06/30/2024

[4] DHS issued a new designation period for Haiti TPS on Aug. 3, 2021 and Sudan TPS on Apr. 19, 2022. The registration periods end on Feb. 3, 2023 and Oct. 19, 2023, respectively.

[5] El Salvador: July 8–Sept. 6, 2016, or Jan. 18–March 19, 2018;

Haiti: Aug. 25–Oct. 26, 2015, May 24–July 24, 2017, or Jan. 18–March 19, 2018;

Honduras: May 16–July 16, 2016; Dec. 15, 2017–Feb. 13, 2018 or June 5–Aug. 6, 2018;

Nepal: Oct. 26–Dec. 27, 2016 or May 22–July 23, 2018;

Nicaragua: May 16–July 15, 2016 or Dec. 15, 2017–Feb. 13, 2018;

Sudan: Jan. 25–March 25, 2016 or Oct. 11, 2017–Dec. 11, 2017.

[6] Your Forms I–94 and I–797 may show a different beginning date of validity than those listed here if you were a late initial filer (LIF) at the time because the forms would have the date of approval of your LIF application for TPS. As long as they bear an end date of validity listed in this chart, then they are automatically extended by this Notice.

Application Procedures

Current beneficiaries covered by the court orders that continue the TPS designations for El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan do not need to pay a fee or file any application, including Application for Employment Authorization (Form I–765), to maintain their TPS benefits through June 30, 2024 under this notice, provided that they have properly re-registered for TPS during either the most recent DHS-announced registration period for their country,[7] or any applicable previous re-registration period described in Footnote 5. In the case of TPS beneficiaries under the prior Haiti and Sudan designations, re-registering under the applicable previous re-registration period in Footnote 5 is sufficient to qualify for the extension in this notice.

Although there is no need to pay a fee or file an application to qualify for this extension, in order to secure TPS pursuant to the new Haiti or Sudan designations, eligible individuals must apply before the close of the registration period on February 3, 2023 under the new Haiti designation and October 19, 2023 under the new Sudan designation. Eligible individuals for the new TPS Haiti or Sudan designations are strongly encouraged to apply at the earliest practicable date, to ensure that their TPS continues beyond the court-ordered extensions and without any gaps in status.

TPS beneficiaries who have failed to re-register properly for TPS during any of these re-registration periods may still file an Application for Temporary Protected Status (Form I–821) but must demonstrate ''good cause'' for failing to re-register on time, as required by law. *See* INA section 244(c)(3)(C) (TPS beneficiary's failure to register without good cause in form and manner specified by DHS is a ground for TPS withdrawal); 8 CFR 244.17(b) and Form I–821 instructions.[8]

Any currently eligible beneficiary who does not presently have a pending EAD application under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras or Nepal may file Form I–765 with the appropriate fee or a fee waiver request in order to obtain a new EAD with a printed expiration date of June 30, 2024. However, applicants under the Haiti 2021 and Sudan 2022 new TPS designations may also file Form I–821 for TPS and, if eligible, receive an EAD with a printed expiration date that correlates with those new designations.

Possible Future Actions

In order to comply with statutory requirements for TPS while the district courts' orders or any superseding court orders concerning the beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal remain in effect, DHS may require these beneficiaries to re-register and will announce the re-registration procedures in a future **Federal Register** notice. DHS has the authority to conduct TPS re-registration in accordance with INA section 244(c)(3)(C) and 8 CFR 244.17. Through the re-registration process, which is generally conducted every 12 to 18 months while a foreign state is designated for TPS, USCIS determines whether each TPS beneficiary is continuing to maintain individual eligibility for TPS, including but not limited to, the requirements related to disqualifying criminal or security issues. *See* id.; INA section 244(c)(2); 8 CFR 244.2, 244.3, and 244.4 (describing individual TPS eligibility requirements, including mandatory criminal and security bars).

The Secretary has already newly designated Haiti for TPS for 18 months through February 3, 2023. *See* 86 FR 41863. Eligible Haitian nationals (and individuals having no nationality who last habitually resided in Haiti) who wish to receive or continue their existing TPS through that date are encouraged to submit their applications for TPS by following the instructions in the **Federal Register** notice, Designation of Haiti for Temporary Protected Status, at 86 FR 41863. Failure to submit an application under the new designation of Haiti, however, does not affect the continuation of the validity of TPS and TPS documents through June 30, 2024 as described in this notice.

Similarly, the Secretary has already newly designated Sudan for TPS for 18 months through October 19, 2023. *See* 87 FR 23202. Eligible Sudanese nationals (and individuals having no nationality who last habitually resided in Sudan) who wish to receive or continue their existing TPS through that date are encouraged to submit their applications for TPS by following the instructions in the **Federal Register** notice, Designation of Sudan for Temporary Protected Status, at 87 FR 23202. Failure to submit an application under the new designation of Sudan, however, does not affect the continuation of the validity of TPS and TPS documents through June 30, 2024 as described in this notice.

The Government appealed both the *Ramos* and *Saget* preliminary injunctions. A three-judge panel of the U.S. Court of Appeals for the Ninth Circuit ruled for the Government and vacated the *Ramos* preliminary injunction on September 14, 2020. However the preliminary injunction remains in effect because the appellate court has not issued its directive (*i.e.,* the mandate) to the district court to implement the panel's decision. The plaintiffs have filed a request for a hearing *en banc* which is pending. The *Saget* case was dismissed as a result of the new TPS designation for Haiti on October 15, 2021.[9]

Should the Government ultimately prevail in its challenge to the *Ramos* preliminary injunction and absent any further change with respect to TPS designations for El Salvador, Nicaragua, Honduras, or Nepal, the Secretary's determination to terminate TPS for any of those countries will take effect no earlier than 365 days from the issuance of any appellate mandate to the district court or upon the expiration of this **Federal Register** notice's extension of TPS-related documents on June 30, 2024, whichever is later.[10]

[7] DHS issued a new designation period for Haiti TPS on Aug. 3, 2021 and Sudan TPS on Apr. 19, 2022. The registration periods end on Feb. 3, 2023 and Oct. 19, 2023, respectively.

[8] An applicant for TPS Haiti who applies under the procedures announced in the Notice regarding the new TPS designation of Haiti at 86 FR 41863 (Aug. 3, 2021) is an initial applicant and does not have to demonstrate ''good cause'' for failing to re-register under prior TPS Haiti designations. Similarly, an applicant for TPS Sudan who applies under the procedures announced in the Notice regarding the new TPS designation of Sudan at 87 FR 23202 (April 19, 2022) is an initial applicant and does not have to demonstrate ''good cause'' for failing to re-register under prior TPS Sudan designations.

[9] Order Approving Stipulation of Dismissal, dated Oct. 15, 2021 in *Saget* (cited previously).

[10] The most recent litigation compliance **Federal Register** notice stated that, absent any further change in the TPS designation of El Salvador, the termination of the TPS designation for El Salvador would go into effect no earlier than 365 days after the issuance of any appellate court mandate. Absent any change in the TPS designations of Nicaragua, Honduras, Sudan, or Nepal, that notice further provided that such terminations would go into effect no earlier than 120 days after issuance of the appellate mandate. The notice also provided that, should the government move to vacate the *Bhattarai* order to stay proceedings in light of an appellate decision affirming the preliminary injunction in *Ramos* that suggests a basis on which to distinguish the determinations to terminate the TPS designations for Honduras and Nepal from the TPS terminations at issue in *Ramos,* TPS would remain in effect for Honduras and Nepal for at least 180 days following an order of the district court vacating the stay in proceedings. *See* 86 FR 50725, 50729 (Sept. 10, 2021). DHS has since determined that absent any further action with respect to TPS for Nicaragua, Honduras, or Nepal, it is appropriate to apply the same minimum post-mandate 365-day effective date provision to the terminations of the existing designations for those countries as for El Salvador. This decision remains consistent with the parties' court-approved stipulations for implementing the current district court orders in

The Secretary has announced new 18-month designations of Haiti and Sudan for TPS, which continue through February 3, 2023 and October 19, 2023, respectively. Application procedures for TPS under the new Haiti and Sudan designations, including for individuals who currently have TPS pursuant to the court orders, are provided in the notices published at 86 FR 41863 and 87 FR 23202.

Additional Notes

Nothing in this notice affects DHS's ongoing authority to determine on a case-by-case basis whether a TPS beneficiary continues to meet the eligibility requirements for TPS described in INA section 244(c) and the implementing regulations in part 244 of Title 8 of the Code of Federal Regulations.

Notice of Compliance With the ''Order Enjoining the Implementation and Enforcement of Determinations To Terminate the TPS Designations for El Salvador, Haiti, Nicaragua, and Sudan'' in Ramos and the ''Order To Stay Proceedings and Agreement To Stay the Determinations To Terminate the TPS Designations for Honduras and Nepal'' in Bhattarai

The previously announced determinations to terminate the existing designations of TPS for El Salvador and Nicaragua, and the 2011 designation of Haiti and the 2013 designation of Sudan [11] will not be implemented or enforced unless and until the district court's order in *Ramos* is reversed and that reversal becomes final. As required by the order to stay proceedings in *Bhattarai,* DHS will not implement or enforce the previously announced determinations to terminate the existing TPS designations for Honduras and Nepal [12] unless and until the district court's order in *Ramos* enjoining implementation and enforcement of the determinations to terminate the TPS designations for El Salvador, Haiti, Nicaragua, and the 2011 designation of Haiti and the 2013 designation of Sudan is reversed and that reversal becomes final for some or all of the affected countries, or by other order of the court. Any termination of TPS-related documentation for beneficiaries under the TPS designations for El Salvador, Nicaragua, the 2011 designation of Haiti, the 2013 designation of Sudan, and the designations of Honduras, and Nepal will go into effect no earlier than either 365 days following the issuance of any mandate to the district court or June 30, 2024, whichever is later, as described in the ''Possible Future Action'' section of this **Federal Register** notice.

In further compliance with the still-valid district court orders, DHS is publishing this notice automatically extending the validity of the TPS-related documentation specified in the Supplementary Information section of this notice through June 30, 2024, for eligible beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal. DHS will issue future notices, as necessary, that will continue TPS-related documentation for all affected beneficiaries under the TPS designations for El Salvador, Nicaragua, Sudan, Haiti, Honduras, and Nepal, so long as the *Ramos* preliminary injunction and *Bhattarai* order to stay proceedings remain in place; for Haiti as long as the *Ramos* preliminary injunction remains in place; or by other order of the court. However, should compliance with the *Ramos and/or Bhattarai,* court orders remain necessary, DHS may announce periodic re-registration procedures for eligible TPS beneficiaries in accordance with the INA and DHS regulations. DHS further continues its commitment to a transition period, as described above.

All TPS beneficiaries must continue to maintain their TPS eligibility by meeting the requirements for TPS in INA section 244(c) and 8 CFR part 244. DHS will continue to adjudicate any pending TPS re-registration and pending late initial applications for affected beneficiaries under the TPS designations for El Salvador, Nicaragua, Honduras, and Nepal. Nationals of Haiti and Sudan (and individuals having no nationality who last habitually resided in Haiti or Sudan) are encouraged to apply under the new designations for Haiti and Sudan announced at 86 FR 41863 and 87 FR 23202. DHS will also continue to make appropriate individual TPS withdrawal decisions in accordance with existing procedures if an individual no longer maintains TPS eligibility. DHS will take appropriate steps to continue its compliance with the orders, and with all statutory requirements.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Approved Documentation To Demonstrate Continuation of Lawful Status and TPS-Related Employment Authorization

- Documentation automatically extended through this **Federal Register** notice dated November 16, 2022.

○ Certain TPS-related documentation, including EADs, of affected beneficiaries under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal, that are automatically extended through this **Federal Register** notice through June 30, 2024.

○ Regardless of their country of birth, a beneficiary granted TPS under the designation for El Salvador, Haiti, Nicaragua, Sudan, Honduras, or Nepal may show their EAD that has been automatically extended to their employer to demonstrate identity and continued TPS-related employment eligibility to meet Employment Eligibility Verification (Form I–9) requirements. In addition, a beneficiary granted TPS under a designation for one of these countries may also choose to show an employer this **Federal Register** notice, which explains that their EAD has been automatically extended.

○ As evidence of their lawful status, a TPS beneficiary may show their EAD that has been automatically extended, or Form I–94, or Form I–797, along with a copy of this **Federal Register** notice, to law enforcement, federal, state, and local government agencies, and private entities.

- Unexpired TPS-related EAD.

- Alternatively, a TPS beneficiary may choose to show other acceptable documents that are evidence of identity and employment eligibility as described in the instructions to Form I–9.

Am I eligible to receive an automatic extension of my current EAD using this Federal Register notice?

Yes. Regardless of your country of birth, provided that you currently have a TPS-related EAD with the specified expiration dates below, this notice automatically extends your EAD as stated in Table 3 below.

Ramos and *Bhattarai.* (As noted, the Secretary has newly designated Sudan as well as Haiti for TPS eliminating the need for this minimum effective date provision for the challenged TPS terminations for those countries.)

[11] *See* Termination of the Designation of El Salvador for Temporary Protected Status, 83 FR 2654 (Jan. 18, 2018); Termination of the Designation of Nicaragua for Temporary Protected Status, 82 FR 59636 (Dec. 15, 2017); Termination of the Designation of Sudan for Temporary Protected Status, 82 FR 47228 (Oct. 11, 2017): and Termination of the Designation of Haiti for Temporary Protected Status, 83 FR 2648 (Jan. 18, 2018).

[12] *See* Termination of the Designation of Honduras for Temporary Protected Status, 83 FR 26074 (June 5, 2018); Termination of the Designation of Nepal for Temporary Protected Status, 83 FR 23705 (May 22, 2018).

TABLE 3—AFFECTED EADS

If your EAD has category code of A–12 or C–19 and an expiration date of:	Then this **Federal Register** notice extends your EAD through:
07/22/2017	06/30/2024
11/02/2017	06/30/2024
01/05/2018	06/30/2024
01/22/2018	06/30/2024
03/09/2018	06/30/2024
06/24/2018	06/30/2024
07/05/2018	06/30/2024
11/02/2018	06/30/2024
01/05/2019	06/30/2024
04/02/2019	06/30/2024
06/24/2019	06/30/2024
07/22/2019	06/30/2024
09/09/2019	06/30/2024
01/02/2020	06/30/2024
01/05/2020	06/30/2024
03/24/2020	06/30/2024
01/04/2021	06/30/2024
10/04/2021	06/30/2024
12/31/2022	06/30/2024

When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?

You can find the Lists of Acceptable Documents on the Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *https://www.uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any documentation from List A (which provides evidence of both your identity and employment authorization) or documentation from List B (which provides evidence of your identity) together with documentation from List C (which provides evidence of your employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *https://www.uscis.gov/I-9Central.*

An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended employment authorization for a new job?'' of this **Federal Register** notice for further information. If your EAD has one of the expiration dates in Table 4 and states A–12 or C–19 under Category, it has been extended automatically by virtue of this **Federal Register** notice, and you may choose to present it to your employer as proof of identity and employment eligibility for Form I–9 through June 30, 2024, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect one of these TPS designated countries for you to be eligible for this extension.

TABLE 4—AFFECTED EADS AND FORM I–9

If your EAD has category code of A–12 or C–19 and an expiration date of:	Enter this date as the employment authorization expiration date in Section 1 of Form I–9:	Your employer must reverify your employment authorization by:
07/22/2017	06/30/2024	07/01/2024
11/02/2017	06/30/2024	07/01/2024
01/05/2018	06/30/2024	07/01/2024
01/22/2018	06/30/2024	07/01/2024
03/09/2018	06/30/2024	07/01/2024
06/24/2018	06/30/2024	07/01/2024
07/05/2018	06/30/2024	07/01/2024
11/02/2018	06/30/2024	07/01/2024
01/05/2019	06/30/2024	07/01/2024
04/02/2019	06/30/2024	07/01/2024
06/24/2019	06/30/2024	07/01/2024
07/22/2019	06/30/2024	07/01/2024
09/09/2019	06/30/2024	07/01/2024
01/02/2020	06/30/2024	07/01/2024
01/05/2020	06/30/2024	07/01/2024
03/24/2020	06/30/2024	07/01/2024
01/04/2021	06/30/2024	07/01/2024
10/04/2021	06/30/2024	07/01/2024
12/31/2022	06/30/2024	07/01/2024

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-inspect your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–9. See the section, ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that your EAD has been automatically extended through June 30, 2024 as indicated in the above chart, but you are not required to do so.

The last day of the automatic EAD extension is June 30, 2024. Before you start work on July 1, 2024, your employer is required by law to reverify your employment authorization in Section 3 of Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9, Lists of Acceptable Documents, or

an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

Can I obtain a new EAD?

Yes, if you remain eligible for TPS and apply for a new EAD, you can obtain a new EAD. However, you do not need to apply for a new EAD in order to benefit from this automatic extension. If you are a beneficiary under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, or Nepal and want to obtain a new EAD valid through June 30, 2024, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (or obtain a fee waiver). If you do not want a new EAD, you do not have to file Form I–765 or pay the Form I–765 fee. If you do not want to request a new EAD now, you may file Form I–765 at a later date and pay the fee (or request a fee waiver), provided that you still have TPS or a pending TPS application.

If you are unable to pay the application fee and/or biometric services fee, you may request a fee waiver by submitting a Request for Fee Waiver (Form I–912). For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *https://www.uscis.gov/tps.*

If you have a Form I–821 and/or Form I–765 application that is still pending under the TPS designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, or Nepal, then you should not file either application again. If your pending Form I–821 is approved, you will be issued Forms I–797 and I–94 valid through June 30, 2024. Similarly, if you have a pending TPS-related Form I–765 that is approved, your new EAD will be valid through June 30, 2024. Your TPS itself continues as long as the preliminary injunction impacting your country's TPS designation remains in effect and in accordance with any relevant future **Federal Register** notices that DHS may issue respecting your country's TPS designation, or until your TPS is finally withdrawn for individual ineligibility under INA section 244(c), or the applicable TPS designation is terminated as discussed in the ''Possible Future Action'' section of this **Federal Register** notice.

Can my employer require that I provide any other documentation to prove my status, such as proof of my citizenship from El Salvador, Haiti, Nicaragua, Sudan, Honduras, or Nepal?

No. When completing Form I–9, including reverifying employment authorization, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of citizenship or proof of re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

See Table 4 in the question ''When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?'' to determine if your EAD has been automatically extended.

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter June 30, 2024, as the expiration date; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix).

2. For Section 2, employers should:

a. Determine if your EAD has been automatically extended by using Table 4 in the question ''When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?''

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write June 30, 2024, as the expiration date.

Before the start of work on July 1, 2024, employers must reverify the employee's employment authorization on Form I–9.

What updates should my current employer make to Form I–9 if my employment authorization has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has automatically extended your EAD, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. See Table 4 in the question ''When hired, what documentation may I show to my employer as evidence of employment authorization and identity when completing Form I–9?'' to determine if your EAD has been automatically extended. The employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension. If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and June 30, 2024, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers should not reverify an employee until either this notice's automatic extension of EADs has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By July 1, 2024, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization in Section 3.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field and the date from the Expiration Date field on Form I–9 into the Document Number and Expiration Date fields in E-Verify. Employers should ensure that they entered June 30, 2024, as the expiration date for EADs that have been automatically extended under this **Federal Register** notice on both the employee's Form I–9 and their E-Verify case.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiration'' alert for an automatically extended EAD?

E-Verify has automated the verification process for TPS-related EADs that USCIS has automatically extended. If you have employees who provided a TPS-related EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on July 1, 2024, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

If I already have TPS for Haiti or Sudan, do I need to apply under the new TPS designation for Haiti or Sudan?

TPS beneficiaries under the Haiti and Sudan designations whose TPS has been continued pursuant to court orders, and as described in this notice, are strongly encouraged to apply for TPS before the close of the registration period on February 3, 2023 and October 19, 2023, respectively, following the instructions in the August 3, 2021 **Federal Register** notice regarding the new Designation of Haiti for Temporary Protected Status at 86 FR 41863 or the April 19, 2022 **Federal Register** notice regarding the new Designation for Sudan for Temporary Protected Status at 87 FR 23202, respectively. Eligible individuals are strongly encouraged to apply at the earliest practicable date, to ensure that their TPS continues beyond the court-ordered extensions and without any gaps in status.

If you are found eligible for TPS under the new Haiti or Sudan designations, your TPS will continue through February 3, 2023 and October 19, 2023, respectively, even if the current court order in *Ramos* that continues TPS is no longer in effect.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I9Central@uscis.dhs.gov*. USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice's Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov*.

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov*. USCIS accepts calls in English, Spanish, and many other languages. Employees or applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based upon citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (mismatch) must promptly inform employees of the mismatch and give such employees an opportunity to take action to resolve the mismatch. A Tentative Nonconfirmation case result means that the information entered into E-Verify from an employee's Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any other adverse action against an employee because of a mismatch while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot verify an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *https://www.justice.gov/ier* and on the USCIS and E-Verify websites at *https://www.uscis.gov/i-9-central* and *https://www.e-verify.gov*.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, if you present an automatically extended EAD as referenced in this **Federal Register** notice, you do not need to show any other document, such as a Form I–797C, Notice of Action reflecting receipt of a Form I–765 EAD renewal application or this **Federal Register** notice, to prove that you qualify for this extension. While federal government agencies must follow the guidelines laid out by the federal government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or may be used by DHS to determine whether you have TPS or other immigration status. Examples of such documents are:

- Your current EAD;
- Your continued EAD with a TPS category code of A–12 or C–19 and an expiration date shown in Table 3 in the question ''Am I eligible to receive an automatic extension of my current EAD using this **Federal Register** notice?'' even if your country of birth noted on the EAD does not reflect one of these TPS designated countries; or
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797 or Form I–797C, Notice of Action, reflecting approval or receipt of a past or current Form I–821.

Check with the government agency requesting documentation regarding which document(s) the agency will

accept. Some Federal, State and local government agencies use the USCIS Systematic Alien Verification for Entitlements Program (SAVE) program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify that an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, Form I–797C, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you present, such as an EAD, the agency should accept your automatically extended TPS-related document, regardless of your country of birth. It may assist the agency if you:

a. Give the agency a copy of this **Federal Register** notice showing the extension of TPS-related documentation, in addition to your most recent TPS-related document with your A-Number or USCIS number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but, occasionally, verification can be delayed.

You can check the status of your SAVE verification by using CaseCheck at *https://save.uscis.gov/casecheck/*. CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-Number, USCIS number, or Form I–94 number) or Verification Case Number). If an agency has denied your application based solely or in part on a SAVE response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted upon or will act upon a SAVE verification case and you do not believe the SAVE response is correct, the SAVE website, *http://www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2022–24984 Filed 11–10–22; 5:15 pm]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0053]

Agency Information Collection Activities; Revision of a Currently Approved Collection: Request for Certification of Military or Naval Service

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 December 16, 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–2007–0016. All submissions received must include the OMB Control Number 1615–0053 in the body of the letter, the agency name and Docket ID USCIS–2007–0016.

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 August 15, 2022, at 87 FR 50094 allowing for a 60-day public comment period. USCIS did receive 1 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–2007–0016 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 Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Certification of Military or Naval Service.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* N–426; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The Form N–426 is used by naturalization applicants to document honorable service in the U.S. Armed Forces. The form is filed with U.S. Citizenship and Immigration Services (USCIS) when the respondent applies for naturalization with USCIS Form N–400, Application for Naturalization (OMB Control Number 1615–0052). The Department of Defense (DOD) record centers or personnel offices verify and certify the applicant's military or naval service information provided on Form N–426. USCIS reviews the form as part of the process to determine the applicant's eligibility for naturalization.

(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 N–426 is 10,000 and the estimated hour burden per response is 0.50 hours.

(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 5,000 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 $245,000.

Dated: November 8, 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. 2022–24904 Filed 11–15–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCO923000–L1440000–ET0000; COC–080815]

Notice of Proposed Withdrawal and Public Meeting, Thompson Divide Area, Colorado; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Land Management (BLM) published a document in the **Federal Register** on October 17, 2022, concerning a proposal to withdraw Federal lands in the Thompson Divide area from all forms of entry, appropriation, and disposal under the public land laws; location, entry, and patent under the mining laws; and operation of the mineral leasing, mineral materials, and geothermal leasing laws, subject to valid existing rights. The document included the date and location of a public meeting that will be held on the proposal; however, it failed to state the time of the meeting.

DATES: Comments must be received by the BLM by January 16, 2023. A public meeting is scheduled for December 14, 2022, from 5 p.m. to 7 p.m.

FOR FURTHER INFORMATION CONTACT: Jennifer Jardine, Senior Realty Specialist, BLM Colorado State Office, telephone: (970) 385–1224; email: *jjardine@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 for contacting Ms. Jardine. 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:

Correction

In the **Federal Register** of October 17, 2022, in FR Doc. 2022–22448, on page 62878, in the third column, correct the ''Dates'' caption to read:

DATES: Comments must be received by the BLM by January 16, 2023. A public meeting is scheduled for December 14, 2022, from 5 p.m. to 7 p.m.

Douglas J. Vilsack,

BLM Colorado State Director.

[FR Doc. 2022–24952 Filed 11–14–22; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1194 (Enforcement Proceeding)]

Certain High-Density Fiber Optic Equipment and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Terminating the Enforcement Proceeding Based on a Settlement Agreement; Termination of the Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 46) of the presiding administrative law judge (''ALJ''), granting a joint motion to terminate the enforcement proceeding based on settlement. The enforcement proceeding is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT: Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted the original investigation on March 24, 2020, based on a complaint filed on behalf of Corning Optical Communications LLC (''Corning'') of Charlotte, North Carolina. 85 FR 16653 (Mar. 24, 2020). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain high-density fiber optic equipment and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 9,020,320 (''the '320 patent''); 10,120,153 (''the '153 patent''); 8,712,206; 10,094,996; and 10,444,456 (''the '456 patent''). *Id.* The Commission's notice of investigation named numerous respondents including Panduit Corporation of Tinley, Illinois (''Panduit''). *Id.* The notice of investigation also named the Office of Unfair Import Investigations (''OUII'') as a party. *Id.* at 16654. The full investigation background is in the final termination notice. 86 FR 43564–65 (Aug. 9, 2021).

On August 3, 2021, the Commission found, *inter alia,* that Panduit violated section 337 with respect to claims 1 and 3 of the '320 patent; claims 11, 12, 14–16, 19, 21, 27, and 28 of the '456 patent; and claims 9, 16, 23, and 26 of the '153 patent. *Id.* at 43565. Specifically, the

Commission found that Panduit's imported articles were used by customers to directly infringe the asserted claims of the '320, '456, and '153 patents at Panduit's inducement. *Id.* The Commission issued, *inter alia,* a general exclusion order (''GEO'') and a cease and desist order (''CDO'') against Panduit and determined that a bond as set forth in the Orders was required during the period of Presidential review. 19 U.S.C. 1337(j)(3).

On November 24, 2021, Corning filed a complaint requesting that the Commission institute an enforcement proceeding under Commission Rule 210.75, 19 CFR 210.75, to investigate alleged violations of the GEO and CDO by Panduit.

The Commission instituted an enforcement proceeding on January 3, 2022. 87 FR 112 (Jan. 3, 2022). The original presiding ALJ set a 12-month target date of January 3, 2023, making the enforcement initial determination due on October 3, 2022. On June 21, 2022, the proceeding was reassigned to the Chief ALJ.

On September 30, 2022, Corning and Panduit filed a joint motion to terminate based on a Settlement Agreement and Non-Exclusive Patent License.

On October 17, 2022, the ALJ issued the subject ID (Order No. 46), granting the joint motion pursuant to Commission Rule 210.21(b), 19 CFR 210.21(b). The ALJ found that the motion to terminate complies with the Commission's rules, and there is no evidence that terminating the enforcement proceeding by settlement would be contrary to the public interest. No petitions for review of the ID were filed.

The Commission has determined not to review the subject ID. The enforcement proceeding is terminated based on settlement.

The Commission vote for this determination took place on November 9, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: November 10, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–24947 Filed 11–15–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act (''Cercla'')

On November 9, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of Rhode Island in the lawsuit entitled *United States of America and Rhode Island Department of Environmental Management* v. *Aerosols Danville, Inc., et al.,* Civil Action No. 1:22–cv–405

The United States seeks performance of a remedial design/remedial action and reimbursement of response costs under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA'') concerning Operable Unit 2 (''OU2'') of the Landfill & Resource Recovery, Inc. Superfund Site (''Site''), located in North Smithfield, Rhode Island. The State of Rhode Island Department of Environmental Management is co-plaintiff.

Under the proposed consent decree, 13 Settling Defendants agree to perform the remedial action for OU2 that is identified in the United States Environmental Protection Agency's (''EPA'') Record of Decision relating to the Site, dated April 2021. The proposed consent decree also requires the Settling Defendants to fully reimburse the State of Rhode Island for its future response costs and to reimburse the United States for a portion of its future Site-related response costs.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Environmental Enforcement Section, and should refer to *United States of America and State of Rhode Island Department of Environmental Management* v. *Aerosols Danville, Inc., et al.,* Civil Action No. 1:22–cv–405, D.J. Ref. No. 90–11–2–449/6. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $69.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–24881 Filed 11–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On November 9, 2022, the Department of Justice lodged a consent decree with the United States District Court for the Northern District of Ohio in *United States and the State of Ohio* v. *The City of Elyria,* Civil Action No. 22–cv–02026 (N.D. Ohio).

The Complaint seeks civil penalties and injunctive relief for alleged violations of a prior Consent Judgment, the Clean Water Act, and Elyria's National Pollutant Discharge Elimination System permit. The violations relate to discharges of pollutants from Elyria's sewer system. Under the proposed Consent Decree, Elyria would implement an Integrated Wet Weather Control Plan to be completed by December 31, 2044 that includes (1) increasing the capacity for treatment at the wastewater treatment plant; (2) enhancing primary treatment and installing high rate disinfection at the wastewater treatment plant; (3) completion of a relief sewer on the eastern side of the city; (4) constructing localized storage and lift stations to reduce overflows; and (5) various projects to reduce infiltration and inflow of storm water and other sources of water into the sanitary sewer system.

Much of the work is to be completed within the first 15 years. Taken together, these control measures are designed to prevent sewer overflows, prevent bypasses around Elyria's wastewater treatment plant, and mitigate harm from any bypasses that may occur. Under the Decree, Elyria would pay a $100,000 civil penalty to the United States and pay $100,000 into Ohio's Surface Water Improvement Fund.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States and the State of Ohio* v. *The City of Elyria, Ohio,* D.J. Ref. No. 90–5–1–1–2155/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed Consent Decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $24.50 (25 cents per page reproduction cost) payable to the United States Treasury.

Patricia Mckenna,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–24898 Filed 11–15–22; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Exemption Application No. D–12067]

Proposed Exemption for Certain Prohibited Transaction Restrictions Involving Citigroup, Inc. (Citigroup or the Applicant); Located in New York, New York

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document provides notice of the pendency before the Department of Labor (the Department) of a proposed exemption extending the exemptive relief provided by PTE 2017–05 for an additional four (4) years. If this proposed exemption is granted, certain entities with specified relationships to Citigroup (hereinafter, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs, as defined in Sections I(f) and I(g), respectively) would not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption), notwithstanding the Conviction (defined in Section I(a)), during the Exemption Period (as defined in Section I(d)).

DATES: If granted, this proposed exemption will be in effect for four (4) years from January 10, 2023, through January 9, 2027. Written comments and requests for a public hearing on the proposed exemption should be submitted to the Department by January 3, 2023.

ADDRESSES: All written comments and requests for a hearing should be submitted to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Attention: Application No. D–12067 via email to *eOED@dol.gov* or online through *https://www.regulations.gov.* Any such comments or requests should be sent by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1515, 200 Constitution Avenue NW, Washington, DC 20210. See **SUPPLEMENTARY INFORMATION** below for additional information regarding comments.

FOR FURTHER INFORMATION CONTACT: Anna Mpras Vaughan of the Department at (202) 693–8565. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Comments

Persons are encouraged to submit all comments electronically and not to follow with paper copies. Comments should state the nature of the person's interest in the proposed exemption and how the person would be adversely affected by the exemption, if granted. Any person who may be adversely affected by an exemption can request a hearing on the exemption. A request for a hearing must state: (1) The name, address, telephone number, and email address of the person making the request; (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption; and (3) a statement of the issues to be addressed and a general description of the evidence to be presented at the hearing. The Department will grant a request for a hearing made in accordance with the requirements above where a hearing is necessary to fully explore material factual issues identified by the person requesting the hearing. A notice of such hearing shall be published by the Department in the **Federal Register**. The Department may decline to hold a hearing if: (1) The request for the hearing does not meet the requirements above; (2) the only issues identified for exploration at the hearing are matters of law; or (3) the factual issues identified can be fully explored through the submission of evidence in written (including electronic) form.

Warning: All comments received will be included in the public record without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be confidential or other information whose disclosure is restricted by statute. If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. However, if EBSA cannot read your comment due to technical difficulties and cannot contact you for clarification, EBSA might not be able to consider your comment.

Additionally, the *https://www.regulations.gov* website is an

''anonymous access'' system, which means EBSA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email directly to EBSA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public record and made available on the internet.

The Department is considering granting this proposed four-year exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code), and in accordance with the procedures set forth in the Department's regulations.[1]

Department's Comment: The proposed four-year exemption would provide relief from certain of the restrictions set forth in ERISA Sections 406 and 407. No relief from a violation of any other law would be provided by this exemption, including any criminal conviction described herein.

The Department cautions that the relief in this proposed four-year exemption would terminate immediately if, among other things, an entity within the Citigroup corporate structure is convicted of a crime described in Section I(g) of PTE 84–14 (other than the Conviction) during the effective period of the exemption. While such an entity could apply for a new exemption in that circumstance, the Department would not be obligated to propose such an exemption. The terms of this proposed four-year exemption have been designed to permit plans to terminate their relationships with the Citigroup Affiliated QPAMs in an orderly and cost-effective fashion in the event of an additional conviction or a determination that it is otherwise prudent for a plan to terminate its relationship with them.

Summary of Facts and Representations [2]

Background

1. Citigroup is a global diversified financial services holding company headquartered in New York, New York. As of December 31, 2020, Citigroup's investment advisory programs within the United States (the Advisory Business) had over 56,700 customer advisory accounts, with over $113 billion in assets under management, including over 12,700 accounts for ERISA-covered pension plans (ERISA Plans) and individual retirement accounts (IRAs) (collectively, Retirement Accounts), with approximately $4.6 billion in assets under management.[3]

2. As described in more detail below, Citigroup affiliates that manage plan and IRA assets rely on the exemptive relief described in class exemption PTE 84–14 (the Citigroup Affiliated QPAMs).[4]

ERISA and Code Prohibited Transactions and PTE 84–14

3. The rules set forth in ERISA Section 406 and Code section 4975(c)(1) proscribe certain ''prohibited transactions'' between plans and related parties with respect to those plans. Under ERISA, such parties are known as ''parties in interest.'' ERISA Section 3(14) defines the term parties in interest with respect to a plan to include, among others, (i) the plan fiduciary, (ii) a sponsoring employer of the plan, (iii) a union whose members are covered by the plan, service providers with respect to the plan, and (iv) certain of their affiliates.[5] The prohibited transaction provisions under ERISA Section 406(a) and Code Section 4975(c)(1) prohibit, in relevant part, sales, leases, loans or the provision of services between a party in interest and a plan (or an entity whose assets are deemed to constitute the assets of a plan), as well as the use of plan assets by or for the benefit of a party in interest or a transfer of plan assets to a party in interest.[6]

4. ERISA Section 408(a) and Code section 4975(c)(2) grant the Department with the authority to issue exemptions for such prohibited transactions if the Department finds that an exemption is (i) administratively feasible, (ii) in the interests of the plan and of its participants and beneficiaries, and (iii) protective of the rights of participants and beneficiaries. The Department has codified its procedures for filing and granting such exemptions in 29 CFR part 2570, subpart B.[7]

5. PTE 84–14 exempts certain prohibited transactions between a party in interest and an ''investment fund'' (as defined in Section VI(b) of PTE 84–14) in which a plan has an interest if the fund's investment manager satisfies the definition of ''qualified professional asset manager'' (QPAM) and additional exemption conditions. PTE 84–14 was developed and granted based on the essential premise that broad relief from the prohibited transaction provisions could be provided for all types of transactions in which a plan engages with parties in interest only if the commitments and the investments of plan assets, and the negotiations leading thereto, are the sole responsibility of an independent, discretionary, manager.[8]

6. Section I(g) of PTE 84–14 prevents an entity that may otherwise meet requirements of the QPAM definition from utilizing the exemptive relief provided by PTE 84–14 for itself and its client plans if that entity, an ''affiliate'' thereof, or any direct or indirect owner of a five percent or more interest in the QPAM has been either convicted or released from imprisonment within 10 years immediately preceding the transaction, whichever is later, as a result of criminal activity described in that section. The Department included Section I(g) in PTE 84–14, in part, based on its expectation that QPAMs will maintain a high standard of integrity to justify the broad relief the exemption provides. This expectation extends not only to the QPAM itself but also to parties that may be positioned to influence the QPAM's policies.

[1] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). For purposes of this proposed four-year exemption, references to section 406 of Title I of ERISA, unless otherwise specified, should be read to refer as well to the corresponding provisions of Code section 4975.

[2] The Summary of Facts and Representations is based on the representations the Applicant provided in its exemption application and does not reflect factual findings or opinions of the Department, unless indicated otherwise. The Department notes that availability of this exemption, if granted, is subject to the express condition that the material facts and representations contained in Application D–12067 are true and complete, and accurately describe all material terms of the transactions covered by the exemption. If there is any material change in a fact or representation described in the application, the exemption will cease to apply as of the date of such change.

[3] Citigroup's advisory programs within the United States are offered primarily by Citi Global Wealth Investments (CGWI). CGWI is comprised of various businesses formerly within Citi Private Bank (CPB) and Citigroup's Consumer Wealth businesses, acting through Citigroup Global Markets Inc. (CGMI) or through Citibank, N.A. (Citibank) and Citi Private Advisory, LLC (CPA).

[4] Certain entities that are owed 5% or more by Citigroup but are not ''controlled by, or under common control with'' Citigroup may also manage plan assets and rely on the QPAM Exemption. These entities are not ''affiliates'' of Citigroup, as defined under Part VI(d) of PTE 84–14. They are referred to as ''Citigroup Related QPAMs''.

[5] Under the Code, such parties, or similar parties, are referred to as ''disqualified persons.''

[6] The prohibited transaction provisions also include certain fiduciary prohibited transactions under ERISA Section 406(b). These include transactions involving fiduciary self-dealing, fiduciary conflicts of interest, and kickbacks to fiduciaries.

[7] (76 FR 66637, 66644, October 27, 2011).

[8] See 75 FR 38837, 38839 (July 6, 2010).

2017 Conviction of Citigroup and PTE 84–14 Ineligibility

7. The U.S. Department of Justice (DOJ) investigated certain conduct and practices of Citigroup and other financial services firms in the foreign exchange (FX) spot market. As a result of the DOJ's investigation, Citicorp, a Delaware corporation that is a financial services holding company and the direct parent company of Citibank, entered into a plea agreement with the DOJ (the Plea Agreement) pursuant to which Citicorp pleaded guilty to one count of an antitrust violation of the Sherman Antitrust Act (15 U.S.C. 1). The plea agreement was approved by the U.S. District Court for the District of Connecticut (the District Court) on January 10, 2017 (Case Number 3:15–cr–78–SRU).

8. As set forth in the Plea Agreement, from at least December 2007 until at least January 2013, Citicorp, through one London-based Euro/U.S. dollar (EUR/USD) trader employed by Citibank and other traders at unrelated financial services firms acting as dealers in the FX spot market, entered into and engaged in a conspiracy to fix, stabilize, maintain, increase or decrease the price of, and rig bids and offers for, the EUR/USD currency pair exchanged in the FX spot market by agreeing to eliminate competition in the purchase and sale of the EUR/USD currency pair in the United States and elsewhere (the Criminal Misconduct). The Criminal Misconduct included almost daily conversations, some of which were in code, in an exclusive electronic chat room used by certain EUR/USD traders, including the EUR/USD trader employed by Citibank. The Criminal Misconduct forms the basis for the DOJ's antitrust charge that Citicorp violated 15 U.S.C. 1.

9. Under the terms of the Plea Agreement, the DOJ and Citicorp agreed that the District Court should impose a sentence requiring Citicorp to pay a criminal fine of $925 million. The Plea Agreement also provided for a three-year term of probation that required, among other things, Citigroup's continued implementation of a compliance program designed to prevent and detect the Criminal Misconduct throughout its operations and the strengthening of its compliance program and internal controls as required by other regulatory or enforcement agencies that have addressed the Criminal Misconduct. Such agencies include:

- the U.S. Commodity Futures Trading Commission, pursuant to its settlement with Citibank on November 11, 2014, that required Citibank to implement remedial measures to strengthen the control framework governing Citigroup's FX trading business;
- the U.S. Office of the Comptroller of the Currency pursuant to its settlement with Citibank on November 11, 2014, that required Citibank to impose remedial measures to improve the control framework governing Citigroup's wholesale trading and benchmark activities;
- the U.K. Financial Conduct Authority, pursuant to its settlement with Citibank on November 11, 2014; and
- the U.S. Board of Governors of the Federal Reserve System, pursuant to its settlement with Citigroup that was entered into concurrently with the DOJ resolution and required Citibank to implement remedial measures to improve controls for its FX trading and activities involving commodities and interest rate products.

The Applicant represents that Citicorp fulfilled all of these obligations during the three-year term of probation, and that neither the DOJ nor any of the regulators described above notified the Applicant to the contrary.

As a result of the Conviction, the Citigroup Affiliated QPAMS and Citigroup Related QPAMs (throughout this proposal and only when applicable, these entities may collectively be referred to as the ''Citigroup QPAMs'') would be ineligible to rely on the relief provided in PTE 84–14 as of the January 10, 2017 sentencing date without an administrative individual exemption issued by the Department that would allow it to continue relying on such relief. The Citigroup Affiliated QPAMs applied for and received the administrative individual exemptions described below.

Prior and Existing Exemptions

10. Following the Conviction, the Citigroup Affiliated QPAMs submitted an exemption application to the Department that would allow their continued reliance on the relief provided in PTE 84–14 following the Conviction. The Citigroup Affiliated QPAMs supported their application by representing to the Department that Covered Plans [9] could incur significant costs and other harm if the Citigroup Affiliated QPAMs became ineligible to rely on the relief provided in PTE 84–14 as of the date of the Conviction.[10] The Applicant asserted that approximately 20,000 of Citigroup's existing Covered Plan clients could be compelled to terminate their advisory relationship with Citigroup if the Department denies the individual exemption request and would incur expenses related to: (a) consultant fees and other due diligence expenses for identifying new managers; (b) transaction costs associated with a change in investment manager, including the sale and purchase of portfolio investments to accommodate the investment policies and strategy of the new manager, and the cost of entering into new custodial arrangements; and (c) lost investment opportunities as a result of the change in investment managers.[11]

The Department granted the Applicants an exemption that would allow the Citigroup QPAMs to continue relying on the relief provided in PTE 84–14 for 12 months on December 22, 2016,[12] and for five years on December 29, 2017.[13] This five-year exemption expires on January 9, 2023.

11. PTE 2017–05 contains conditions that subject the Citigroup Affiliated QPAMs to biennial audits with a one-year look-back period and annual certifications that must be submitted to the Department and made available to the public. Under PTE 2017–05, a qualified, independent auditor, currently Fiduciary Counselors, Inc. (FCI), is responsible for: (a) determining whether each Citigroup Affiliated QPAM has developed, implemented, maintained and followed written policies and procedures in accordance with the exemption conditions and developed and implemented the training program in accordance with the exemption conditions; (b) testing whether each of the Citigroup Affiliated QPAMs is compliant with these policies and training; and (c) issuing a written audit report [14] summarizing its findings

[9] The term ''Covered Plan'' means a plan subject to Part 4 of Title 1 of ERISA (ERISA-covered plan) or a plan subject to Section 4975 of the Code (IRA) with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14).

[10] A description of the potential costs and harm to Covered Plans is provided below.

[11] In PTE 2017–05, the Department noted that, if a five-year exemption were granted, compliance with the condition in Section I(j) of the exemption would require the Citigroup Affiliated QPAMs to hold their plan customers harmless for any actual losses attributable to, among other things, any prohibited transactions or violations of the duty of prudence and loyalty.

[12] PTE 2016–14, 81 FR 94034.

[13] PTE 2017–05, 82 FR 61864.

[14] The audit reports required under PTE 2017–05 (the Reports) and this proposed exemption, if granted, comprise a part of the record supporting PTE 2017–05 and this proposed exemption. Therefore, copies of the Reports can be requested

and recommendations with respect to each Citigroup Affiliated QPAM.[15]

Findings of the Auditor—the First Audit Period

12. On January 6, 2020, FCI issued a written Audit Report (the First Audit Report) covering the twelve-month period from July 10, 2018, through July 9, 2019 (the First Audit Period). On January 24, 2020, Citigroup provided the Department with a copy of the certifications related to the Audit Report.[16]

13. *Policies.* FCI reported that by July 9, 2018, the Citigroup Affiliated QPAMs developed, implemented, maintained, and followed written policies and procedures (Policies) reasonably designed to ensure the following:

Section I(h)(l)(i). Asset management decisions of the Citigroup Affiliated QPAMs are conducted independently of the corporate management and business activities of Citigroup.

To make this finding FCI, among other things, reviewed minutes of investment committee meetings, Information Barriers Policies and Procedures, and held discussions with employees of the Citigroup Affiliated QPAMs.[17] FCI states that there were 112 instances in which a Citi Private Bank (CPB) employee and six instances in which a Global Consumer Bank (GCB) employee ''wall-crossed.[18]'' FCI notes that in these instances, established notification procedures were followed that require employees to alert Citigroup's compliance teams when they come into contact with material nonpublic information, indicating that the Information Barriers Policies and Procedures were complied with. FCI states that employees of the Citigroup Affiliated QPAMs were involved in three of these 118 incidents, which all were resolved in accordance with established procedures.

Section I(h)(l)(ii). The Citigroup Affiliated QPAMs fully complied with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and did not knowingly participate in any violation of these duties with respect to Covered Plans.

In making this finding FCI, among other things, reviewed several trade management systems used to support the Citigroup Affiliated QPAMs investment compliance and trading process. In its review of trade management systems, FCI reviewed the restrictions contained in those systems to avoid prohibited transactions, oversight procedures, complaint logs, trade error logs, overdraft reports and relevant policies and procedures. FCI also reviewed CPB and GCB records of employee disciplinary actions in order to determine whether employees had committed violations of Title I of ERISA with respect to Covered Plans. In this regard, FCI reviewed approximately 82 disciplinary actions related to personal trading/trade issues, encryption issues, use of personal email address in communicating with a client, Mystery Shopper non-disclosures, investment concentration, failure to escalate and altered documentation. These violations resulted in a range of disciplinary actions including letters of education, letters of reprimand, and final written warnings.

FCI represented that its review of the foregoing information enabled it to determine that the mechanisms Citigroup has in place, including relevant policies, procedures and training, were designed to ensure that the Citigroup Affiliated QPAMs complied with ERISA and the Code's prohibited transaction provisions.

Section I(h)(1)(iii). The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans.

FCI reviewed records of client complaint escalations (including completed complaint logs, sample written/email and oral complaints, and trade error logs and resolution reports). Based on its review, FCI determined that the Citigroup Affiliated QPAMs complied with the requirements of Section I(h)(1)(iii).

Section I(h)(1)(iv). Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at the time.

FCI planned to review excise tax filings and associated incident reports. However, FCI notes that no prohibited transaction excise tax filings were submitted to the IRS during the First Audit Period. FCI states that it reviewed the Form ADVs filed by the Citigroup Affiliated QPAMs, which confirmed the Citigroup Affiliated QPAMs discretionary assets under management and confirmed that the Citigroup Affiliated QPAMs were registered investment advisers.

The Department notes that ''*filings or statements made by the Citigroup Affiliated QPAM to regulators . . . on behalf of or in relation to Covered Plans,*'' should be interpreted broadly. In this regard, the Department's view is that relevant filings or statements under this condition may include, among other things, filings made by the Citigroup Affiliated QPAMs for pooled funds on behalf of Covered Plans such as Forms 5500, statements made by a Citigroup Affiliated QPAM in response to regulatory inquiries related to proprietary vehicles in which Covered Plans invest, such as target-date funds managed by such QPAM, statements made in response to regulatory inquiries regarding abandoned plans or missing participants, and similar information.[19]

Moreover, the Department expects that FCI should request for its review (in addition to the information described above) any policies specifically addressing the Citigroup Affiliated QPAMs' government filings or responses to regulatory inquiries, including any review processes to ensure accuracy and any corrective mechanisms if a deficiency is noted.

In the absence of any of the above-described information, FCI should contact the Department in order to determine the course of action FCI should take to complete its audit of compliance with Section I(h)(1)(iv).

by the public by contacting the EBSA Public Disclosure Room.

[15] The Department notes that the Independent Auditor's methods of testing for compliance with the conditions of the exemption described herein are specifically tailored to the Applicant's facts underlying the Criminal Misconduct, as well as the Applicant's corporate organization, business lines, compliance regimes, etc. As such, the Department would expect the Independent Auditor to develop its audit plan based on the Applicant's specific facts.

[16] The following Citigroup QPAM executive officers made certifications: Robert Cole, Chief Compliance Officer for CPB, CGMI and CPA; Mary McNiff, Chief Executive Officer of Citibank; Daniel Keegan, Chief Executive Officer of CGMI; and Daniel O'Donnell, Chief Executive Officer of CPA.

[17] Citigroup's ''Code of Conduct'' provides that ''Information barriers [are used to] Prevent confidential information from being shared with individuals who are not authorized to know such information, [and] Address actual or potential conflicts of interest among business activities.'' See *www.citigroup.com/citi/investor/data/codeconduct_en.pdf,* Page 35.

[18] Wall crossing generally may occur when individuals inadvertently gain access to ''insider'' or confidential information. Asset management firms have compliance regimes to manage wall-crossing events, which generally require the execution of non-disclosure agreements by the individual that received such information and a range of remedial actions to prevent such disclosures from re-occurring.

[19] It is the Department's view that FCI is empowered under the terms of PTE 2017–05 and Section III(i)(2) of this proposed exemption, if granted, to request such materials. FCI should contact the Department if the Applicant is unwilling to grant such request.

Section I(h)(1)(v). To the best of the Citigroup Affiliated QPAM's knowledge at the time, the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation with respect to Covered Plans or make material misrepresentations or omit material information in its communications with Covered Plans.

In making this finding, FCI reviewed, among other things, regulatory filings, billing and performance reports, marketing materials, certain other incident reports (including Form ADV omissions), client complaints, trade error logs and complaint logs. During its review, FCI specifically noted the three following incident reports:

(1) Missing documentation for rollovers required for compliance with the now-vacated Department of Labor's Fiduciary Rule. CPB oversaw efforts to obtain documentation for the accounts where the information was not on file and to train personnel on the documentation requirement. Once the Fiduciary Rule was vacated by the Fifth Circuit Court of Appeals, no further action was taken to recover the missing rollover information, as the requirement to retain the rollover information was no longer necessary to comply with ERISA.

(2) Form ADV omissions involved certain multi-asset investment sub-accounts with approximately $310 million in assets under management that were inadvertently omitted from the Form ADV filed in March 2018. The Form ADV was updated on June 20, 2018, with corrected data. CPB Advisory Operations, a unit of CPB, conducted a detailed review to determine if any other sub-accounts could have been left off the March ADV filing. The registration associated with the omitted accounts was corrected in the system and CPB Operations scheduled training on the revised procedures.

(3) A technical issue resulted in the firm's website not displaying the Summary of QPAM Policies and Procedures. The issue was remediated in 24 hours and a quarterly monitoring routine was incepted to ensure that the website links remain active and accurate.

Section I(h)(1)(vi). The Citigroup Affiliated QPAMs comply with the terms of PTE 2017–05, including compliance with the conditions of Class PTE 84–14.

FCI reviewed whether each condition of PTE 2017–05 was met, including conditions related to timing and adequacy of notices required under the exemption; whether training was held in a timely manner; and whether the Citigroup Affiliated QPAMs complied with the additional contractual undertakings requirements described in Section I(j). Specifically, FCI reviewed sample Citigroup investment management agreements, assets under management tables with data on a per client basis, trading restrictions in Citigroup trade management systems, financial statements demonstrating equity capital and shareholder equity, Form ADVs, and copies of notices to interested persons.

14. *Correction of Policy Violations.* FCI determined that any violations of, or failure to comply with an item in subparagraphs (ii) though (iv) of Section I(h)(1) were corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance, and that any violations or failures not so corrected were reported in writing to the head of compliance and the General Counsel (or the functional equivalent) of the relevant line of business that engaged in the violation or failure.

FCI reviewed, among other things, policies applicable to the Citigroup Affiliated QPAMs, including the Information Barriers Policy, Restricted Trading List Policy, Escalation Policy, Complaint Policy and Procedures, Error Standard for Managed Accounts, Personal Trading and Investment Policy, Fiduciary Code of Ethics Standard, the Citigroup Code of Conduct, and the Gifts and Entertainment Standard.

Further, FCI was able to conclude that any violations of items in subparagraphs (ii) through (iv) of Section I(h)(1) were corrected in compliance with Section I(h)(1)(vii) of PTE 2017–05 through its review of certain documents and spreadsheets provided by Citigroup to FCI. These documents and spreadsheets included a description of the violation or other action, how it was corrected or addressed, and the date or dates that action was undertaken. In this regard, FCI reviewed incident reports, if any, employee trading violations, employee disciplinary actions taken, overdraft reports, and errors and complaints.

15. *Training.* FCI determined that the Citigroup Affiliated QPAMs developed an annual training program (Training) by July 9, 2018, and completed the first Training by July 9, 2019, for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel:

Section I(h)(2)(i). The Training, at a minimum, covers the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences of not complying with the conditions of PTE 2017–05 (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing.

In making this finding, FCI reviewed a copy of the 2018 ERISA Fiduciary Training, proof of training sessions provided by Citigroup (including spreadsheets detailing each QPAM employee who took the training), conducted interviews with portfolio managers and QPAM employees regarding the training, and reviewed the training system and process of assigning courses to employees (and governing the completion of training).

16. *Annual Compliance Review.* FCI reviewed the most recent annual review (Annual Review) conducted by a senior compliance officer designated by Citigroup (Compliance Officer) in accordance with Section I(m) of PTE 2017–05 and specifically validated the adequacy of the Annual Review and Citigroup's compliance with Section I(m) of PTE 2017–05.[20]

FCI determined that Citigroup timely appointed the Compliance Officer, who prepared a combined annual report for all Citigroup Affiliated QPAMs (Annual Report) that complied with the requirement of Section I(m)(2)(ii). Based on its review of the Annual Report, FCI concluded that Citigroup developed a robust monitoring program with several compliance routines that address relevant compliance issues under PTE 2017–05 and established committees and meetings that address ERISA compliance issues as they arise.

Findings of the Auditor—the Second Audit Period

17. On January 6, 2022, FCI issued a written Audit Report covering the twelve-month period from July 10, 2020, through July 9, 2021 (the Second Audit Period). On January 31, 2022, on behalf of each Citigroup Affiliated QPAM, Citigroup provided the Department with a copy of the certifications related to the Audit Report.[21]

[20] Pursuant to Section I(m) of PTE 2017–05, the Compliance Officer must conduct an Annual Review for each annual period beginning on January 10, 2018. The Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023. The Applicant represents that Citigroup has performed all annual reviews required by Section I(m) of PTE 2017–05 to date, including during the periods not under audit by FCI. The Department notes that in the future, FCI will verify that Citigroup performed its annual reviews during off-audit year periods.

[21] The following Citigroup QPAM executive officers made certifications: Daniel Keegan, Chief

18. *Policies.* FCI reported that the Citigroup Affiliated QPAMs timely developed, implemented, maintained, and followed written policies and procedures (Policies) reasonably designed to ensure the following:

Section I(h)(l)(i). Asset management decisions of the Citigroup Affiliated QPAMs are conducted independently of the corporate management and business activities of Citigroup.

FCI based its conclusions on reviews of marketing materials made available to Covered Plans, interviews with portfolio managers, investment committee members' affiliations, minutes of investment committee meetings, Information Barriers Policies and Procedures, restricted trading list policies and procedures, and discussions with applicable Citigroup Affiliated QPAM employees. FCI reviewed reports of approximately 200 ''wall-crossing [22]'' incidents. In this regard, FCI states that there were 169 instances in which a Citi Private Bank (CPB) employee and 21 instances in which a Global Consumer Bank (GCB) employee ''wall-crossed.'' The reports describe the incident and the remedial activity taken that indicate compliance with the Information Barriers Policies and Procedures. FCI states that employees of Citigroup Affiliated QPAMs were involved in three of these approximately 200 incidents, which were resolved pursuant to established procedures.

Section I(h)(l)(ii). The Citigroup Affiliated QPAMs fully comply with ERISA's fiduciary duties (as more fully described above).

FCI reviewed the trade management systems used to support the Citigroup Affiliated QPAMs' investment compliance and trading process. FCI reviewed the restrictions contained in those systems to avoid prohibited transactions, oversight procedures, complaint logs, trade error logs, overdraft reports and relevant policies and procedures. FCI also reviewed, among other things, policies and procedures regarding client complaints, errors, overdrafts, affiliated broker and/or dealer compliance; trading systems hardcoding related to compliance with affiliated broker/dealers and cross-trading and block-trading compliance; and policies for handling breaches of investment guidelines and ERISA restrictions in trading systems. FCI specifically reviewed reports of actual instances of breaches of the aforementioned policies and procedures and how such breaches were remediated. FCI also reviewed records of CPB and GCB employee disciplinary actions in order to determine whether employees had committed violations of Title I of ERISA with respect to Covered Plans. In this regard, FCI reviewed records of approximately 30 disciplinary actions related primarily to personal trading issues, failure to obtain preapproval for a gift, Mystery Shopper non-disclosures, failure to identify customer complaints, personal use of a corporate credit card and altered documentation.

Based on its review of the foregoing information, FCI confirmed that the mechanisms Citigroup has in place, including relevant policies, procedures and training, were designed to ensure that the Citigroup Affiliated QPAMs comply with ERISA and the Code's prohibited transaction provisions.

Section I(h)(1)(iii). The Citigroup Affiliated QPAMs do not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans.

FCI reviewed Citigroup's ''Escalation Policy,'' which was revised effective December 11, 2020. Under the policy, employees must escalate violations or potential violations of law, regulation, rule, or breaches of policy, procedure or the Code of Conduct and other relevant standards of conduct. The policy also sets forth responsibilities of managers involved in the escalation. FCI reviewed records of client complaint escalations and error handling (including completed complaint logs, sample written/email and oral complaints, and trade error logs and resolution reports) and confirmed that Citigroup complied with the requirements of Section I(h)(1)(iii).

Section I(h)(1)(iv). Any filings or statements made by the Citigroup Affiliated QPAMs to regulators are materially accurate and complete (as more fully described above). FCI's determination of compliance with this Section was to be based on a review of excise tax filings and associated incident reports. No excise tax filings for prohibited transactions were submitted to the IRS during the Second Audit Period. FCI states that it reviewed the Form ADV for the Citigroup Affiliated QPAM's discretionary assets under management and to confirm that the Citigroup Affiliated QPAM is a registered investment adviser.

As noted above, the Department expects that FCI should request for its review of any policies specifically addressing a QPAM's government filings or responses to regulatory inquiries, including any review processes to ensure accuracy and any corrective mechanisms if a deficiency is noted. Further, the Department notes that ''*filings or statements made by the Citigroup Affiliated QPAM to regulators . . . on behalf of or in relation to Covered Plans,*'' should be interpreted broadly.[23] If FCI cannot identify any such information to review, FCI should contact the Department to determine how to complete its audit for compliance with Section I(h)(1)(iv).

Section I(h)(1)(v). The Citigroup Affiliated QPAMs do not make material misrepresentations or omit material information (as more fully described above). FCI reviewed performance reports, marketing materials, sample investment management agreements, certain incident reports (including a late update to a notice required by ERISA Section 408(b)(2) and tax withholding errors), and client complaints. The late ERISA Section 408(b)(2) notice update involved a description of the firm's gift and entertainment disclosure related to brokerage offering that was updated three days after the deadline. The tax withholding error involved Citigroup's inadvertent failure to withhold Federal and state taxes on several customers' IRA accounts but did not impact the accounts' required minimum distributions under Code section 401(a)(9) due to IRS rules applicable during the COVID–19 pandemic. FCI also notes that during an update of Citi Private Bank's public facing website on April 26, 2021, a technical issue resulted in the entity's Form ADV showing as not found when entered in a particular format on the website. According to the incident report reviewed by FCI, the issue was identified on the same day and remediated within 48 hours of discovery.

Section I(h)(1)(vi). The Citigroup Affiliated QPAMs comply with the terms of PTE 2017–05, including compliance with the conditions of Class PTE 84–14.

FCI reviewed whether each condition of PTE 2017–05 was met, including

Executive Officer of CGMI; Robert Cole, Chief Compliance Officer for CPB, CGMI, and Citi Private Advisory, LLC (CPA); Sunil Garg, Chief Executive Officer of Citibank N.A.; and Daniel O'Donnell, Chief Executive Officer of CPA.

[22] Wall crossing generally may occur when individuals inadvertently gain access to ''insider'' or confidential information. Asset management firms have compliance regimes to manage wall-crossing events, which generally require the execution of non-disclosure agreements by the individual that received such information and a range of remedial actions to prevent such disclosures from re-occurring.

[23] It is the Department's view that FCI is empowered under the terms of PTE 2017–05 and Section III(i)(2) of this proposed exemption, if granted, to request such materials. FCI should contact the Department if the Applicant is unwilling to grant such request.

conditions related to timing and adequacy of notices required under the exemption, whether the Training was held in a timely manner, and whether the QPAMs complied with the additional contractual undertakings requirements described in Section I(j) of PTE 2017–05. Specifically, FCI reviewed sample Citigroup investment management agreements, assets under management tables with data on a per client basis, trading restrictions in Citigroup trade management systems, financial statements demonstrating equity capital and shareholder equity, Form ADVs, and copies of notices to interested persons.

19. *Correction of Policy Violations.* FCI determined that any violations of, or failure to comply with an item in subparagraphs (ii) though (iv) of Section I(h)(1) of PTE 2017–05 were corrected as soon as reasonably possible upon discovery or as soon after the QPAM reasonably should have known of the noncompliance; and that any violations or failures not so corrected were reported in writing to the head of compliance and the General Counsel (or the functional equivalent) of the relevant line of business that engaged in the violation or failure.

In making its determination, FCI reviewed, among other things, policies applicable to the Citigroup Affiliated QPAMs, including the Information Barriers Policy, Restricted Trading List Policy, Escalation Policy, Complaint Policy and Procedures, Error Standard for Managed Accounts, Personal Trading and Investment Policy, Fiduciary Code of Ethics Standard, the Citigroup Code of Conduct, and the Gifts and Entertainment Standard.

Further, FCI was able to conclude that any violations of items in subparagraphs (ii) through (iv) of Section I(h)(1) were corrected in compliance with Section I(h)(1)(vii) of PTE 2017–05 through its review of certain documents and spreadsheets provided by Citigroup to FCI. These documents and spreadsheets included a description of the violation or other action, how it was corrected or addressed, and the date or dates that action was undertaken. In this regard, FCI reviewed incident reports, if any, employee trading violations, employee disciplinary actions taken, overdraft reports, and errors and complaints.

20. *Training.* FCI determined that the Citigroup Affiliated QPAMs developed Training:

Section I(h)(2)(i). The Training, at a minimum, covers the Policies, ERISA and Code compliance, ethical conduct, the consequences of not complying with the conditions of PTE 2017–05, and prompt reporting of wrongdoing (as more fully described above).

FCI reviewed a copy of the annual 2020 Citigroup ERISA Fiduciary Training and other annual trainings provided to new and current employees throughout the year and proof of such trainings (including spreadsheets detailing each QPAM employee who took the training); conducted interviews with portfolio managers regarding the training; reviewed the training system and process of assigning courses to employees (and governing the completion of training); and specifically interviewed Citigroup Affiliated QPAM employees as to the training system and governance process.

21. *Annual Compliance Review.* FCI reviewed the most recent annual review (Annual Review) conducted by a senior compliance officer designated by Citigroup (Compliance Officer) in accordance with Section I(m) of PTE 2017–05 and specifically validated the adequacy of the Annual Review and Citigroup's compliance with Section I(m) of PTE 2017–05.[24]

FCI determined that Citigroup timely appointed the Compliance Officer, who prepared a combined annual report for all Citigroup Affiliated QPAMs (Annual Report) that complies with the requirement of Section I(m)(2)(ii). Similar to its findings under the First Audit Period, FCI found that the Compliance Officer's Annual Report reviewed during the Second Audit Period includes a separate review of the information barriers for each Citigroup Affiliated QPAM. The Annual Report also includes a review of any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or other relevant parties during the Second Audit Period, any material changes to the relevant business activities of the Citigroup Affiliated QPAMs, and any changes to ERISA, the Code, or regulations, related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Citigroup Affiliated QPAMs.

FCI found that the Annual Report summarizes the Compliance Officer's material activities during the Annual Review; sets forth any instances of noncompliance discovered during the Annual Review, and any related corrective action; details any change to the Policies or Training; and makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems; and describes management's actions taken in response to such recommendations.

Based on its above review of the Compliance Officer's Annual Review, FCI concluded that Citigroup developed a robust monitoring program with several routines that address relevant compliance issues under PTE 2017–05 and established committees and meetings that address ERISA compliance issues as they arise.

Current Exemption Request

22. The Applicant now seeks a four-year exemption that would allow the Citigroup QPAMs to continue to rely on PTE 84–14 until the end of the ten-year disqualification period in Section I(g). The requested exemption is substantially similar to PTE 2017–05.

This proposed exemption requires each Citigroup Affiliated QPAM to continue to maintain, implement and follow written policies and procedures (Policies) that are reasonably designed to ensure the following, among other things: the asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup; the Citigroup Affiliated QPAMs fully comply with ERISA's fiduciary duties, and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan; any filings or statements made by Citigroup Affiliated QPAMs to regulators, on behalf of Covered plans, are materially accurate and complete; and the Citigroup Affiliated QPAMs comply with the terms of the proposed exemption, if granted. Further, any violation of, or failure to comply with the Policies must be corrected promptly upon discovery, and any such violation or compliance failure not promptly corrected must be reported, upon the discovering of the failure to promptly correct, in writing, to the head of compliance and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor response for reviewing compliance with the Policies.

This proposed exemption requires each Citigroup Affiliated QPAM to implement or maintain a training

[24] As mentioned above, pursuant to Section I(m) of PTE 2017–05, the Compliance Officer must conduct an Annual Review for each annual period beginning on January 10, 2018. The Annual Review must be completed with respect to the annual periods ending January 9, 2019; January 9, 2020; January 9, 2021; January 9, 2022; and January 9, 2023. The Applicant represents that Citigroup has performed all annual reviews required by Section I(m) of PTE 2017–05 to date, including during the periods not under audit by FCI. The Department notes that in the future, FCI will verify that Citigroup performed its annual reviews during off-audit year periods.

program (the Training) to be conducted at least annually by a prudently selected professional, that covers the Policies, ERISA and Code compliance, ethical conduct, the consequences for not complying with the conditions of the exemption, and the duty to promptly report wrongdoing; and submit to a biennial compliance audit conducted by a prudently-selected independent auditor (the Auditor), to evaluate the adequacy of, and the Citigroup Affiliated QPAM's compliance with, the Policies and Training requirements of the exemption. The Auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which such audit applies that describes the procedures performed during the Audit. In its Audit Report, the Auditor must assess the adequacy of the Citigroup Affiliated QPAM's Policies and Training Program; the Citigroup Affiliated QPAM's compliance with the Policies and Training Program; the need, if any to strengthen the Policies and Training Program; and any instance of noncompliance.

The proposed exemption requires certain senior Citigroup personnel to review the Audit Report and make certain certifications and take various corrective actions. In this regard, the General Counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which the report applies must certify in writing and under penalty of perjury that such officer has reviewed the Audit Report, addressed, corrected, or remedied any inadequacy identified in the Audit Report; and determined that the Policies and Training Program are adequate to ensure compliance with the requirements of the exemption and applicable provisions of ERISA and the Code. The Audit Report must also be provided to the Department's Office of Exemption Determinations.

The proposed exemption requires each Citigroup Affiliated QPAM to agree and warrant to each Covered Plan client that they will comply with ERISA and the Code, refrain from engaging in non-exempt prohibited transactions (and will promptly correct any non-exempt prohibited transactions), and comply with standards of prudence and loyalty set forth in ERISA Section 404 for the duration of the Exemption. The proposed exemption also requires the Citigroup Affiliated QPAM to agree and warrant to indemnify and hold their Covered Plan clients harmless for any actual losses resulting directly from the QPAM's violation of these rules or failure to qualify for relief under PTE 84–14 as a result of any other criminal convictions, and that it will not require the Covered Plan to waive, limit, or qualify its liability for violating ERISA or the Code or engaging in non-exempt prohibited transactions. The proposed exemption also prohibits the Citigroup Affiliated QPAM from restricting the ability of Covered Plan clients to terminate their investment management arrangement with such QPAM or from imposing fees, penalties, or other charges upon the client for doing so, except for certain reasonable restrictions specifically designed to ensure equitable treatment of all investors in a pooled fund.

The proposed exemption contains extensive notice requirements that obligate the Citigroup Affiliated QPAMs to provide Covered Plan clients regarding the grant of the exemption and the QPAM's obligations thereunder, including a separate summary describing the facts that led to the Conviction, within specified time periods.

The proposed exemption also requires Citigroup to continue to designate a senior compliance officer (the Compliance Officer) to conduct an annual review (the Annual Review) of the adequacy and effectiveness of the implementation of the Policies and Training Program, and prepare a written report for each Annual Review that, among other things, summarizes their material activities during the preceding year; and sets forth any instance of noncompliance discovered during the preceding year and any related corrective action.

The proposed exemption requires Citigroup to inform its Covered Plan Clients of their right to obtain a copy or summary description of the Policies and provided with updated disclosures following any changes.[25]

The proposed exemption also requires Citigroup to immediately disclose to the Department any Deferred Prosecution Agreement or Non-Prosecution Agreement it enters into with the U.S. Department of Justice in connection with conduct described in Section I(g) of PTE 84–14 or ERISA Section 411 of ERISA. Under this condition, the Applicant must notify the Department if and when it or any of its affiliates enter into a DPA or NPA with the U.S. Department of Justice for conduct described in section I(g) of PTE 84–14 or ERISA Section 411 and immediately provide the Department with any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement. The Department will review the information provided and may seek additional information from the Department of Justice, in order to determine whether the conduct described in the DPA or NPA raises questions about the Citigroup Affiliated QPAMs' ability to act with a high standard of integrity. The Department retains the right to propose a withdrawal of the exemption pursuant to its procedures contained at 29 CFR 2570.50, should the circumstances warrant such action.

Department's Request for Comment: The Department requests comments whether the Applicant should be required to provide information regarding adverse regulatory actions (*e.g.,* fines, censures, penalties, civil lawsuits, settlements of civil or criminal lawsuits), that are taken by other regulators against Citigroup and its affiliates. Should the Applicant be required to provide information regarding actions taken by certain regulators (*e.g.,* IRS, SEC, OCC, UK FCA), and is there an appropriate type of information or class of regulatory actions that are relevant or irrelevant to the Department's determination whether under PTE 84–14 should continue to be permitted notwithstanding the Conviction?

Modifications of Conditions for the Proposed Exemption From Those of PTE 2017–05

23. The Department is proposing to modify the terms of PTE 2017–05 in the proposed exemption, based on the Applicant's request, to reflect the following terms the Department has included in recently granted individual exemptions providing relief from a violation of Section I(g) of PTE 84–14:

- Allow the Training to be conducted electronically.

Department's Request for Comment Regarding Training: The Department views the Training obligation under this exemption as a key protection of Covered Plans and expects that Citigroup Affiliated QPAMs and their personnel will complete their obligations in good faith. The Department requests comments regarding whether the Citigroup Affiliated QPAMs should be required to validate the efficacy of Training that is provided electronically, through methods such as in-training knowledge checks, ''graduation'' tests, and other technological tools designed to confirm that personnel fully and in good faith participate in the Training.

[25] Citigroup maintains a summary of the policies on its website, at: *https://www.privatebank.citibank.com/pdf/Summary-QPAM-Policies-and-Procedures.pdf.*

• Allow the certifications described in Section I(i)(7) of PTE 2017–05 that are required to be made by the General Counsel or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which an Audit Report applies,[26] to be made ''to the best of such officer's knowledge at the time.'' Similarly, the certification by the designated compliance officer as to the accuracy of the written report on each Annual Review and certain other matters (including the correction of any ''known'' instance of noncompliance) in Section I(m)(2)(iii) of PTE 2017–05 may be made to the compliance officer's ''best knowledge.''

Department's Comment Regarding ''Best Knowledge'' Standard: The Department intends for the ''Best Knowledge'' standard described in the exemption to require the certifying senior executive to perform its due diligence required under the exemption to determine whether the information such executive is certifying is complete and accurate in all respects.

• Allow the certified Audit Report to be delivered no later than 45 days after completion of the report.

24. *Other Conforming Changes.* The Department has updated the operative language of the proposed exemption to more accurately reflect the factual record and the operative language of similar, recently granted exemptions. The Department notes further that it has made minor formatting changes in the proposed exemption, so that certain operative language that is identical or parallel to language in PTE 2017–05 is now located in different sections of the proposed exemption.[27]

25. *Department's Comment Regarding Audit Timing.* The Department notes that PTE 2017–05 requires the Independent Auditor to conduct biennial audits covering the periods from July 10, 2018, through July 9, 2019, (which must be completed by January 9, 2020); from July 10, 2020, through July 9, 2021 (which must be completed by January 9, 2022); and from July 10, 2022, through July 9, 2023 (which must be completed by January 9, 2024). As such, the last audit period under PTE 2017–05 will extend into this proposed exemption's Exemption Period.

In order to avoid confusion regarding the audit periods under this proposed exemption, the Department provides the following clarification: The first audit under this proposed four-year exemption (the fourth audit under the totality of exemptive relief) would cover the period from July 10, 2024 through July 9, 2025, (and must be completed by January 9, 2026); and the second audit (the fifth audit under the totality of exemptive relief) would cover the period from July 10, 2026, through January 9, 2027, (must be completed by July 9, 2027).

As described above, the fifth audit period is truncated, so that it expires with the expiration of the Exemption Period. However, the Department expects the audit report for the fifth audit period to be completed and delivered timely to the Department. The failure to receive such report would impede Citigroup's ability to claim relief under this proposed exemption for transactions entered into during the Exemption Period.

Hardship to Covered Plans

26. *Inability to Engage in Transactions that are in the Interest of Plans.* The Applicant states that it would be difficult for Citigroup to engage in a variety of routine transactions on behalf of a Retirement Account with counterparties, without the ability to use PTE 84–14, because virtually every counterparty may be a service provider to that Retirement Account. The Applicant states that because counterparties are familiar and comfortable with PTE 84–14, it is generally the most-commonly used prohibited transaction exemption. In addition, the Applicant states that market participants, both clients and counterparties, routinely expect an investment adviser or manager of Retirement Accounts to represent that it qualifies as a QPAM, even if such a representation is not technically required in a particular circumstance.

27. The Applicant represents that disqualification would deprive Covered Plans clients of the Citigroup Affiliated QPAMs from receiving advisory or sub-advisory services that fiduciaries of the Covered Plans have determined to be in the best interests of the Covered Plans. According to the Applicant, this would be an undesirable result that would extend to asset managers selected by fiduciaries that Citigroup does not control and in which it has a non-controlling investment (collectively, the Citigroup Related QPAMs).

28. The Applicant represents that PTE 84–14 is used for investment transactions such as the purchase and sale of debt and equity securities, both foreign and domestic that are either registered or sold under Rule 144A, the purchase and sale of commodities, futures, swaps, real estate, foreign exchange and other investments in the U.S. and internationally, and the hedging of risk through a variety of investment instruments and strategies. The Applicant states that it is very difficult for a manager of ERISA assets to manage such assets effectively without the ability to rely on PTE 84–14. Therefore, the Applicant represents that if the Department does not grant the exemption, fiduciaries that otherwise decided to retain Citigroup's advisory services pursuant to a prudent process would have to seek an alternative service provider.

29. Alternatively, the Applicant states that fiduciaries of Covered Plans have been clearly informed and will, in keeping with their fiduciary duties, be able to make their own individualized decisions about continuing to utilize Citigroup as an advisor to their plans' assets. In this regard, the Applicant states that the Plea Agreement has been well-publicized and made readily available. Further, the Applicant states that the Plea Agreement is disclosed in Citigroup's Form ADVs and is the subject of notice to Covered Plan clients pursuant to PTEs 2016–14 and 2017–05 (and will be further disclosed as required by this proposed exemption, if granted).

30. *Retirement Accounts Would Incur Significant Costs in Transitioning Managers.* The Applicant states that any Retirement Account that transitions away from a Citigroup Affiliated QPAM if the requested exemption is denied would incur quantifiable financial costs that fall into three categories:(i) Trading and market impact costs, (ii) consultant costs associated with identifying new investment managers, and (iii) legal costs, are summarized below.[28] These categories are discussed below.

31. *Trading and Market Risk Costs.* The Applicant states that trading-related costs consist of brokerage commissions, bid-ask spreads of assets traded on a principal basis, and ''market impact''

[26] Section I(i)(7) of PTE 2017–05 provides that ''. . . the General Counsel, or one of the three most senior executive officers of the Citigroup Affiliated QPAM to which [an] Audit Report applies, must certify in writing, under penalty of perjury, that the officer has reviewed the Audit Report and this exemption; that such Citigroup Affiliated QPAM has addressed, corrected or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report . . . .''

[27] For example, in the proposed exemption, the definitions are now located in Section I, the covered transactions are now located in Section II, and the conditions for relief are located in Section III.

[28] The Applicant is not including certain costs in its summary, such as those incurred to replace custodians, prepare employee communications and implement new record-keeping procedures, because they depend on a Covered Plan's current service arrangements and may vary widely. In addition, the Applicant states that estimates below are based on experience with employee pension plans, so the costs described may differ for IRAs.

costs based on the effects of trading on the price of the particular assets.[29]

The Applicant estimates that the trading and market risk costs of transitioning a hypothetical $1 billion investment portfolio, categorized by asset class and assuming an index-based portfolio, are as follows:[30]

Asset class	Notional	Explicit fees		Implicit costs	Total trading-related costs	Risk cost (daily volatility)[31]
		Commissions*	Stamp and exchange fees	Bid ask spread and market impact[32]		
US Large Cap Equity	1,000,000,000	50,334	5,100	560,000	615,434	13,802,002
US Small Cap Equity	1,000,000,000	253,897	5,100	1,801,403	2,060,400	15,871,433
ACWI -Ex US Equity	1,000,000,000	568,156	1,050,138	1,030,495	2,648,789	9,713,042
Emerging Markets Equity	1,000,000,000	741,785	1,029,998	2,702,068	4,473,851	10,323,360
US Agg Index Fixed income	1,000,000,000	358,576	.....	2,273,556	2,632,131	6,299,407

Commission rates	
US Equities	0.5 cents per share.

32. *Investment Consultant Costs.* The costs for Pension plans that use an investment consultant to advise on selecting a new investment manager (including administering the request-for-proposal process) may include:[33]

- $10,000–$50,000 for replacement of an individual manager or a single investment option for a defined contribution plan.
- $30,000–$100,000 for replacement of a ''manager of managers'' that chooses all investment managers for the plan, such as an outsourced chief investment officer.

33. *Legal Costs.* The Applicant estimates that the cost of outside counsel for a manager transition by a single employer plan is in the range of $15,000 to $28,000. As noted above, plans may use a transition manager to minimize transaction costs in moving assets to the new manager. The Applicant states that the legal work retain a transition manager could range from $5,000 to $10,000.

Statutory Findings

34. ERISA Section 408(a) provides, in part, that the Department may not grant an exemption unless the Department finds that the exemption is administratively feasible, in the interest of affected plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries. The Department's findings under these criteria are discussed below.

35. ''*Administratively Feasible.*'' The Department has tentatively determined that the proposal is administratively feasible because, among other things, a qualified independent auditor would be required to perform an in-depth audit covering each Citigroup Affiliated QPAMs' compliance with the terms of the exemption, and a corresponding written audit report would be provided to the Department and made available to the public.

The independent audit would help to ensure that the continued compliance with the terms of the exemption and ethical behavior of the Applicant is subject to on-going oversight by an independent third party reporting its findings to the Department.

36. ''*In the Interests of.*'' The Department has tentatively determined that the proposed exemption is in the interests of the participants and beneficiaries of the Covered Plans.

The primary reason the Department is proposing to provide the Applicant with four additional years of exemptive relief, is to prevent Covered Plans from incurring the costs and expenses that they would not otherwise incur, in the event the Citigroup Affiliated QPAMs lose exemptive relief under PTE 84–14, and Covered Plans terminate their advisory relationships with Citigroup. As mentioned above, as of December 31, 2020, Citigroup's advisory businesses had over 12,700 Retirement Accounts with approximately $4.6 billion of assets under management.

The Applicant states that it made certain assumptions to quantify the specific costs to Retirement Accounts if the exemption request were denied, including the portion of those assets would transition away from Citigroup if it were to not eligible to rely on the QPAM Exemption. The Applicant states that making this assumption depends on such factors as the type of account and investment strategy, because it may be possible to substantially implement certain investment strategies without relying on the QPAM Exemption (although there may be clients that nevertheless view ineligibility to rely on the QPAM Exemption as a reason to change asset managers).

The Applicant estimates that if 10% of such assets ($460 million) representing 5% of such accounts (635) were to transition away from Citigroup as a result of a denial of the exemption, the Quantifiable Costs to Retirement Investors, assuming the midpoint level of such costs for each category of Quantifiable Costs, would total $36.3 million.[34]

The Applicant also represents that any manager transition will cause Plans to incur costs in time and attention, which are not able to be quantified, but no less disruptive in terms of resources that would need to be re-directed away from activities that are otherwise necessary for the functioning of a Plan.

37. ''*Protective of.*'' The Department has tentatively determined that the proposed exemption is protective of the interests of the participants and beneficiaries of affected Covered Plans.

[29] Market impact costs are generally a function of the size of the trade and the liquidity of the particular asset.

[30] Estimates are based on Citigroup's own transition management services that are offered to transitioning pension plans.

[31] Risk costs measure the potential loss from a portfolio being uninvested and ''out of the market'' during the transition, which is a function of the daily volatility in the particular assets. However, if clients employ a ''transition manager'' to move assets from Citigroup into a new target portfolio with a different manager, the plan could avoid the full Risk Costs.

[32] A portfolio that is not based on an index would likely be expected to have higher Bid/Ask Spread and Market Impact costs.

[33] The Applicant states that these estimates could vary depending on the specific circumstances of the particular plan and RFP.

[34] The Applicant states that this calculation is based on conservative assumptions, so the actual costs could be higher. Further, the Applicant states that the calculation is limited to the costs it was able to quantify so the actual costs could be higher. The assumptions include the following:

- Trading and Market Risk Costs—averaging the figures described above (leaving out Emerging Markets Equity, which tends to constitute a smaller portion of investment portfolios) and adjusting for an aggregate portfolio of $460 million in assets = $6,168,903.
- Investment Consultant Costs—using $30,000, the midpoint of the above figures for a single manager search, times 635 accounts = $19,050,000.
- Legal Costs—using $17,500, the midpoint of the above figures for a manager search (assuming either no transition manager or a transition manager already in place), times 127 accounts = $11,112,500.

The conditions, which are described in more detail above and in PTE 2017–05, require continued oversight of Citigroup's compliance with the terms and conditions of PTE 2017–05 by the Independent Auditor and a robust audit to be completed by the auditor that is reviewed by the Department.

As demonstrated by the Audit Reports for the First and Second Audit Periods, the Independent Audit is an important tool to test Citigroup's adherence to the conditions of PTE 2017–05 and this proposed exemption (if granted), and the audit reports provide transparency and accountability to the Department and interested persons regarding Citigroup's efforts to maintain a culture of compliance.

In addition to oversight by an Independent Auditor, the proposed exemption is subject to protective conditions that include but not limited to: (a) the development and maintenance of the Policies; (b) the implementation of the Training Program; (c) the requirement for the Citigroup Affiliated QPAMs to make certain agreements and warranties to Covered Plan clients; (d) specific notice and disclosure requirements concerning the circumstances necessitating the need for exemptive relief and the Citigroup Affiliated QPAMs' obligations under this proposed exemption; and (e) the designation of a Compliance Officer with responsibility to ensure compliance with the Policies and Training requirements under this proposed exemption, and the Compliance Officer's completion of an Annual Review and corresponding Annual Report.

Summary

38. Based on the representations of the Applicant, the substance of the Audit Reports, and Citigroup's required continued compliance with a robust set of conditions, the Department has tentatively determined that the relief sought by the Applicant satisfies the statutory requirements for a four-year exemption under section 408(a) of ERISA.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within fifteen (15) days of the publication of the notice of proposed four-year exemption in the **Federal Register**. The notice will be provided to all interested persons in the manner described in Section III(k)(1) of this proposed four-year exemption and will contain the documents described therein and a supplemental statement required by 29 CFR 2570.43(a)(2). The supplemental statement will inform interested persons of their right to comment on and request a hearing with respect to the pending exemption. All written comments and/or requests for a hearing must be received by the Department within forty-five (45) days of the date of publication of this proposed exemption in the **Federal Register** and will be made available to the public. The notice may be provided by first-class mail, hand delivery or through electronic means, including by an email that has a link to the notice documents on Citigroup's website that Covered Plan clients with an internet connection can access at any time (except for any periods when the website is temporarily unavailable because it is undergoing routine maintenance).

Warning: If you submit a comment, EBSA recommends that you include your name and other contact information in the body of your comment, but DO NOT submit information that you consider to be confidential, or otherwise protected (such as a Social Security number or an unlisted phone number) or confidential business information that you do not want publicly disclosed. All comments may be posted on the internet and can be retrieved by most internet search engines.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under ERISA Section 408(a) and/or Code Section 4975(c)(2) does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of ERISA and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of ERISA Section 404, which, among other things, require a fiduciary to discharge their duties respecting an ERISA-covered plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion as required by ERISA Section 404(a)(1)(B); nor does it affect the requirement of Code Section 401(a), which require a plan to operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted, ERISA Section 408(a) and/or Code Section 4975(c)(2) require the Department to find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, would be supplemental to, and not in derogation of, any other provisions of ERISA and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, would be subject to the express condition that the material facts and representations contained in the application are true and complete at all times, and that the application accurately describes all material terms of the transactions which are the subject of the exemption.

Proposed Exemption

The Department is considering granting a four-year exemption under the authority of ERISA Section 408(a) and Code section 4975(c)(2), and in accordance with the procedures set forth in exemption procedure regulation.[35]

Section I: Definitions

(a) The term ''Citicorp'' means Citicorp, a financial services holding company organized and existing under the laws of Delaware and does not include any subsidiaries or other affiliates.

(b) The term ''Citigroup Affiliated QPAM'' means a ''qualified professional asset manager'' (as defined in section VI(a)[36] of PTE 84–14) that relies on the relief provided by PTE 84–14 and with respect to which Citigroup is a current or future ''affiliate'' (as defined in section VI(d)(1) of PTE 84–14). The term ''Citigroup Affiliated QPAM'' excludes Citicorp, the entity implicated in the criminal conduct that is the subject of the Conviction.

(c) The term ''Citigroup Related QPAM'' means any current or future ''qualified professional asset manager'' (as defined in section VI(a) of PTE 84–

[35] 29 CFR part 2570, subpart B (76 FR 66637, 66644, October 27, 2011). Effective December 31, 1978, Section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

[36] In general terms, a QPAM is an independent fiduciary that is a bank, savings and loan association, insurance company, or investment adviser that meets certain equity or net worth requirements and other licensure requirements and has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

14) that relies on the relief provided by PTE 84–14, and with respect to which Citigroup owns a direct or indirect five percent or more interest, but with respect to which Citigroup is not an ''affiliate'' (as defined in Section VI(d)(1) of PTE 84–14).

(d) The term ''Conviction'' means the judgment of conviction against Citigroup for violation of the Sherman Antitrust Act (15 U.S.C. 1), entered in the District Court for the District of Connecticut (the District Court) (Case Number 3:15–cr–78–SRU). For all purposes under this exemption, ''conduct'' of any person or entity that is the ''subject of [a] Conviction'' encompasses the conduct described in Paragraph 4(g)–(i) of the Plea Agreement filed in the District Court in Case Number 3:15–cr–78–SRU.

(e) The term ''Covered Plan'' means a plan subject to Part 4 of Title I of ERISA (ERISA-covered plan) or a plan subject to Section 4975 of the Code (IRA) with respect to which a Citigroup Affiliated QPAM relies on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM (or any Citigroup affiliate) has expressly represented that the manager qualifies as a QPAM or relies on the QPAM class exemption (PTE 84–14). A Covered Plan does not include an ERISA-covered Plan or IRA to the extent the Citigroup affiliated QPAM has expressly disclaimed reliance on QPAM status or PTE 84–14 in entering into its contract, arrangement, or agreement with the ERISA-covered plan or IRA.

(f) The term ''Exemption Period'' means January 10, 2023, through January 9, 2027.

Section II: Covered Transactions

If the proposed four-year exemption is granted, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (as defined in Sections I(b) and I(c), respectively) will not be precluded from relying on the exemptive relief provided by Prohibited Transaction Class Exemption 84–14 (PTE 84–14 or the QPAM Exemption),[37] notwithstanding the Conviction, as defined in Section I(d)), during the Exemption Period, provided that the conditions in Section III below are satisfied.

Section III: Conditions

(a) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business, and who had no responsibility for and exercised no authority in connection with the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, agents other than Citicorp, and employees of such QPAMs who had responsibility for, or exercised authority in connection with the management of plan assets) did not know of, did not have reason to know of, or participate in the criminal conduct that is the subject of the Conviction. For purposes of this paragraph (a), ''participate in'' means the knowing approval of the misconduct underlying the Conviction;

(b) Other than a single individual who worked for a non-fiduciary business within Citigroup's Markets and Securities Services business and who had no responsibility for and exercised no authority in connection with the management of plan assets, the Citigroup Affiliated QPAMs and the Citigroup Related QPAMs (including their officers, directors, and agents other than Citicorp, and employees of such Citigroup QPAMs) did not receive direct compensation or knowingly receive indirect compensation in connection with the criminal conduct that is the subject of the Conviction;

(c) The Citigroup Affiliated QPAMs will not employ or knowingly engage any of the individuals that participated in the criminal conduct that is the subject of the Conviction. For the purposes of this paragraph (c), ''participated in'' includes the knowing approval of the misconduct underlying Conviction;

(d) At all times during the Exemption Period, no Citigroup Affiliated QPAM will use its authority or influence to direct an ''investment fund'' (as defined in Section VI(b) of PTE 84–14), that is subject to ERISA or the Code and managed by such Citigroup Affiliated QPAM in reliance on PTE 84–14, or with respect to which a Citigroup Affiliated QPAM has expressly represented to an ERISA-covered plan or IRA with assets invested in such ''investment fund'' that it qualifies as a QPAM or relies on PTE 84–14, to enter into any transaction with Citicorp, or to engage Citicorp to provide any service to such investment fund, for a direct or indirect fee borne by such investment fund, regardless of whether such transaction or service may otherwise be within the scope of relief provided by an administrative or statutory exemption;

(e) Any failure of a Citigroup Affiliated QPAM or a Citigroup Related QPAM to satisfy Section I(g) of PTE 84–14 arose solely from the Conviction;

(f) A Citigroup Affiliated QPAM or a Citigroup Related QPAM did not exercise authority over the assets of any plan subject to Part 4 of Title I of ERISA (an ERISA-covered plan) or section 4975 of the Code (an IRA) in a manner that it knew or should have known would: Further the criminal conduct that is the subject of the Conviction; or cause the Citigroup Affiliated QPAM, the Citigroup Related QPAM or their affiliates to directly or indirectly profit from the criminal conduct that is the subject of the Conviction;

(g) Other than with respect to employee benefit plans maintained or sponsored for its own employees or the employees of an affiliate, Citicorp will not act as a fiduciary within the meaning of section 3(2l)(A)(i) or (iii) of ERISA, or section 4975(e)(3)(A) and (C) of the Code, with respect to ERISA-covered plan and IRA assets; provided, however, that Citicorp will not be treated as violating the conditions of this exemption solely because it acted as an investment advice fiduciary within the meaning of section 3(2l)(A)(ii) or section 4975(e)(3)(B) of the Code;

(h)(1) Each Citigroup Affiliated QPAM must continue to maintain, adjust (to the extent necessary), implement and follow written policies and procedures (the Policies). The Policies must require and be reasonably designed to ensure that:

(i) The asset management decisions of the Citigroup Affiliated QPAM are conducted independently of the corporate management and business activities of Citigroup;

(ii) The Citigroup Affiliated QPAM fully complies with ERISA's fiduciary duties and with ERISA and the Code's prohibited transaction provisions, as applicable with respect to each Covered Plan, and does not knowingly participate in any violation of these duties and provisions with respect to Covered Plans;

(iii) The Citigroup Affiliated QPAM does not knowingly participate in any other person's violation of ERISA or the Code with respect to Covered Plans;

(iv) Any filings or statements made by the Citigroup Affiliated QPAM to regulators, including, but not limited to, the Department, the Department of the Treasury, the Department of Justice, and the Pension Benefit Guaranty Corporation, on behalf of or in relation to Covered Plans, are materially accurate and complete to the best of such QPAM's knowledge at the time;

(v) To the best of the Citigroup Affiliated QPAM's knowledge at the time, the Citigroup Affiliated QPAM does not make material misrepresentations or omit material information in its communications with such regulators with respect to Covered

[37] 49 FR 9494 (March 13, 1984), as corrected at 50 FR 41430 (October 10, 1985), as amended at 70 FR 49305 (August 23, 2005), and as amended at 75 FR 38837 (July 6, 2010).

Plans, or make material misrepresentations or omit material information in its communications with Covered Plans;

(vi) The Citigroup Affiliated QPAM complies with the terms of this exemption; and

(vii) Any violation of, or failure to comply with an item in subparagraphs (ii) through (vi), is corrected as soon as reasonably possible upon discovery, or as soon after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and any such violation or compliance failure not so corrected is reported, upon the discovery of such failure to so correct, in writing, to the head of compliance, and the General Counsel (or their functional equivalent) of the relevant line of business that engaged in the violation or failure, and the independent auditor responsible for reviewing compliance with the Policies. A Citigroup Affiliated QPAM will not be treated as having failed to develop, implement, maintain, or follow the Policies, provided that it corrects any instance of noncompliance as soon as reasonably possible upon discovery, or as soon as reasonably possible after the QPAM reasonably should have known of the noncompliance (whichever is earlier), and provided that it adheres to the reporting requirements set forth in this subparagraph (vii);

(2) Each Citigroup Affiliated QPAM must maintain, adjust (to the extent necessary), and implement a program of training (the Training) to be conducted at least annually for all relevant Citigroup Affiliated QPAM asset/portfolio management, trading, legal, compliance, and internal audit personnel. The Training must:

(i) At a minimum, cover the Policies, ERISA and Code compliance (including applicable fiduciary duties and the prohibited transaction provisions), ethical conduct, the consequences for not complying with the conditions of this four-year exemption (including any loss of exemptive relief provided herein), and prompt reporting of wrongdoing;

(ii) Be conducted by a professional who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code; and

(iii) Be conducted in-person, electronically or via a website;

(i)(1) Each Citigroup Affiliated QPAM, which Citigroup identifies in a certificate signed by the officer who will review and certify the Audit Report (as defined in Section I(i)(5)) pursuant to Section I(i)(8), submits to an audit conducted every two years by an independent auditor, who has been prudently selected and who has appropriate technical training and proficiency with ERISA and the Code, to evaluate the adequacy of, each Citigroup Affiliated QPAM's compliance with the Policies and Training conditions described herein. The audit requirement must be incorporated in the Policies. The last audit period under PTE 2017–05 will extend into the Exemption Period under this proposed exemption; therefore, the audit periods under PTE 2017–05 and this proposed exemption are as follows:

(i) Under PTE 2017–05, the first audit covers the period from July 10, 2018 through July 9, 2019 (and must be completed by January 9, 2020); the second audit covers the period from July 10, 2020 through July 9, 2021 (and must be completed by January 9, 2022); and the third audit covers the period from July 10, 2022 through July 9, 2023 (and must be completed by January 9, 2024).

(ii) The first audit under this proposed four-year exemption (the fourth audit under the totality of exemptive relief) covers the period from July 10, 2024 through July 9, 2025 (and must be completed by January 9, 2026); and the second audit (the fifth audit under the totality of exemptive relief) covers the period from July 10, 2026 through January 9, 2027 (must be completed by July 9, 2027). As described above, the fifth audit period is truncated, so that it expires concurrently with the expiration of the Exemption Period. However, the audit report for the fifth audit period must be completed and delivered timely and despite such report being due to the Department after the expiration of the Exemption Period, the failure to receive such report could impact negatively on Citigroup's ability to claim relief under this exemption during the Exemption Period, if granted.

(2) Within the scope of the audit and to the extent necessary for the auditor, in its sole opinion, to complete its audit and comply with the conditions for relief described herein, and only to the extent such disclosure is not prevented by State or Federal statute, or involves communications subject to attorney client privilege, each Citigroup Affiliated QPAM and, if applicable, Citigroup, will grant the auditor unconditional access to its business, including, but not limited to: Its computer systems; business records; transactional data; workplace locations; training materials; and personnel. Such access is limited to information relevant to the auditor's objectives as specified by the terms of this exemption;

(3) The auditor's engagement must specifically require the auditor to determine whether each Citigroup Affiliated QPAM has developed, implemented, maintained, and followed the Policies in accordance with the conditions of this exemption, and has developed and implemented the Training, as required herein;

(4) The auditor's engagement must specifically require the auditor to test each Citigroup Affiliated QPAM's operational compliance with the Policies and Training. In this regard, the auditor must test, for each QPAM, a sample of such QPAM's transactions involving Covered Plans, sufficient in size and nature to afford the auditor a reasonable basis to determine such QPAM's operational compliance with the Policies and Training;

(5) For each audit, on or before the end of the relevant period described in Section III(i)(1) for completing the audit, the auditor must issue a written report (the Audit Report) to Citigroup and the Citigroup Affiliated QPAM to which the audit applies that describes the procedures performed by the auditor during the course of its examination. The auditor, at its discretion, may issue a single consolidated Audit Report that covers all the Citigroup Affiliated QPAMs. The Audit Report must include the auditor's specific determinations regarding:

(i) The adequacy of each Citigroup Affiliated QPAM's Policies and Training; each Citigroup Affiliated QPAM's compliance with the Policies and Training; the need, if any, to strengthen such Policies and Training; and any instance of the respective Citigroup Affiliated QPAM's noncompliance with the written Policies and Training described in Section III(h) above.

The Citigroup Affiliated QPAM must promptly address any noncompliance and promptly address or prepare a written plan of action to address any determination by the auditor regarding the adequacy of the Policies and Training and the auditor's recommendations (if any) with respect to strengthening the Policies and Training of the respective Citigroup Affiliated QPAM. Any action taken, or the plan of action to be taken, by the respective Citigroup Affiliated QPAM must be included in an addendum to the Audit Report (and such addendum must be completed before the certification described in Section III(i)(7) below). In the event such a plan of action to address the auditor's recommendation regarding the adequacy of the Policies and Training is not completed by the time the Audit

Report is submitted, the following period's Audit Report must state whether the plan was satisfactorily completed. Any determination by the auditor that the respective Citigroup Affiliated QPAM has implemented, maintained, and followed sufficient Policies and Training must not be based solely or in substantial part on an absence of evidence indicating noncompliance. In this last regard, any finding that a Citigroup Affiliated QPAM has complied with the requirements under this subparagraph must be based on evidence that the particular Citigroup Affiliated QPAM has actually implemented, maintained, and followed the Policies and Training required by this exemption. Furthermore, the auditor must not rely solely on the Annual Report created by the compliance officer (the Compliance Officer) as described in Section III(m) below, as the basis for the auditor's conclusions in lieu of independent determinations and testing performed by the auditor as required by Section III(i)(3) and (4) above; and

(ii) The adequacy of the most recent Annual Review described in Section III(m);

(6) The auditor must notify the respective Citigroup Affiliated QPAM of any instance of noncompliance identified by the auditor within five (5) business days after such noncompliance is identified by the auditor, regardless of whether the audit has been completed as of that date;

(7) With respect to each Audit Report, the General Counsel, or one of the three most senior executive officers, of the line of business engaged in discretionary asset management services through the Citigroup Affiliated QPAM with respect to which the Audit Report applies, must certify in writing, under penalty of perjury, that such signatory has reviewed the Audit Report and this exemption; and that, to the best of such signatory's knowledge at the time, such Citigroup Affiliated QPAM has addressed, corrected, or remedied any noncompliance and inadequacy or has an appropriate written plan to address any inadequacy regarding the Policies and Training identified in the Audit Report. Such certification must also include the signatory's determination that, to the best of such signatory's knowledge at the time, the Policies and Training in effect at the time of signing are adequate to ensure compliance with the conditions of this proposed exemption, and with the applicable provisions of ERISA and the Code;

(8) The Risk Management Committee of Citigroup's Board of Directors is provided a copy of each Audit Report; and a senior executive officer of Citigroup or one of its affiliates who reports directly to, or reports to another executive who reports directly to, the highest-ranking compliance officer of Citigroup must review the Audit Report for each Citigroup Affiliated QPAM and must certify in writing, under penalty of perjury, that such officer has reviewed each Audit Report;

(9) Each Citigroup Affiliated QPAM provides its certified Audit Report by electronic mail to: *e-oed@dol.gov;* or by regular mail to: Office of Exemption Determinations (OED), 200 Constitution Avenue NW Suite 400, Washington DC 20210; or by private carrier to: 122 C Street NW, Suite 400, Washington, DC 20001–2109. This delivery must take place no later than forty-five (45) days following completion of the Audit Report. The Audit Report will be made part of the public record regarding this exemption. Furthermore, each Citigroup Affiliated QPAM must make its Audit Report unconditionally available, electronically or otherwise, for examination upon request by any duly authorized employee or representative of the Department, other relevant regulators, and any fiduciary of a Covered Plan;

(10) Each Citigroup Affiliated QPAM and the auditor must submit to OED by electronic mail to: *e-oed@dol.gov:* Any engagement agreement(s) entered into pursuant to the engagement of the auditor under this exemption, no later than two (2) months after the execution of any such engagement agreement;

(11) The auditor must provide the Department, upon request, for inspection and review, access to all the workpapers created and utilized in the course of the audit, provided such access and inspection is otherwise permitted by law; and

(12) Citigroup must notify the Department of a change in the independent auditor no later than two (2) months after the engagement of a substitute or subsequent auditor and must provide an explanation for the substitution or change including a description of any material disputes between the terminated auditor, and Citigroup;

(j) Throughout the Exemption Period, with respect to any arrangement, agreement, or contract between a Citigroup Affiliated QPAM and a Covered Plan, the Citigroup Affiliated QPAM agrees and warrants:

(1) To comply with ERISA and the Code, as applicable with respect to such Covered Plan; to refrain from engaging in prohibited transactions that are not otherwise exempt (and to promptly correct any non-exempt prohibited transactions in accordance with applicable rules under ERISA and the Code); and to comply with the standards of prudence and loyalty set forth in section 404 of ERISA with respect to each such Covered Plan to the extent that section is applicable;

(2) To indemnify and hold harmless the Covered Plan for any actual losses resulting directly from a Citigroup Affiliated QPAM's violation of ERISA's fiduciary duties, as applicable, and of the prohibited transaction provisions of ERISA and the Code, as applicable; a breach of contract by the QPAM; or any claim arising out of the failure of such Citigroup Affiliated QPAM to qualify for the exemptive relief provided by PTE 84–14 as a result of a violation of Section I(g) of PTE 84–14 other than the Conviction. This condition applies only to actual losses caused by the Citigroup Affiliated QPAM's violations. Actual losses include losses and related costs arising from unwinding transactions with third parties and from transitioning Plan assets to an alternative asset manager as well as costs associated with any exposure to excise taxes under Code section 4975 as a result of a QPAM's inability to rely upon the relief in the QPAM Exemption.

(3) Not to require (or otherwise cause) the Covered Plan to waive, limit, or qualify the liability of the Citigroup Affiliated QPAM for violating ERISA or the Code or engaging in non-exempt prohibited transactions;

(4) Not to restrict the ability of such Covered Plan to terminate or withdraw from its arrangement with the Citigroup Affiliated QPAM with respect to any investment in a separately managed account or pooled fund subject to ERISA and managed by such QPAM, with the exception of reasonable restrictions, appropriately disclosed in advance, that are specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors. In connection with any of these arrangements involving investments in pooled funds subject to ERISA entered into after the effective date of this exemption, the adverse consequences must relate to a lack of liquidity of the underlying assets, valuation issues, or regulatory reasons that prevent the fund from promptly redeeming a Covered Plan's investment, and such restrictions must be applicable to all investors in the pooled fund on equal terms and effective no longer than reasonably necessary to avoid the adverse consequences;

(5) Not to impose any fees, penalties, or charges for such termination or

withdrawal with the exception of reasonable fees, appropriately disclosed in advance, that are specifically designed to prevent generally recognized abusive investment practices or specifically designed to ensure equitable treatment of all investors in a pooled fund in the event such withdrawal or termination may have adverse consequences for all other investors, provided that such fees are applied consistently and in like manner to all such investors;

(6) Not to include exculpatory provisions disclaiming or otherwise limiting liability of the Citigroup Affiliated QPAM for a violation of such agreement's terms. To the extent consistent with ERISA Section 410, however, this provision does not prohibit disclaimers for liability caused by an error, misrepresentation, or misconduct of a plan fiduciary or other party hired by the plan fiduciary who is independent of Citigroup, and its affiliates, or damages arising from acts outside the control of the Citigroup Affiliated QPAM; and

(7) Each Citigroup Affiliated QPAM must provide a notice of its obligations under this Section III(j) to each Covered Plan. For all other prospective Covered Plans, the Citigroup Affiliated QPAM will agree to its obligations under this Section III(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and such clients or other written contractual agreement. This condition will be deemed met for each Covered Plan that received a notice pursuant to PTE 2016–14 or PTE 2017–05 that meets the terms of this condition. This condition will also be met where the Citigroup Affiliated QPAM has already agreed to the same obligations required by this Section III(j) in an updated investment management agreement between the Citigroup Affiliated QPAM and a Covered Plan. Notwithstanding the above, a Citigroup Affiliated QPAM will not violate the condition solely because a Covered Plan client refuses to sign an updated investment management agreement;

(k) *Notice to ERISA-covered plan and IRA clients.* Within ninety (90) days after the effective date of this exemption, each Citigroup Affiliated QPAM provides notice of the exemption as published in the **Federal Register** along with a separate summary describing the facts that led to the Conviction (the Summary), which has been submitted to the Department, and a prominently displayed statement (the Statement) that the Conviction results in a failure to meet a condition in PTE 84–14, to each sponsor and beneficial owner of a Covered Plan, or the sponsor of an investment fund in any case where a Citigroup Affiliated QPAM acts only as a sub-advisor to the investment fund in which such ERISA-covered plan and IRA invests.

All prospective Covered Plan clients that enter into a written asset or investment management agreement with a Citigroup Affiliated QPAM (including a participation or subscription agreement in a pooled fund managed by a Citigroup Affiliated QPAM) after the date that is ninety (90) days after the effective date of this exemption must receive the proposed and final exemptions with the Summary and the Statement prior to, or contemporaneously with, the client's receipt of a written asset management agreement from the Citigroup Affiliated QPAM (for avoidance of doubt, all Covered Plan clients of a Citigroup Affiliated QPAM during the Exemption Period must receive the disclosures described in this Section by the later of (i) 90 days after the effective date of the exemption or (ii) the date that a Covered Plan client enters into a written asset or investment management agreement with a Citigroup Affiliated QPAM). Disclosures required under this paragraph (k) may be delivered electronically (including by an email that has a link to this exemption);

(l) The Citigroup Affiliated QPAMs must comply with each condition of PTE 84–14, as amended, with the sole exception of the violation of Section I(g) of PTE 84–14 that is attributable to the Conviction;

(m)(1) Citigroup designates a senior compliance officer (the Compliance Officer) who will be responsible for compliance with the Policies and Training requirements described herein. The Compliance Officer must conduct an annual review for each annual period beginning on January 10, 2023 (the Annual Review), to determine the adequacy and effectiveness of the implementation of the Policies and Training. With respect to the Compliance Officer, the following conditions must be met:

(i) The Compliance Officer must be a professional who has extensive experience with, and knowledge of, the regulation of financial services and products, including under ERISA and the Code; and

(ii) The Compliance Officer must be a senior compliance officer of Citigroup Inc. or one of its affiliates who reports directly to (or reports to another compliance officer who reports directly to) Citigroup Inc.'s highest ranking compliance officer (whose title is currently Global Chief Compliance Officer of Citigroup Inc.);

(2) With respect to each Annual Review, the following conditions must be met:

(i) The Annual Review includes a review of the Citigroup Affiliated QPAM's compliance with and effectiveness of the Policies and Training and of the following: Any compliance matter related to the Policies or Training that was identified by, or reported to, the Compliance Officer or others within the compliance and risk control function (or its equivalent) during the previous year; the most recent Audit Report issued pursuant to this exemption (or pursuant to PTE 2017–05 if no audit report has been issued under this exemption); any material change in the relevant business activities of the Citigroup Affiliated QPAMs; and any change to ERISA, the Code, or regulations related to fiduciary duties and the prohibited transaction provisions that may be applicable to the activities of the Citigroup Affiliated QPAMs;

(ii) The Compliance Officer prepares a written report for each Annual Review (each, an Annual Report) that: (A) summarizes their material activities during the preceding year; (B) sets forth any instance of noncompliance discovered during the preceding year, and any related corrective action; (C) details any change to the Policies or Training to guard against any similar instance of noncompliance occurring again; and (D) makes recommendations, as necessary, for additional training, procedures, monitoring, or additional and/or changed processes or systems, and management's actions on such recommendations;

(iii) In each Annual Report, the Compliance Officer must certify in writing that to the best of their knowledge at the time: (A) The report is accurate; (B) the Policies and Training are working in a manner which is reasonably designed to ensure that the Policies and Training requirements described herein are met; (C) any known instance of noncompliance during the preceding year and any related correction taken to date have been identified in the Annual Report; and (D) the Citigroup Affiliated QPAMs have complied with the Policies and Training and/or corrected (or is correcting) any known instances of noncompliance in accordance with Section III(h) above;

(iv) Each Annual Report must be provided to: (A) the person or persons who certify as to the current or most recent preceding Audit Report provided pursuant to Section III(i)(7) above, and (B) the head of compliance and the

General Counsel (or their functional equivalent) of the relevant Citigroup Affiliated QPAM; and must be made unconditionally available to the independent auditor described in Section III(i) above;

(v) Each Annual Review, including the Compliance Officer's written Annual Report, must be completed within three (3) months following the end of the period to which it relates;

(n) Citigroup imposes its internal procedures, controls, and protocols to reduce the likelihood of any recurrence of conduct that is the subject of the Conviction;

(o) Citigroup complies in all material respects with the requirements imposed by a U.S. regulatory authority in connection with the Conviction;

(p) Each Citigroup Affiliated QPAM will maintain records necessary to demonstrate that the conditions of this exemption have been met, for six (6) years following the date of any transaction for which such Citigroup Affiliated QPAM relies upon the relief in the exemption;

(q) During the Exemption Period, Citigroup:

(1) Immediately discloses to the Department any Deferred Prosecution Agreement (a DPA) or a Non-Prosecution Agreement (an NPA) with the U.S. Department of Justice, entered into by Citigroup or any of its affiliates in connection with conduct described in Section I(g) of PTE 84–14 or section 411 of ERISA; and

(2) immediately provides the Department any information requested by the Department, as permitted by law, regarding the agreement and/or conduct and allegations that led to the agreement;

(r) Each Citigroup Affiliated QPAM, in its agreements with, or in other written disclosures provided to Covered Plans, clearly and prominently informs Covered Plan clients of the Covered Plan's right to obtain a copy of the Policies or a description (Summary Policies), which accurately summarizes key components of the QPAM's written Policies developed in connection with this exemption. If the Policies are thereafter changed, each Covered Plan client must receive a new disclosure within six (6) months following the end of the calendar year during which the Policies were changed. If the Applicant meets this disclosure requirement through Summary Policies, changes to the Policies shall not result in the requirement for a new disclosure unless, as a result of changes to the Policies, the Summary Policies are no longer accurate. With respect to this requirement, the description may be continuously maintained on a website, provided that such website link to the Policies or the Summary Policies is clearly and prominently disclosed to each Covered Plan;

(s) A Citigroup Affiliated QPAM or a Citigroup Related QPAM will not fail to meet the terms of this exemption, solely because a different Citigroup Affiliated QPAM or Citigroup Related QPAM fails to satisfy a condition for relief described in Sections III(c), (d), (h), (i), (j), (k), (l), (p) and (r); or if the independent auditor described in Section III(i) fails to comply with a provision of the exemption, other than the requirement described in Section III(i)(11), provided that such failure did not result from any actions or inactions of Citigroup or its affiliates; and

(t) All the material facts and representations set forth in the Summary of Facts and Representations are true and accurate.

Effective Date: This proposed four-year exemption, will be effective from January 10, 2023, through January 9, 2027.

Signed at Washington, DC.

George Christopher Cosby,

Director, Office of Exemption, Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. 2022–25039 Filed 11–15–22; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

Proposed Renewal of the Approval of Information Collection Requirements; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), 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 and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA). The program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Federal Contract Compliance Programs (OFCCP) is soliciting comments concerning its proposal to obtain approval from the Office of Management and Budget (OMB) to renew the following information collections: ''Vietnam Era Veterans' Readjustment Assistance Act, as Amended'' (OMB Control No. 1250–0004) and ''Section 503 of the Rehabilitation Act of 1973, as Amended'' (OMB Control No. 1250–0005). The current OMB approvals for these information collections expire on April 30, 2023 and May 31, 2023, respectively. A copy of the proposed information collection requests can be obtained by contacting the office listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice or by accessing it at *www.regulations.gov.*

DATES: Written comments must be submitted using one of the methods listed in the addresses section below on or before January 17, 2023.

ADDRESSES: You may submit comments by any of the following methods:

Electronic comments: The Federal eRulemaking portal at *www.regulations.gov.* Follow the instructions found on that website for submitting comments.

Mail, Hand Delivery, Courier: Addressed to Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210.

Instructions: Please submit one copy of your comments by only one method. For faster submission, we encourage commenters to transmit their comment electronically via the *www.regulations.gov* website. Comments that are mailed to the address provided above must be postmarked before the close of the comment period. All submissions must include OFCCP's name for identification. Comments submitted in response to the notice, including any personal information provided, become a matter of public record and will be posted on *www.regulations.gov.* Comments will also be summarized and/or included in the request for OMB approval of the information collection request.

FOR FURTHER INFORMATION CONTACT: Tina T. Williams, Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs, 200 Constitution Avenue NW, Room C–3325, Washington, DC 20210. Telephone: (202) 693–0103 or toll free at 1–800–397–6251. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services. Copies of this notice may be obtained in

alternative formats (large print, braille, audio recording) upon request by calling the numbers listed above.

SUPPLEMENTARY INFORMATION:

I. *Background:* OFCCP administers and enforces the three equal employment opportunity authorities listed below.

- Executive Order 11246, as amended (E.O. 11246)
- Section 503 of the Rehabilitation Act of 1973, as amended (section 503)
- Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA)

E.O. 11246 requires affirmative action and prohibits covered Federal contractors from discriminating against applicants and employees based on race, color, religion, sex, sexual orientation, gender identity, or national origin. E.O. 11246 also prohibits contractors from taking discriminatory actions, including firing, against applicants and employees for inquiring about, discussing, or disclosing their own compensation information and, in certain instances, the compensation information of their co-workers. E.O. 11246 applies to Federal contractors and subcontractors and to federally assisted construction contractors holding a government contract in excess of $10,000, or government contracts that have, or can reasonably be expected to have, an aggregate total value exceeding $10,000 in a 12-month period. E.O. 11246 also applies to government bills of lading, depositories of Federal funds in any amount, and financial institutions that are issuing and paying agents for U.S. savings bonds.

Section 503 prohibits employment discrimination against applicants and employees because of physical or mental disability and requires contractors and subcontractors to take affirmative action to employ and advance in employment qualified individuals with disabilities. Section 503 applies to Federal contractors and subcontractors with contracts in excess of $15,000.[1]

VEVRAA requires contractors to take affirmative action to employ, and advance in employment, qualified protected veterans. VEVRAA applies to Federal contractors and subcontractors with contracts of $150,000 or more.[2]

II. *Review Focus:* OFCCP is particularly interested in comments that:

- Evaluate the proposed changes to the Voluntary Self-Identification of Disability form;
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

III. *Current Actions:* OFCCP seeks the approval of the renewal of these information collections in order to carry out its responsibility to enforce the affirmative action and nondiscrimination provisions of VEVRAA and section 503, which it administers.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: 38 U.S.C. 4212, Vietnam Era Veterans' Readjustment Assistance Act, as Amended.

OMB Number: 1250–0004.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 97,271 Contractor Establishments. 35,017,560 Applicants.

Total Annual Responses: 97,271 Contractor Establishments. 35,017,560 Applicants.

Average Time per Response: 16.8 hours per Contractor Establishment. .08 hours (5 minutes) per Applicant.

Estimated Total Burden Hours: 4,439,563.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,330,654.

Type of Review: Renewal.

Agency: Office of Federal Contract Compliance Programs.

Title: 29 U.S.C 793, Section 503 of the Rehabilitation Act of 1973, as Amended.

OMB Number: 1250–0005.

Agency Number: None.

Affected Public: Business or other for profit; individuals.

Total Respondents: 97,271 Contractor Establishments. 35,017,560 Applicants. 5,166,988 Employees.

Total Annual Responses: 97,271 Contractor Establishments. 35,017,560 Applicants. 5,166,988 Employees.

Average Time per Response: 4.5 hours per Contractor Establishment. .08 hours (5 minutes) per Applicant. .08 hours (5 minutes) per Employee.

Estimated Total Burden Hours: 3,650,074.

Frequency: On occasion.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,330,654.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection requests; they will also become a matter of public record.

Dated: November 8, 2022.

Tina T. Williams,

Director, Division of Policy and Program Development, Office of Federal Contract Compliance Programs.

[FR Doc. 2022–24930 Filed 11–15–22; 8:45 am]

BILLING CODE 4510–CM–P

[1] Effective October 1, 2010, the coverage threshold under section 503 increased from $10,000 to $15,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 75 FR 53129 (Aug. 30, 2010).

[2] Effective October 1, 2015, the coverage threshold under VEVRAA increased from $100,000 to $150,000, in accordance with the inflationary adjustment requirements in 41 U.S.C. 1908. *See Federal Acquisition Regulation; Inflation Adjustment of Acquisition-Related Thresholds,* 80 FR 38293 (July 2, 2015).

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0024; NARA–2023–007]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by January 2, 2023.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://*

www.regulations.gov/docket/NARA-22-0024/document. This is a direct link to the schedules posted in the docket for this notice on *regulations.gov*. You may submit comments by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov*, you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Strategy and Performance Division, by email at *regulation_comments@nara.gov* or at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule.

We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of Commerce, National Oceanic and Atmospheric Administration, Coastal Wetlands, Planning, Protection, and Restoration Files (DAA–0370–2021–0001).
2. Department of Commerce, National Oceanic and Atmospheric Administration, Southeastern Region Fisheries Service Logbooks (DAA–0370–2022–0003).
3. Department of Transportation, Federal Aviation Administration, Air Traffic Safety Oversight Credentialing System (AOVC) (DAA–0237–2021–0007).
4. Department of Transportation, Federal Aviation Administration, Weather Systems Processor (WSP) (DAA–0237–2021–0035).
5. Department of Transportation, Federal Aviation Administration, FAA Hotline Tips, Complaints, and the AIR21 Whistleblower Protection Program (DAA–0237–2022–0010).
6. Department of Transportation, Federal Aviation Administration, Federal Notice to Air Mission (NOTAM) System (DAA–0237–2022–0014).
7. Department of Transportation, Federal Aviation Administration, Records of the Security and Hazardous Materials Organization (DAA–0237–2022–0015).
8. Federal Communications Commission, Public Safety and Homeland Security Bureau, Enhanced 911 records (DAA–0173–2021–0003).
9. Securities and Exchange Commission, Agency-Wide, Registration Statements, Reports, and Other Filings (DAA–0266–2021–0007).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–24911 Filed 11–15–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 10:00 a.m., November 17, 2022.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street (All visitors must use Diagonal Road Entrance), Alexandria, VA 22314–3428

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: Board Briefing, Share Insurance Fund Quarterly Report.

CONTACT PERSON FOR MORE INFORMATION: Melane Conyers-Ausbrooks, Secretary of the Board, Telephone: 703–518–6304.

Melane Conyers-Ausbrooks,

Secretary of the Board.

[FR Doc. 2022–25011 Filed 11–14–22; 11:15 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended, notice is hereby given that 21 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference or videoconference.

DATES: See the **SUPPLEMENTARY INFORMATION** section for individual meeting times and dates. All meetings are Eastern time and ending times are approximate:

ADDRESSES: National Endowment for the Arts, Constitution Center, 400 7th St. SW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Daniel Beattie, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *hales@arts.gov,* or call 202/682–5688.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chair of March 11, 2022, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

The upcoming meetings are:

Our Town (review of applications): This meeting will be closed.

Date and time: December 1, 2022; 11:00 a.m. to 1:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 1, 2022; 11:30 a.m. to 1:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 1, 2022; 2:30 p.m. to 4:30 p.m.

Theater (review of applications): This meeting will be closed.

Date and time: December 1, 2022; 11:00 a.m. to 1:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 5, 2022; 2:00 p.m. to 4:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 6, 2022; 11:30 a.m. to 1:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 6, 2022; 2:00 p.m. to 4:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 7, 2022; 2:00 p.m. to 4:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2022; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 7, 2022; 2:30 p.m. to 4:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 7, 2021; 2:00 p.m. to 4:00 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 8, 2021; 11:30 a.m. to 1:30 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 8, 2022; 1:00 p.m. to 3:00 p.m.

Local Arts Agencies (review of applications): This meeting will be closed.

Date and time: December 8, 2022; 3:30 p.m. to 5:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 8, 2022; 2:00 p.m. to 4:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Date and time: December 8, 2022; 1:30 p.m. to 3:30 p.m.

Museums (review of applications): This meeting will be closed.

Date and time: December 8, 2022; 11:30 a.m. to 1:30 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Date and time: December 9, 2022; 2:00 p.m. to 4:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 13, 2022; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 14, 2022; 1:00 p.m. to 3:00 p.m.

Folk and Traditional Arts (review of applications): This meeting will be closed.

Date and time: December 14, 2022; 1:00 p.m. to 3:00 p.m.

Dated: November 9, 2022.

Daniel Beattie,

Director, National Endowment for the Arts.

[FR Doc. 2022–24879 Filed 11–15–22; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Business and Operations Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Business and Operations Advisory Committee (#9556).

DATE AND TIME: December 12, 2022; 8:30 a.m.–5:00 p.m. (Eastern).

PLACE: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual). To attend the virtual meeting, please send your request for the meeting link to the following email address: *negglest@nsf.gov.*

TYPE OF MEETING: Open.

CONTACT PERSON: NaChanza Eggleston, National Science Foundation, 2415

Eisenhower Avenue, Alexandria, VA 22314; Telephone: (703) 292–8100.

PURPOSE OF MEETING: To provide advice concerning issues related to the oversight, integrity, development and enhancement of NSF's business operations.

AGENDA

- Welcome/Introductions/Previous Recommendations
- Updates: Annual Conflicts of Interest; BFA; OIRM; Budget/OLPA
- Knowledge Management at NSF
- Hybrid Workforce Evaluation
- Subcommittee on NSF's Information Technology and Enterprise Architecture Strategy
- Meeting with Karen Marrongelle and Teresa Grancorvitz

Dated: November 10, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–24907 Filed 11–15–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: Alan T. Waterman Award Committee (#1172).

DATE AND TIME: January 30, 2023; 12:30 p.m.–5:30 p.m. (Eastern).

PLACE: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

TYPE OF MEETING: Closed.

CONTACT PERSONS: Gayle Pugh Lev, OD/OIA, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–7589.

PURPOSE OF MEETING: Virtual meeting to provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

AGENDA: To review and evaluate nominations as part of the selection process for awards.

REASON FOR CLOSING: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c), (6) of the Government in the Sunshine Act.

Dated: November 10, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–24906 Filed 11–15–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

President's Committee on the National Medal of Science; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub., L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name and Committee Code: Presidential Committee on the National Medal of Science (#1182).

Date and Time: December 15, 2022; 8:30 a.m.–5 p.m. (Eastern).

Place: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Type of Meeting: Closed.

Contact Persons: Gayle Pugh Lev, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–7589.

Purpose of Meeting: Virtual meeting to provide advice and recommendations to the President in the selection of the 2022 National Medal of Science laureates. The committee assists the President in carrying out his responsibilities under 42 U.S.C. 1880–1881.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c), (6) of the Government in the Sunshine Act.

Dated: November 10, 2022.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2022–24934 Filed 11–15–22; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 72–1014, 72–51, 50–247 and 50–286; NRC–2022–0152]

Holtec Decommissioning International, LLC, Indian Point Energy Center, Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing an exemption in response to a request submitted by Holtec Decommissioning International, LLC (HDI), on behalf of Holtec Indian Point 2, LLC and Holtec Indian Point 3, LLC on March 24, 2022. This exemption would, if granted, permit HDI to load up to three MPC–32Ms, using Amendment No. 15 of the Holtec International Certificate of Compliance (CoC) No. 1014 for the HI–STORM 100 storage system, with either up to 32 fuel assemblies each containing either a Californium-252 (Cf-252) or an Antimony-Beryllium (Sb-Be) neutron source assemblies (NSA) with sufficient cooling time, or a combination of up to five Plutonium-Beryllium (Pu-Be) NSAs and up to all of the remaining basket locations with fuel assemblies each containing either a Cf-252 or an Sb-Be NSA with sufficient cooling time. Further, it would permit HDI to load the fuel assemblies containing either Cf-252 or Sb-Be NSAs in any location in the basket and the fuel assemblies containing Pu-Be NSAs such that one is located in the center of the basket and no more than one NSA is located in each of the four basket quadrants.

DATES: The exemption was issued on November 7, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0152 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0152. Address questions about Docket IDs to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov*

or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Chris Allen, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6877; email: *William.Allen@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Holtec Decommissioning International, LLC (HDI), holds a general license for the Indian Point Energy Center Independent Spent Fuel Storage Installation (ISFSI) under provisions in part 72 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Licensing Requirements for the Independent Storage of Spent Nuclear Fuel, High-Level Radioactive Waste, and Reactor-Related Greater Than Class C Waste.'' Under 10 CFR 72.212(a)(2), (b)(3), (b)(5)(i), (b)(11) and 72.214, a general licensee may store spent fuel in a cask, so long as it is one of the approved casks listed in 10 CFR 72.214 and the general licensee conforms to the terms, conditions, and specifications of the relevant certificate of compliance (CoC) or amended CoC. HDI has stated that it plans to use the HI–STORM 100 dry storage system, CoC No. 1014, Amendment No. 15 in an upcoming spent fuel loading campaign.

II. Request/Action

By letter dated March 24, 2022, as supplemented on June 17, 2022, HDI, on behalf of Holtec Indian Point 2, LLC and Holtec Indian Point 3, LLC, requested an exemption under 10 CFR 72.7. HDI further clarified its request during a Microsoft Teams call on September 20, 2022. HDI specifically requested an exemption from the requirements of 10 CFR 72.212(b)(3), and the portion of 10 CFR 72.212(b)(11) that states ''[t]he licensee shall comply with the terms, conditions, and specifications of the certificate of compliance (CoC).'' The exemption request would permit, if granted, HDI to load up to three MPC–32Ms, using Amendment No. 15 of the Holtec International Certificate of Compliance (CoC) No. 1014 for the HI–STORM 100 storage system, with either up to 32 fuel assemblies each containing either a Californium-252 (Cf-252) or an Antimony-Beryllium (Sb-Be) NSA with sufficient cooling time, or a combination of up to five fuel assemblies each containing a Plutonium-Beryllium (Pu-Be) NSA and up to all of the remaining basket locations with fuel assemblies each containing either a Cf-252 or an Sb-Be NSA with sufficient cooling time. Further, as discussed later, it would permit HDI to load the fuel assemblies containing either Cf-252 and Sb-Be NSAs in any location in the basket and the fuel assemblies containing Pu-Be NSAs such that one is located in the center of the basket and no more than one is located in each of the four basket quadrants. Additionally, although HDI's analysis included information about polonium beryllium (Po-Be) NSAs, based on its September 20, 2022, Microsoft Teams call, HDI indicated that they only wanted to load Cf-252 and Sb-Be NSAs.

Although HDI only requested exemptions from 10 CFR 72.212(b)(3) and (b)(11), to carry out this action, the NRC would also need to grant exemptions from 72.212(a)(2), (b)(5)(i), and 72.214. Consequently, in evaluating the request, the NRC also considered, pursuant to its authority in 10 CFR 72.7, exempting HDI from similar requirements in 10 CFR 72.212(a)(2), 10 CFR 72.212(b)(5)(i); and 10 CFR 72.214, ''List of Approved Spent Fuel Storage Casks.'' For clarity, when this **Federal Register** notice refers to HDI's requested exemption, it means both the two provisions from which HDI requested exemption and the additional provisions from which the NRC staff is considering exempting HDI on its own initiative.

III. Discussion

Pursuant to 10 CFR 72.7, the Commission may, upon application by any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations of 10 CFR part 72 as it determines are authorized by law and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

The NRC staff prepared a safety evaluation report to document its safety evaluation of the requested exemption. As summarized in this document, the NRC's safety review concluded that the requested exemption meets the requirements for issuance in 10 CFR 72.7.

A. The Exemption Is Authorized by Law

The Commission has the legal authority to issue exemptions from the requirements of 10 CFR part 72 as provided in 10 CFR 72.7. Issuance of this exemption is consistent with the Atomic Energy Act of 1954, as amended, and is not otherwise inconsistent with NRC's regulations or other applicable laws. Therefore, issuance of the exemption is authorized by law.

B. Will Not Endanger Life or Property or the Common Defense and Security

The staff reviewed HDI's exemption request and concludes, as discussed further, that the proposed exemption from certain requirements of 10 CFR part 72 will not cause the HI–STORM 100 storage cask to encounter conditions beyond those for which it has already been evaluated and demonstrated to meet the applicable safety requirements in 10 CFR part 72. The staff followed the guidance in NUREG–2215, ''Standard Review Plan for Spent Fuel Dry Storage Systems and Facilities,'' April 2020, to complete its safety evaluation.

Safety Review of the Requested Exemption

HDI submitted an exemption request to deviate from the requirement in CoC No. 1014, Appendix D, table 2.1–1, section V, ''MPC MODEL: MPC–32M,'' Item C of Amendment No. 15 for CoC No. 1014 only permits general licensees to load a single NSA per cask. Further, per Final Safety Analysis Report (FSAR) table 2.II.1.1, Rev. 22, the single NSA must be located in a cell in the inner part of the basket (*i.e.,* fuel storage location 13, 14, 19, or 20). The staff reviewed the exemption request and concluded that the proposed exemption from certain requirements of 10 CFR part 72 will not cause the HI–STORM 100 storage system to encounter conditions beyond those for which it has been evaluated and demonstrated to meet the applicable safety requirements in 10 CFR part 72.

The staff determined that the presence of additional NSAs or the presence of those NSAs in different locations throughout the basket will not cause the bounding canister weight previously evaluated in approving Amendment No. 15 to be exceeded, making a structural evaluation unnecessary. Further, the staff determined that the decay heat contribution from activated metal associated with the NSAs at issue in the specified locations is negligible compared to the decay heat from the fuel assembly.

Consequently, the staff determined that a thermal evaluation is unwarranted. Since the NSAs are located inside the confinement boundary of the multi-purpose canister (MPC) and changing the number of NSAs, or their locations, will not change that fact, a confinement evaluation is also not necessary. In addition, increasing the neutron source terms by adding NSAs in different locations does not increase the multiplication factor. Therefore, criticality safety is not affected, and a criticality evaluation is

unnecessary. Therefore, shielding is the only area potentially affected by the requested exemption.

Shielding

The current CoC authorizes general licensees to load only a single fuel assembly containing an NSA per cask, and that fuel assembly must be loaded in a cell within the inner part of the basket (*i.e.,* fuel storage location 13, 14, 19, or 20) because NSAs can have a significant neutron source term. The applicant developed a quantitative analysis that explicitly evaluated the neutron dose rates associated with storing more than one fuel assembly containing an NSA per cask to support new loading requirements. In its analysis, the applicant evaluated two possible high-level loading scenarios: a maximum of 32 fuel assemblies each containing an NSA and a maximum of five fuel assemblies each containing a Pu-Be NSA.

For both scenarios, the applicant considered three primary NSA types in its evaluation: Cf-252, Pu-Be, and Po-Be. During the September 20, 2020, Microsoft Teams call, HDI indicated that they only wanted to load Cf-252 and Sb-Be NSAs. Consequently, the staff did not consider Po-Be NSAs in its evaluation of this exemption. Cf-252 and Pu-Be NSAs have half-lives of 2.646 years and 87.7 years, respectively. The applicant also considered a secondary NSA type, Sb-Be, with a half-life of 60.2 days. For Cf-252, which decays by neutron emission, the analysis identified that the neutron source strength will reduce gradually over time because the half-life is on the order of a few years; neither long enough for the source strength to remain relatively constant, nor short enough for the reduction to be quick. For Pu-Be, which generates neutrons when the beryllium absorbs an alpha particle emitted by the plutonium, the analysis identified that the neutron source strength will remain essentially the same as when the NSA was manufactured (*i.e.,* it will not reduce significantly over time) because the half-life for plutonium is very long. For Sb-Be, which produces neutrons when the beryllium interacts with a high energy gamma emitted by activated antimony (*i.e.,* antimony that has absorbed neutrons), the analysis identified that the neutron source strength will reduce very quickly over time because of the short half-life of the activated antimony.

In evaluating the scenario of loading a maximum of 32 fuel assemblies containing NSAs, the applicant determined, using the initial source strength and the half-life values in the previous paragraph, that after seven half-lives the neutron source strength of a fuel assembly containing either a Cf-252 or an Sb-Be NSA is negligibly higher than the neutron source strength of a design basis fuel assembly. Therefore, the applicant asserted that, after seven half-lives, the presence of either a Cf-252 or an Sb-Be NSA within a design basis fuel assembly will not significantly increase the dose rate from a design basis fuel assembly. Consequently, the applicant concluded that up to 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA can be loaded per basket, and that they can be loaded into any basket location.

Staff reviewed the applicant's approach. In reviewing this approach, staff found that the applicant could load up to 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA—with those 32 fuel assemblies having any combination of Cf-252 and Sb-Be NSAs—and that the neutron source strength of each fuel assembly with either a Cf-252 NSA or an Sb-Be NSA increased by only a small amount, approximately 2×10^{-6} neutrons per second, after seven half-lives relative to a design basis fuel assembly. Because this increase is so small, after seven half-lives, the dose rate of a canister containing 32 fuel assemblies with either Cf-252 or Sb-Be NSAs that have undergone seven half-lives of decay will be very similar to the dose rate of a container containing 32 design basis fuel assemblies. More specifically, accounting for statistical uncertainties, dose rates would potentially increase a millirem/hr or less, if at all, under both normal and accident conditions. The NRC staff considers dose rate increases of this magnitude to be negligible relative to the dose rates from design basis fuel assemblies. Therefore, the staff determined that the analysis demonstrated that dose rates under both normal and accident conditions would increase negligibly by the addition of 32 fuel assemblies containing either Cf-252 or Sb-Be NSAs after seven half-lives of decay time. Further, because a canister loaded with 32 fuel assemblies each containing either a Cf-252 or Sb-Be NSA would have an NSA loaded in every fuel loading location and because the effect on dose would be negligible, the NRC staff concludes that loading fuel assemblies containing either a Cf-252 or an Sb-Be NSA in any location in the basket would have a negligible effect on dose.

In evaluating loading a maximum of five fuel assemblies each containing a Pu-Be NSA the applicant performed dose rate calculations assuming each NSA had the design basis fuel assembly neutron source term in HI–STORM 100 FSAR table 5.2.15 rather than the actual source strength of an NSA. The applicant evaluated dose rates using the general-purpose, continuous-energy, generalized-geometry, time-dependent Monte Carlo N-Particle (MCNP) code. The applicant used MCNP5 version 1.41 to model the MPC–32M, with up to five NSAs per basket, in both the HI–TRAC Version MS and the HI–STORM 100S Version E overpack. The MCNP model located one NSA in the center of the MPC–32M (*i.e.,* cell locations 13, 14, 19 and 20 of appendix D, figure 2.1–1). In addition, the model located the remaining four NSAs on the basket periphery with one NSA in each basket quadrant.

The applicant calculated the maximum dose rate from the NSAs in the fuel assembly and not the maximum total dose rate from the fuel assembly and the NSA. The applicant asserted that this approach would result in conservative dose rates because the maximum dose rate due to the design basis fuel assembly may be in a different location (*e.g.,* the midplane of the overpack radial surface) from the maximum dose rate due to the NSAs. The applicant calculated dose rates at the same surface and one-meter locations for design basis fuel under normal conditions as reported in HI–STORM 100 FSAR tables 5.II.1.1 and 5.II.1.3. Additionally, the applicant evaluated the dose rate at 100 meters for design basis fuel in the HI–TRAC under accident conditions at the same locations as reported in HI–STORM 100 FSAR table 5.II.1.4. The analysis determined the maximum dose rate increase under normal conditions due to adding four fuel assemblies each containing a Pu-Be NSA, in addition to the fuel assembly containing an NSA authorized by CoC No. 1014, at the following locations: the overpack surface, one meter from the overpack surface, the HI–TRAC surface, and one meter from the HI–TRAC surface. The analysis calculated the following dose rate increases at these locations: 3.44 millirem per hour (mrem/hr), 0.78 mrem/hr, 1099.92 mrem/hr and 122.69 mrem/hr respectively. Finally, the analysis determined the maximum dose rate increase under accident conditions due to adding four NSAs, in addition to the NSA authorized by CoC No. 1014, at 100 meters from the HI–TRAC is 0.27 mrem/hr.

In conducting its evaluation, the applicant assumed the Pu-Be NSA source strength equaled the design basis fuel assembly source strength of 1.4×10^{9} neutrons per second. The staff

determined that this approach is conservative because the initial source term of a Pu-Be NSA is approximately 1.5×10^6 neutrons per second which is less than the value HDI used. Because the MCNP code is a standard tool in the nuclear industry for performing Monte Carlo criticality safety and radiation shielding calculations, the staff found MCNP an acceptable code for this application. Because the exemption request is limited to fuel stored in an MPC–32M, which can only be stored in the HI–STORM 100S Version E overpack, and because the HI–TRAC MS can only be used with the HI–STORM 100S Version E overpack, staff found it acceptable to limit the MCNP analyses to the HI–TRAC MS and the HI–STORM 100S Version E overpack. In addition, the applicant calculated the dose rates related to this exemption at the same locations at which it calculated the dose rates for HI–STORM Amendment No. 15. In issuing Amendment No. 15, staff determined the dose rates at these locations satisfied as low as is reasonably achievable (ALARA) principles, where relevant, and demonstrated compliance with 10 CFR 72.104 and 10 CFR 72.106, as well as 10 CFR part 20, as documented in Section 6 of the SER staff prepared to support issuance of Amendment No. 15. Nothing about this exemption would affect, or in any way make inapplicable, the staff's previous finding that calculating the dose rate at those locations is acceptable. Therefore, staff finds these locations are appropriate for calculating dose rates associated with this exemption.

Further, the staff reviewed the applicant's approach of only calculating the maximum dose rate caused by the NSAs in the fuel assemblies and not the overall maximum dose rate. The total dose rate from two different sources (*i.e.,* the design basis fuel assembly and the NSA) is simply the sum of the individual dose rates. Consequently, by taking the dose rate caused by design basis fuel assemblies in the canister, which are found in FSAR tables 5.II.1.1, 5.II.1.3 and 5.II.1.4 and adding them to the dose rate caused by the NSAs within fuel assemblies, the staff was able to evaluate the overall maximum dose rate as part of its review. Therefore, the staff also found acceptable the applicant's approach of only calculating the maximum dose rate due to fuel assemblies containing NSAs.

When the staff approved the MPC–32M, the HI–TRAC MS and the HI–STORM 100S Version E overpack, the staff identified two accident conditions that increased the dose at the controlled area boundary: (1) the draining of the neutron shield water jacket for the transfer cask and (2) a non-mechanistic tipover of the overpack which exposes the bottom of the cask. As discussed in the SER approving the HI–STORM 100S Version E overpack, staff found it very unlikely that the Version E overpack would tip over. Nothing about this exemption would affect that conclusion. Therefore, the staff found the applicant's approach of modeling the HI–TRAC with the assumed loss of the neutron absorber as the bounding accident acceptable for this evaluation.

NRC staff concluded that the increased dose rates under normal conditions from the presence of up to five fuel assemblies containing Pu-Be NSAs are acceptable for the HI–STORM overpack because the dose rate increase is less than a mrem/hr for all locations except at the midplane of the radial surface on the overpack surface where it increased by less than four mrem/hr. Relative to the dose rates from loading the canister as already-approved, staff considers dose rate increases of this magnitude negligible. Additionally, the dose rate increases at a distance of one meter are even less than the dose rate increases at the surface. Thus, relative to the dose rates from loading the canister as already approved, the staff also considers these dose rate increases to be negligible. Further, the HI–TRAC MS dose rates increased by less than ten percent compared to the dose rates in HI–STORM 100 FSAR table 5.II.1.3 at all locations both on the HI–TRAC MS surface and one meter from the HI–TRAC MS surface except at the HI–TRAC MS radial surface midplane where the dose rate increased by 28 percent (*i.e.,* 1099.92 mrem/hr). Staff considers the dose rate increase at the HI–TRAC MS radial surface midplane a very localized effect due to the reduced neutron shielding capability of the HI–TRAC MS compared to the HI–STORM 100S Version E overpack. The staff considers the HI–TRAC MS dose rate increases, including the increase at the radial surface midplane, acceptable for the following reasons. First, radiological workers would only be exposed to these increased dose rates for relatively short periods of time. Second, members of the public will be exposed to even lower dose rates since 10 CFR 72.106(b) requires a minimum distance of 100 meters between spent fuel and members of the public and dose rates decrease as distance increases. NRC staff also determined that an increase in the HI–TRAC dose rates of less than ten percent compared to the dose rates in HI–STORM 100 FSAR table 5.II.1.4 for the HI–TRAC MS accident condition dose rates due to the presence of up to five fuel assemblies containing Pu-Be NSAs is acceptable because staff confirmed through hand calculations that the dose at 100 meters meets the 10 CFR 72.106 requirement assuming a 30-day duration. Finally, after adding the dose rates considered when issuing CoC 1014, Amendment No. 15 to the dose rate increases that would result from approving this exemption, staff finds that canisters loaded in accordance with this exemption will continue to satisfy overall dose limits of 10 CFR 72.104 for normal conditions, 10 CFR 72.106 for accident conditions, and the limits in 10 CFR part 20. These conclusions only apply, however, when the fuel assemblies containing the Pu-Be NSAs are loaded such that one is located in the center of the basket (*i.e.,* fuel storage location 13, 14, 19, or 20) and no more than one is located in each of the four basket quadrants.

As referenced earlier, if granted, this exemption would permit HDI to load a fuel canister with up to five fuel assemblies each containing a Pu-Be NSA and up to all of the remaining basket locations with fuel assemblies each containing either a Cf-252 or an Sb-Be NSA that has decayed for at least seven half-lives. HDI did not provide an analysis of this specific configuration. That said, as discussed previously, staff has already analyzed a canister loaded with five fuel assemblies each containing a Pu-Be NSA and a canister loaded with 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA that has decayed for at least seven half-lives. Staff concluded that the neutron source strength of a fuel assembly with either a Cf-252 NSA or an Sb-Be NSA increased by only a small amount—approximately 2×10^{-6} neutrons per second—after seven half-lives relative to a design basis fuel assembly. As discussed before, the staff concluded that that source strength increase was so small that the neutron dose rate increase, if any, associated with loading a canister with 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA would be negligible. As the dose rate increase from loading a canister with 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA would be negligible, it follows that adding 27 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA that has undergone seven half-lives of decay, will have a similarly negligible effect on dose rate because the increase in neutron source strength will be even smaller than when loading 32 such fuel assemblies. Consequently, loading 27

fuel assemblies each containing either a Cf-252 or an Sb-Be NSA that has undergone seven half-lives of decay into a canister with five fuel assemblies each containing a Pu-Be NSA will negligibly increase the neutron dose rate, if at all, beyond the neutron dose rate associated with loading just five fuel assemblies each containing a Pu-Be NSA. Therefore, the staff determined that under this loading scenario—up to five fuel assemblies each containing a Pu-Be NSA and up to 27 fuel assemblies, each containing a Cf-252 of Sb-Be NSA—the dose rates under both normal and accident conditions will continue to satisfy overall dose limits of 10 CFR 72.104 for normal conditions, 10 CFR 72.106 for accident conditions, and the limits in 10 CFR part 20. Finally, the staff determined that this loading scenario, along with the scenario of loading 32 fuel assemblies each containing a Cf-252 or an Sb-Be NSA bound all loading scenarios that this exemption, if granted, would permit because the other loading scenarios will be a version of these two scenarios with fewer fuel assemblies containing NSAs and, therefore, less dose.

As a final note, the staff's analysis of a canister loaded with five fuel assemblies each containing a Pu-Be NSA depends on HDI's dose rate analysis. As discussed previously, that analysis was based on a model with one NSA in the center of the MPC–32M (*i.e.,* cell locations 13, 14, 19 and 20 of appendix D, figure 2.1–1) and the remaining four NSAs on the basket periphery with one NSA in each basket quadrant.

Consequently, the staff's analysis of and conclusions about this loading scenario—up to five fuel assemblies each containing a Pu-Be NSA and up to 27 fuel assemblies, each containing a Cf-252 of Sb-Be NSA—only apply when the fuel assemblies containing Pu-Be NSAs are loaded with one in the center of the basket and a maximum of one in each of the remaining quadrants.

Although the exemption request did not explicitly evaluate the gamma dose associated with storing more than one NSA, the applicant asserted that the additional gamma dose due to activation of the NSA components will remain within the limits of 10 CFR 72.104 for normal conditions and 10 CFR 72.106 for accident conditions. In evaluating this assertion, staff reviewed HI–STORM 100 FSAR sections 5.2.7.1 submitted with Amendment No. 15 in which Holtec International stated that the total Burnable Poison Rod Assembly (BPRA) activation source term bounded the total NSA activation source term. In approving Amendment No. 15, in SER section 6.2.2.3, the staff found the use of the BPRA source term to represent all non-fuel hardware—including Pu-Be, Cf-252, and Sb-Be NSAs—acceptable. Further, the SER approving Amendment No. 15 determined that a canister loaded with 32 fuel assemblies containing BPRAs would remain within the limits of 10 CFR 72.104 for normal conditions and 10 CFR 72.106 for accident conditions. Because the staff found that the BPRA activation source term bounded the NSA activation source term in approving Amendment No. 15, and because this exemption does not change or affect that determination, the staff determined, for this exemption request, that the gamma source term associated with storing either five fuel assemblies each containing a Pu-Be NSA and up to 27 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA or 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA in an MPC–32M canister is bounded by the dose rates evaluated in Amendment No. 15. Therefore, because the dose rates evaluated in Amendment No. 15 met the applicable regulatory requirements, the staff finds that the dose due to activation of NSA components will remain within the limits of 10 CFR 72.104 for normal conditions, 10 CFR 72.106 for accident conditions, and the limits in 10 CFR part 20.

Finally, the staff reviewed the application from the perspective of dose rates remaining ALARA. Staff determined that the proposed exemption did not alter those aspects of the HI–STORM 100 system that the SER issued with CoC No. 1014 Amendment No. 15 had indicated contributed to a finding that ALARA had been satisfied (*e.g.,* temporary shielding equipment utilized during loading operations). In addition, as explained in section 11.1.2 of the SER issued with Amendment No. 15 to CoC No. 1014, the staff found reasonable assurance that the design of the HI–TRAC MS and the operational restrictions meet ALARA objectives for direct radiation levels because the estimated occupational exposure in FSAR table 10.II.3 was below the 10 CFR 20.1202(a) dose limit for an individual. For this exemption request, staff increased the estimated occupational exposure in FSAR table 10.II.3.1 by 3.3 percent, which was the greatest increase for locations where most operations occurred. The revised estimated occupational exposure remained below the 10 CFR 20.1201(a) dose limit. Therefore, consistent with these previous evaluations, the staff finds that for a canister loaded as permitted by this exemption, the occupational doses would remain ALARA despite the overall increase in dose.

Review of Common Defense and Security

HDI's exemption request is not related to any aspect of the physical security or defense of the Indian Point Energy Center ISFSI. In addition, the number of NSAs stored within a multipurpose canister does not affect the Indian Point Energy Center ISFSI security plans. Therefore, granting the exemption would not result in any potential impacts to common defense and security.

As discussed earlier, the staff has evaluated the effects this exemption would have, if granted, on shielding for the configurations that exist during the different stages of storage operations including under both normal and accident conditions. This evaluation includes dose rate results which lead the staff to conclude that the HI–STORM 100 system will meet the limits in 10 CFR part 20, the 10 CFR 72.104 and 72.106 radiation protection requirements, and that ALARA principles for occupational exposure are adequately considered and incorporated into the HI–STORM 100 system design and operations after implementing the exemption. The staff reached this finding based on a review that considered the regulations, appropriate regulatory guides, applicable codes and standards, accepted engineering practices, and the statements and representations in the application. Based on this evaluation, the staff concludes that granting this exemption will not endanger life, property or the common defense and security.

D. Otherwise in the Public Interest

During a June 17, 2022, Microsoft Teams call with the NRC, the applicant indicated that granting the requested exemption would result in shorter operation of the spent fuel pool cleaning system. Shorter operation of the cleaning system would generate less waste of which the licensee would ultimately need to dispose. The staff reviewed the information provided by HDI, and based upon the earlier stated information, concludes that granting the requested exemption would be in the public interest because it would result in the generation of less low-level waste.

E. Environmental Considerations

The NRC staff also considered whether there would be any significant environmental impacts associated with the exemption. For this proposed action,

the NRC staff performed an environmental assessment pursuant to 10 CFR 51.30. The environmental assessment concluded that the proposed action would not significantly impact the quality of the human environment. The NRC staff concluded that the proposed action would not result in any changes in the types or quantities of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because of the proposed action. The environmental assessment and the finding of no significant impact was published on October 31, 2022 (87 FR 65613).

IV. Conclusion

Based on the statements and representations provided by HDI in its exemption request, the staff concludes that the proposed action is authorized by law and will not endanger life, property, or the common defense and security, and is otherwise in the public interest. As a result, the NRC staff concludes the requested exemption meets the requirements in 10 CFR 72.7. Therefore, the NRC staff hereby grants HDI, an exemption from 10 CFR 72.212(a)(2), (b)(3), (b)(5)(i), (b)(11), and 72.214, pursuant to 10 CFR 72.7, permitting HDI to load up to three MPC–32Ms, using Amendment No. 15 for CoC No. 1014, with either up to 32 fuel assemblies each containing either a Cf-252 or an Sb-Be NSA with sufficient cooling time, or a combination of up to five fuel assemblies each containing a Pu-Be NSA and up to all of the remaining basket locations with fuel assemblies each containing either a Cf-252 or an Sb-Be NSA with sufficient cooling time. Further, it permits HDI to load the fuel assemblies containing either Cf-252 or Sb-Be NSAs in any location in the basket and the fuel assemblies containing Pu-Be NSAs such that one is located in the center of the basket (*i.e.*, fuel storage locations 13, 14, 19, or 20) and no more than one is located in each of the four basket quadrants.

The exemption is effective upon issuance.

V. Availability of Documents

The documents identified in the following table are available to interested persons through one or more of the following methods, as indicated.

Document description	ADAMS accession No.
Issuance of Certificate of Compliance No. 1014, Amendment No. 15 for the HI–STORM 100 Multipurpose Canister Storage System, dated May 13, 2021.	ML21118A862 (package).
Indian Point Energy Center—Request for Exemption from an Allowable Contents Requirement Contained in the Certificate of Compliance No. 1014 for the HI–STORM 100S Version E Cask, dated March 24, 2022.	ML22083A191.
Indian Point Exemption Environmental Assessment Conversation Record (6–16–22), date of contact June 16, 2022	ML22172A174
Neutron Source Assembly Loading Clarification Call, date of contact September 20, 2022	ML22264A045.
Safety Evaluation Report, dated November 7, 2022	ML22217A017.
HI–2002444, Revision 22, Holtec International Final Safety Analysis Report for the HI–STORM 100 Cask System, dated July 1, 2021.	ML21221A329.

Dated: November 9, 2022.

For the Nuclear Regulatory Commission.

Yoira K. Diaz-Sanabria,

Chief, Storage and Transportation Licensing Branch, Division of Fuel Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–24877 Filed 11–15–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–41 and CP2023–40; MC2023–42 and CP2023–41]

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:* November 18, 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:

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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.

[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).

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–41 and CP2023–40; *Filing Title:* USPS Request to Add Priority Mail Contract 764 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 18, 2022.

2. *Docket No(s).:* MC2023–42 and CP2023–41; *Filing Title:* USPS Request to Add First-Class Package Service Contract 121 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 9, 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:* November 18, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–24965 Filed 11–15–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. CP2022–4; MC2023–36 and CP2023–35; MC2023–37 and CP2023–36; MC2023–38 and CP2023–37; MC2023–39 and CP2023–38; MC2023–40 and CP2023–39]

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.

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FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

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II. Docketed Proceeding(s)

1. *Docket No(s).:* CP2022–4; *Filing Title:* Notice of the United States Postal Service of Filing Modification One to Global Reseller Expedited Package 2 Negotiated Service Agreement; *Filing Acceptance Date:* November 8, 2022; *Filing Authority:* 39 CFR 3035.105; *Public Representative:* Nikki Brendemuehl; *Comments Due:* November 17, 2022.

2. *Docket No(s).:* MC2023–36 and CP2023–35; *Filing Title:* USPS Request to Add Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Philip T. Abraham; *Comments Due:* November 17, 2022.

3. *Docket No(s).:* MC2023–37 and CP2023–36; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 225 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Nikki Brendemuehl; *Comments Due:* November 17, 2022.

4. *Docket No(s).:* MC2023–38 and CP2023–37; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 81 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Nikki Brendemuehl; *Comments Due:* November 17, 2022.

5. *Docket No(s).:* MC2023–39 and CP2023–38; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 82 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Madison Lichtenstein; *Comments Due:* November 17, 2022.

6. *Docket No(s).:* MC2023–40 and CP2023–39; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 83 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 8, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Madison Lichtenstein; *Comments Due:* November 17, 2022.

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[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).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–24886 Filed 11–15–22; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Title and purpose of information collection: Evidence of Marital Relationship—Living with Requirements; OMB 3220–0021.

To support an application for a spouse or widow(er)'s annuity under sections 2(c) or 2(d) (45 U.S.C. 231a) of the Railroad Retirement Act, an applicant must submit proof of a valid marriage to a railroad employee. In some cases, the existence of a marital relationship is not formalized by a civil or religious ceremony. In other cases, questions may arise about the legal termination of a prior marriage of the employee, spouse, or widow(er). In these instances, the RRB must secure additional information to resolve questionable marital relationships. The circumstances requiring an applicant to submit documentary evidence of marriage are prescribed in 20 CFR 219.30.

In the absence of documentary evidence, the RRB needs to determine if a valid marriage existed between a spouse or widow(er) annuity applicant and a railroad employee. The RRB utilizes Forms G–124, Individual Statement of Marital Relationship; G–124a, Certification of Marriage Information; G–237, Statement Regarding Marital Status; G–238, Statement of Residence; and G–238a, Statement Regarding Divorce or Annulment, to secure the needed information. Forms G–124, G–237, G–238, and G–238a can be completed either with assistance from RRB personnel during an in-office interview or by mail. One response is requested of each respondent. Completion is required to obtain benefits. The RRB proposes minor non-burden impacting changes to Forms G–124, G–124a, and G–237 to remove the words ''husband'' or ''wife'' and replace them with gender-neutral term ''spouse''. The RRB proposes no changes to Forms G–238 and G–238a.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–124 (in person)	125	15	31
G–124 (by mail)	75	20	25
G–124a	300	10	50
G–237 (in person)	75	15	19
G–237 (by mail)	75	20	25
G–238 (in person)	150	3	8
G–238 (by mail)	150	5	13
G–238a	150	10	25
Total	1,100	.....	196

2. Title and purpose of information collection: Employer Service and Compensation Reports; OMB 3220–0070.

Section 2(c) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 352) specifies the maximum normal unemployment and sickness benefits that may be paid in a benefit year. Section 2(c) further provides for extended benefits for certain employees and for beginning a benefit year early for other employees. The conditions for these actions are prescribed in 20 CFR 302.

All information about creditable railroad service and compensation needed by the RRB to administer section 2(c) is not always available from annual reports filed by railroad employers with the RRB (OMB 3220–0008). When this occurs, the RRB must obtain supplemental information about service and compensation.

The RRB utilizes Form UI–41, *Supplemental Report of Service and Compensation,* and Form UI–41a, *Supplemental Report of Compensation,* to obtain the additional information about service and compensation from railroad employers. Completion of the forms is mandatory. One response is required of each respondent. The RRB proposes no changes to Form UI–41 and Form UI–41a.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
UI–41	100	8	13
UI–41a	50	8	7
Total	150	.....	20

3. Title and purpose of information collection: Customer Satisfaction Monitoring; OMB 3220–0192.

In accordance with Executive Order 12862, the Railroad Retirement Board (RRB) conducts a number of customer surveys designed to determine the kinds and quality of services our beneficiaries, claimants, employers and members of the public want and expect, as well as their satisfaction with existing RRB services. The information collected is used by RRB management to monitor customer satisfaction by determining to what extent services are satisfactory and where and to what extent services can be improved. The surveys are limited to data collections that solicit strictly voluntary opinions, and do not collect information which is required or regulated. The information collection, which was first approved by the Office of Management and Budget (OMB) in 1997, provides the RRB with a generic clearance authority. This generic authority allows the RRB to submit a variety of new or revised customer survey instruments (needed to timely implement customer monitoring activities) to the Office of Management and Budget (OMB) for expedited review and approval. The RRB proposes no changes to Form G–201.

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.	Annual responses	Time (minutes)	Burden (hours)
G–201	50	2	2
Web-Site Survey	300	5	25
Periodic Survey	1,020	12	204
Focus Groups	250	120	500
Total	1,620		731

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, contact Kennisha Tucker at (312) 469–2591 or *Kennisha.Tucker@rrb.gov.* Comments regarding the information collection should be addressed to Brian Foster, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–1275 or emailed to *Brian.Foster@rrb.gov.* Written comments should be received within 60 days of this notice.

Brian Foster,

Clearance Officer.

[FR Doc. 2022–24878 Filed 11–15–22; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–809, OMB Control No. 3235–0766]

Proposed Collection; Comment Request; Extension: Rule 17a–14 and Form CRS

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 17a–14 [17 CFR 240.17a–14] and Form CRS [17 CFR 249.640], under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17a–14 and Form CRS require a broker-dealer that offers services to retail investors to prepare and file with the Commission through WebCRD, post to the broker-dealer's website (if it has one), and deliver to retail investors a relationship summary. The relationship summary can assist retail investors in making an informed choice about whether to hire or retain a broker-dealer, as well as what types of accounts and services are appropriate for their needs.

The information that must be collected pursuant to Rule 17a–14 and Form CRS is necessary to provide broker-dealer retail customers, prospective retail customers, and the Commission with information about the relationships and services the firm offers to retail investors, fees and costs that the retail investor will pay, specific conflicts of interest and standards of conduct, legal or disciplinary history, and how to obtain additional information about the firm. The Commission uses the information to manage its regulatory and examination programs. Clients can use the information required in the relationship summary to determine whether to hire or retain a broker-dealer, as well as what types of accounts and services are appropriate for their needs. The information will therefore help establish a framework that protects investors and promotes efficiency, competition, and capital formation.

The aggregate annual hour burden for all respondents to comply with the information collection requirements of Rule 17a–14 and Form CRS is estimated to be approximately 6,098,916 hours per year. Under Rule 17a–14 and Form CRS, respondents will also incur cost burdens. The aggregate annual cost burden for all respondents is estimated to be approximately $181,194 per year.

Written comments are invited on: (a) 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; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing by January 17, 2023.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: November 9, 2022.

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–24880 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96295; File No. SR–CboeBZX–2022–053]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(f) To Permit Affiliated Users To Enable Match Trade Prevention

November 10, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2022 Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Exchange Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to permit affiliated Users to enable Match Trade Prevention at the parent company level. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to add the term ''affiliate identifier'' to the definition of ''Unique Identifier'' while also adding a description of eligibility to utilize the proposed affiliate identifier. Adding an affiliate identifier for MTP functionality on the Exchange would allow affiliated Users[5] to enable MTP at the affiliate level, in addition to the current MTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier (any such existing identifier, a ''Unique Identifier'').[6] Currently, the Exchange's MTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.[7] MTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID;[8] (ii) Exchange Member identifier; (iii) trading group identifier; and (iv) Exchange Sponsored Participant identifier.[9] MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables MTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a fifth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for use of the affiliate identifier will be determined.[10]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(cc). ''User'' is defined as ''[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.9(f).

[7] *Id.*

[8] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[9] See Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 15, 2009) SR–BATS–2009–022 (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BATS Rule 11.9, Entitled ''Orders and Modifiers''''), in which the Exchange adopted Member Match Trade Prevention (now known as MTP) and designated MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier as Unique Identifiers. *See also* Securities Exchange Act Release No. 67093 (June 1, 2012), 77 FR 33798 (June 7, 2012) SR–BATS–2012–018 (''Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BATS Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality''), which amended the definition of Unique Identifier to include trading group identifier.

[10] Infra *note 14.*

The proposed addition of the affiliate identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.[11] As applied to the Exchange, there are situations where two separate entities (*i.e.,* Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (*i.e.,* Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales[12] and self-trades.[13] Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User's affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships or Sponsored Participant relationships to utilize MTP where one User is an affiliate of another User.[14] Specifically, the Exchange is proposing to allow affiliated Users to use MTP functionality in order to prevent executions from occurring between those individual Users. When a User requests MTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend MTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which MTP functionality may be useful.

To demonstrate how MTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which MTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and will use an affiliate identifier of ''A'' when requesting MTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of ''C''.

Affiliate Level MTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled MTP. Firm A's buy order is prevented from executing with Firm B's sell order as each firm has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order will be permitted to execute with Firm C's sell order because Firm C has not enabled MTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled MTP. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's order will be eligible to trade with both Firm B and Firm C. Firm A's order is eligible to trade with Firm B because Firm B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is eligible to execute with Firm C's sell order because while Firm A and Firm C have enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

The Exchange plans to implement the proposed rule change during the fourth quarter of 2022 or first quarter of 2023, and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of

[11] *See* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[12] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[13] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[14] The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level MTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and prevent undesirable trading activity such as wash sales'' [18] or self-trades [19] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange's MTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, trading group, and Sponsored Participant levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.[20] For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire MTP functionality on an affiliate level that will help them achieve compliance [21] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level MTP functionality will permit Users that have separate memberships or Sponsored Participant relationships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize MTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (*e.g.,* voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the affiliate identifier and is available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may

[17] *Id.*

[18] *Supra* note 5.

[19] *Supra* note 6.

[20] The Exchange notes that the proposed rule filing is similar in in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of ''beneficial ownership'', and whether separate accounts have common ownership. For example, the CME Group (''CME''), an operator of global derivatives markets, recognizes that ''buy and sell orders for different accounts with common beneficial ownership . . . shall also be deemed to violate the prohibition on wash trades.'' *See* CME Rule 534. *See also https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf,* FAQ Q2, which describes ''common beneficial ownership'' as accounts with common beneficial ownership that is less than 100%.

[21] The Exchange reminds Users that while they may utilize MTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

designate if consistent with the protection of investors and the public interest.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii)[26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit affiliated Users to immediately enable MTP functionality in order to better manage order flow and assist with preventing undesirable executions in the same manner as individual Users who currently enable MTP at either the MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[28]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–053.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2022–053, and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

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BILLING CODE 8011–01–P

[24] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(3)(C).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96294; File No. SR–CboeBYX–2022–025]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.9(f) To Permit Affiliated Users To Enable Match Trade Prevention

November 10, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2022 Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') proposes to amend Exchange Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to permit affiliated Users to enable Match Trade Prevention at the parent company level. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/byx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.9(f) (''Match Trade Prevention (''MTP'') Modifiers'') to add the term ''affiliate identifier'' to the definition of ''Unique Identifier'' while also adding a description of eligibility to utilize the proposed affiliate identifier. Adding an affiliate identifier for MTP functionality on the Exchange would allow affiliated Users [5] to enable MTP at the affiliate level, in addition to the current MTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, trading group identifier, or Exchange Sponsored Participant identifier (any such existing identifier, a ''Unique Identifier'').[6] Currently, the Exchange's MTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.[7] MTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently four Unique Identifiers that a User may choose from when submitting an order subject to MTP: (i) MPID; [8] (ii) Exchange Member identifier; (iii) trading group identifier; and (iv) Exchange Sponsored Participant identifier.[9] MTP functionality is optional for Users and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables MTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables MTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The trading group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. Users who enable MTP functionality using the Exchange Sponsored Participant Unique Identifier will prevent matched trades between contra side orders with an identical Sponsored Participant identifier. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.9(f) and enhance its existing MTP functionality by introducing a fifth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for use of the affiliate identifier will be determined.[10] The proposed addition of the affiliate identifier does not present any new or novel MTP functionality, but rather would extend existing MTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.[11] As applied to the Exchange, there are situations where two separate entities (*i.e.,* Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (*i.e.,* Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [12] and self-trades.[13] Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User's affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed MTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships or Sponsored Participant relationships to utilize MTP where one User is an affiliate of another User.[14] Specifically, the Exchange is proposing to allow affiliated Users to use MTP functionality in order to

[5] *See* Exchange Rule 1.5(cc). ''User'' is defined as ''[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(aa). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.9(f).

[7] *Id.*

[8] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[9] *See* Securities Exchange Act Release No. 63097 (October 13, 2010), 75 FR 64767 (October 20, 2010) SR–BYX–2010–002 (''Notice of Filing of Proposed Rule Change To Amend BATS Y-Exchange Rules to Conform to the Current Rules of BATS Exchange''). *See also* Securities Exchange Act Release No. 60266 (July 9, 2009), 74 FR 34380 (July 15, 2009) SR–BATS–2009–022 (''Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend BATS Rule 11.9, Entitled ''Orders and Modifiers''''), in which the Exchange's affiliate Cboe BZX Exchange adopted Member Match Trade Prevention (now known as MTP) and designated MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier as Unique Identifiers. *See also* Securities Exchange Act Release No. 67092 (June 1, 2012), 77 FR 33800 (June 7, 2012) SR–BYX–2012–009 (''Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend BYX Rules Related to the Operation of BATS Post Only Orders and Match Trade Prevention Functionality''), which amended the definition of Unique Identifier to include trading group identifier.

[10] *Infra* note 14.

[11] *See* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[12] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[13] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[14] The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

prevent executions from occurring between those individual Users. When a User requests MTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend MTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which MTP functionality may be useful.

To demonstrate how MTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which MTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and will use an affiliate identifier of ''A'' when requesting MTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of ''C''.

Affiliate Level MTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled MTP. Firm A's buy order is prevented from executing with Firm B's sell order as each firm has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order will be permitted to execute with Firm C's sell order because Firm C has not enabled MTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled MTP. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's order will be eligible to trade with both Firm B and Firm C. Firm A's order is eligible to trade with Firm B because Firm B did not enable MTP. In order for MTP to prevent the matching of contra side orders, both the buy and sell order must contain an MTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm B has enabled MTP at the affiliate level using an affiliate identifier of A. Firm C has enabled MTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled MTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is eligible to execute with Firm C's sell order because while Firm A and Firm C have enabled MTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level MTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and prevent undesirable trading activity such as wash sales''[18] or self-trades[19] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange's MTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, trading group, and Sponsored Participant levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.[20] For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire MTP functionality on an affiliate level that will help them achieve compliance[21] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current MTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level MTP functionality will permit Users that have separate memberships or Sponsored Participant relationships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] *Supra* note 5.

[19] *Supra* note 6.

[20] The Exchange notes that the proposed rule filing is similar in in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of ''beneficial ownership'', and whether separate accounts have common ownership. For example, the CME Group (''CME''), an operator of global derivatives markets, recognizes that ''buy and sell orders for different accounts with common beneficial ownership. . .shall also be deemed to violate the prohibition on wash trades.'' *See* CME Rule 534. *See also https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf,* FAQ Q2, which describes ''common beneficial ownership'' as accounts with common beneficial ownership that is less than 100%.

[21] The Exchange reminds Users that while they may utilize MTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize MTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (*e.g.,* voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. MTP is an optional functionality offered by the Exchange and Users are free to decide whether to use MTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing MTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the proposed affiliate identifier, which will be available to any User who satisfies such criteria. MTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level MTP will not change how the current Unique Identifiers and MTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. MTP is an optional functionality offered by the Exchange and Users are not required to use MTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer MTP and is choosing to do so as a benefit for Users who wish to enable MTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit affiliated Users to immediately enable MTP functionality in order to better manage order flow and assist with preventing undesirable executions in the same manner as individual Users who currently enable MTP at either the MPID, Exchange Member identifier, or Exchange Sponsored Participant identifier levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[28]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBYX–2022–025.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBYX–2022–025. This file number should be included on the subject line if email is used. To help the Commission process and review your

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(3)(C).

comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBYX–2022–025, and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24955 Filed 11–15–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96285; File No. SR–Phlx–2022–44]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Rule Phlx Equity 6, Section 5 Concerning Optional Risk Settings for Stocks

November 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule Phlx Equity 6, Section 5 (Exchange Sharing of PSX Participant Risk Settings) to provide PSX Participants with additional optional settings.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule changes under Rule Phlx Equity 6, Section 5 (Exchange Sharing of PSX Participant Risk Settings) is to provide PSX Participants (the ''Participants'') with additional optional settings to assist them in their efforts to manage risk on their order flow. These additional settings provide participants with extra oversight and controls on orders coming into the exchange. Once the optional risk controls are set, the Exchange is authorized to take automated action if a designated risk level for a Participant is exceeded. Such risk settings would provide Participants with enhanced abilities to manage their risk with respect to orders on the Exchange.

All proposed risk settings are optional for Participants and afford flexibility to Participants to select their own risk tolerance levels. The proposed new and amended risk settings are as follows.

The Exchange is proposing to add an additional risk setting titled ''Restricted Stock List.'' This control allows a Participant to restrict the types of securities transacted by setting a list of symbols for which orders cannot be entered. This control also allows Participants to set a hard to borrow list, which is a list of symbols for which short sale orders may not be entered. Short sale orders for symbols not on the hard to borrow list will be accepted; however, Participants will have an option to indicate that short sales orders are permitted for all symbols by not maintaining a hard to borrow list. This setting is similar to Interpretations and Policies .01(d) of BZX Rule 11.13.[3]

The Exchange is proposing to add an additional risk setting titled ''ADV Check.'' This control relates to the size of an order as compared to the 20 day consolidated average daily volume[4] (ADV) of the security and allows a Participant to set a specified percent of ADV that an order size cannot exceed. This control also allows a Participant to specify the minimum value on which such control is based if the average daily volume of the securities is below such value. This setting is similar to Interpretations and Policies .01(g) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled ''Fat Finger Protection.'' This control relates to the limit price of an order as compared to the NBBO and includes both percentage-based and dollar-based controls. If the limit price of an order deviates from the NBBO in excess of the amount set by a Participant (either percentage or dollar based), the order will not be accepted. This setting is similar to Interpretations and Policies .01(b) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled ''Rate Thresholds Check.'' A Participant will be able to set the maximum number of messages (other than cancellations, but including new orders, replacement orders and modifications) that can be sent in during a configurable one second time window set by the Exchange. This control can be set as a port level or per symbol. This setting is similar to Interpretations and Policies .01(f) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled ''Gross Exposure Check.'' This control measures open, executed, or notional exposure of

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 80611 (May 5, 2017) 82 FR 22045 (May 11, 2017) (SR–BatsBZX–2017–24).

[4] In certain circumstances, when the security does not have 20 days of trading history, the ADV Check is calculated on fewer than 20 data points.

a Participant on the Exchange; and, when breached, prevents submission of all new orders and, optionally, will cancel all open orders. Gross open order exposure is measured as the sum of booked price times size for all open orders plus the sum of booked price times size for all open sell orders. Gross executed order exposure is measured as the sum of all executed buy and sell orders. Gross notional order exposure is measured as the sum of the gross open exposure and gross executed exposure. This setting is similar to Interpretations and Policies .01(h) of BZX Rule 11.13.

The Exchange is proposing to add an additional risk setting titled ''Market Impact Check.'' This optional control, if enabled, will result in the rejection of a Participant's incoming limit order if the limit price of the order is priced through the far-side of the current LULD bands. In other words, a buy (sell) order cannot be priced more aggressively than the upper (lower) LULD band.[5] The Exchange notes that pursuant to the existing LULD requirements, buy orders priced below the lower price bands (and vice versa for sell orders) will be accepted and are eligible for inclusion in the NBBO; however, these orders are outside the price bands and will be non-executable. If the price bands move in such a way that an order that was previously outside the price band is now inside the band, the order will become executable.

The Exchange believes that this new optional setting is similar to the Exchange's existing Limit Order Protection (''LOP''). LOP is a feature of the PSX that prevents certain Limit Orders at prices outside of pre-set standard limits (''LOP Limit'') from being accepted by the System.[6] LOP is operational each trading day. LOP does not apply in the event that there is no established LOP Reference Price.[7] LOP is applicable on all order entry protocols.[8] While the current LULD functionality would continue to apply, this additional proposed risk setting would allow a Participant to manage its risk more comprehensively.

The Exchange is also proposing to amend two existing risk settings titled, ISO Control and Duplication Control.

Currently, pursuant to Phlx Equity 6, Section 5(j), the Duplication control will automatically reject an order that a Participant submits to the Exchange to the extent that it is duplicative of another order that the Participant submitted to the Exchange during the prior five seconds. The Exchange proposes to provide additional flexibility for Participants by allowing the interval applicable to this risk check to vary from one to thirty seconds, as set by a Participant. This setting is similar to Interpretations and Policies .01(e) of BZX Rule 11.13.

Pursuant to Phlx Equity 6, Section 5(b), ISO Control setting prevents a Participant from entering an ISO order onto the Exchange. The Exchange proposes to expand this setting to allow a Participant to restrict additional order types from being entered. Specifically, a Participant may restrict their ability to place any of the following: ISO Orders (as currently provided by this risk setting), short sale orders, non-auction market orders, pre-market orders or post-market orders. The Exchange proposes to change the title of this risk setting to Order Type/Attribution Check to better reflect its substance, as amended. This setting is similar to Interpretations and Policies .01(c) of BZX Rule 11.13.

As currently provided for existing risk settings, the Exchange will share any Participant risk settings in the trading system that are specified Rule Phlx Equity 6, Section 5, with the clearing member that clears transactions on behalf of the Participant even if the clearing member is not designated.

Implementation

The Exchange intends to implement of the proposed rule changes on or before March 31, 2023. The Exchange will issue an Equity Trader Alert to members announcing the exact date the Exchange will implement the risk protections.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5) of the Act,[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Specifically, the Exchange believes the proposed amendment will remove impediments to and perfect the mechanism of a free and open market and a national market system because it provides functionality for a Participant to manage its risk exposure, while also maintaining a notification system under Rule Phlx Equity 6, Section 5 that would help to ensure the Participant and its clearing member are aware of developing issues.

A clearing member guarantees transactions executed on PSX for members with whom it has entered into a clearing arrangement, and therefore bears the risk associated with those transactions. The Exchange therefore believes that it is appropriate for the clearing member to have knowledge of what risk settings the Participant may utilize within the Exchange's trading system, as well as the option to set and adjust the risk levels. The proposal will permit clearing members who have a financial interest in the risk settings of Participants with whom the Participants have entered into clearing arrangements to better monitor and manage the potential risks assumed by clearing members, thereby providing clearing members with greater control and flexibility over setting their own risk tolerance and exposure and aiding clearing members in complying with the Act.

In addition, the Exchange believes that the proposed amendments under Rule Phlx Equity 6, Section 5, are designed to protect investors and the public interest because the proposed functionalities are a form of risk mitigation that will aid Participants and clearing members in minimizing their financial exposure and reduce the potential for disruptive, market-wide events. The proposed new:

- Gross Executed Check settings are appropriate measures to serve as an additional tool for Participants and clearing members to assist them in identifying open, executed, or notional exposure risk;
- Market Impact Check and ADV check may assist Participants in avoiding placing orders with unintentional market impact;
- Rate Thresholds Check may help alert a Participant to excessive message traffic that could affect technical port performance;
- Fat Finger Protection will assist a Participant in avoiding submission of

[5] The Limit Up-Limit Down (LULD) mechanism is intended to prevent trades in National Market System (NMS) securities from occurring outside of specified price bands. The bands are set at a percentage level above and below the average reference price of the security over the immediately preceding five-minute period. To accommodate fundamental price moves, there is a five-minute trading pause if trading is unable to occur within the specified price band after 15 seconds.

[6] The LOP Limit is the greater of 10% of the LOP Reference Price or $0.50 for all securities across all trading sessions. The LOP Reference Price is the current National Best Bid or Best Offer, the bid for sell orders and the offer for buy orders.

[7] For example, if there is a one-sided quote or if the NBB, when used as the LOP Reference Price, is equal to or less than $0.50.

[8] PSX maintains several communications protocols for Participants to use in entering Orders and sending other messages, such as: OUCH, RASH, QIX, FLITE and FIX.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

orders with unintended price limits or share sizes;

• Restricted Stock List will assist a Participant in limiting trading for a particular security.

The proposed amendments to ISO Control will a Participant prevent trading in a particular order type by expanding the types of orders subject to this check to pre-market, post-market, short sales, non-auction market orders. The proposed amendments to the Duplication Control will allow a Participant additional flexibility in using this control by letting a Participant to choose the period of time over which this control applies.

The Exchange also believes the proposed amendments will assist Participants and clearing members in managing their financial exposure which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

Finally, the Exchange believes that the proposed rule changes do not unfairly discriminate among the Exchange's Participants because use of the risk settings under Rule Phlx Equity 6, Section 5 are optional and available to all Participants, and not a prerequisite for participation on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that the proposal will have a positive effect on competition because, it would allow the Exchange to offer risk management functionality that is comparable to functionality being offered by other national securities exchanges. Moreover, by providing Participants and their clearing members additional means to monitor and control risk, the proposed rule may increase confidence in the proper functioning of the markets and contribute to additional competition among trading venues and broker-dealers. Rather than impede competition, the proposal is designed to facilitate more robust risk management by Participants and clearing members, which, in turn, could enhance the integrity of trading on the securities markets and help to assure the stability of the financial system.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [11] and subparagraph (f)(6) of Rule 19b–4 thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–44 on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2022–44 and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

J. Matthew DeLesDernier,

Deputy Secretary.

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BILLING CODE 8011–01–P

[11] 15 U.S.C. 78s(b)(3)(A)(iii).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96292; File No. SR–CboeEDGX–2022–048]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.10(d) To Permit Affiliated Users To Enable EdgeRisk Self Trade Prevention

November 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2022 Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''''EDGX'''') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') proposes to amend Exchange Rule 11.10(d) (''EdgeRisk Self Trade Prevention (''ERSTP'') Modifiers'') to permit affiliated Users to enable Self Trade Prevention at the parent company level. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.10(d) (''EdgeRisk Self Trade Prevention (''ERSTP'') Modifiers'') to add the term ''affiliate identifier'' to the definition of ''Unique Identifier'' while also adding a description of eligibility to utilize the proposed affiliate identifier. Adding an affiliate identifier for ERSTP functionality on the Exchange would allow affiliated Users[5] to enable ERSTP at the affiliate level, in addition to the current ERSTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, or ERSTP Group identifier (any such existing identifier, a ''Unique Identifier'').[6] Currently, the Exchange's ERSTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.[7] ERSTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently three Unique Identifiers that a User may choose from when submitting an order subject to ERSTP: (i) MPID;[8] (ii) Exchange Member identifier; and (iii) ERSTP Group identifier.[9] Use of ERSTP functionality is optional and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables ERSTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables ERSTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The ERSTP Group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.10(d) and enhance its existing ERSTP functionality by introducing a fourth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for the use of the affiliate identifier will be determined.[10] The proposed addition of the affiliate identifier does not present any new or novel ERSTP functionality, but rather would extend existing ERSTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.[11] As applied to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Exchange Rule 1.5(ee). ''User'' is defined as ''[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.10(d).

[7] *Id.*

[8] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[9] *See* Securities Exchange Act Release No. 63428 (December 3, 2010), 75 FR 76763 (December 9, 2010) SR–EDGX–2010–18 (''Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGX Rule 11.9 To Offer Anti-Internalization Qualifier (''AIQ'') Functionality to Exchange Users''). *See also* Securities Exchange Act Release No. 73468 (October 29, 2014), 79 FR 65450 (November 4, 2014) SR–EDGX–2014–18 (''Notice of Filing of Amendment Nos. 1 and 3 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 3, To Amend EDGX Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions''), in which AIQ functionality was renamed ERSTP.

[10] *Infra* note 13.

[11] *See* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more

Exchange, there are situations where two separate entities (*i.e.,* Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (*i.e.,* Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [12] and self-trades.[13] Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User's affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed ERSTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships to utilize ERSTP where one User is an affiliate of another User.[14] Specifically, the Exchange is proposing to allow affiliated Users to use ERSTP functionality in order to prevent executions from occurring between those individual Users. When a User requests ERSTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend ERSTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which ERSTP functionality may be useful.

To demonstrate how ERSTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which ERSTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and will use an affiliate identifier of ''A'' when requesting ERSTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of ''C''.

Affiliate Level ERSTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled ERSTP. Firm A's buy order is prevented from executing with Firm B's sell order as each firm has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order will be permitted to execute with Firm C's sell order because Firm C has not enabled ERSTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled ERSTP. Firm C has enabled ERSTP at the affiliate level using an affiliate identifier of C. Firm A's order will be eligible to trade with both Firm B and Firm C. Firm A's order is eligible to trade with Firm B because Firm B did not enable ERSTP. In order for ERSTP to prevent the matching of contra side orders, both the buy and sell order must contain an ERSTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled ERSTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled ERSTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm C has enabled ERSTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is eligible to execute with Firm C's sell order because while Firm A and Firm C have enabled ERSTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level ERSTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and

intermediaries, controls or is controlled by, or is under common control with, the person specified.

[12] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.*, 15 U.S.C. 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[13] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[14] The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

prevent undesirable trading activity such as wash sales'' [18] or self-trades [19] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange's ERSTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, and ERSTP Group identifier levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.[20] For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire ERSTP functionality on an affiliate level that will help them achieve compliance [21] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current ERSTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level ERSTP functionality will permit Users that have separate memberships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize ERSTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (*e.g.,* voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. ERSTP is an optional functionality offered by the Exchange and Users are free to decide whether to use ERSTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing ERSTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the proposed affiliate identifier, which will be available to any User who satisfies such criteria. ERSTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level ERSTP will not change how the current Unique Identifiers and ERSTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. ERSTP is an optional functionality offered by the Exchange and Users are not required to use ERSTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer ERSTP and is choosing to do so as a benefit for Users who wish to enable ERSTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would

[18] *Supra* note 5.

[19] *Supra* note 6.

[20] The Exchange notes that the proposed rule filing is similar in in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of ''beneficial ownership'', and whether separate accounts have common ownership. For example, the CME Group (''CME''), an operator of global derivatives markets, recognizes that ''buy and sell orders for different accounts with common beneficial ownership . . . shall also be deemed to violate the prohibition on wash trades.'' *See* CME Rule 534. *See also https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf,* FAQ Q2, which describes ''common beneficial ownership'' as accounts with common beneficial ownership that is less than 100%.

[21] The Exchange reminds Users that while they may utilize ERSTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

permit affiliated Users to immediately enable ERSTP functionality in order to better manage order flow and assist with preventing undesirable executions in the same manner as individual Users who currently enable ERSTP at either the MPID, Exchange Member identifier, or ERSTP Group identifier levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[28]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeEDGX–2022–048.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–048. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–048, and should be submitted on or before December 7,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24895 Filed 11–15–22; 8:45 am]

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[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(3)(C).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96281; File No. SR–ISE–2022–18]

Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Granting Approval of a Proposed Rule Change To Amend the Short Term Option Series Program

November 9, 2022.

I. Introduction

On September 9, 2022, Nasdaq ISE, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to: (1) limit the number of Monday and Wednesday expiration dates for options on SPDR S&P 500 ETF Trust (SPY), the INVESCO QQQ Trust℠, Series 1 (QQQ), and iShares Russell 2000 ETF (IWM); and (2) permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Exchange's short term option series program (''Short Term Options Series Program''). The proposed rule change was published for comment in the **Federal Register** on September 26, 2022.[3] No comments were received. The Commission is approving the proposed rule change.

II. Description of the Proposal[4]

The Exchange proposes to amend the Short Term Option Series Program rules to: (1) decrease the number of Monday and Wednesday short term option expiration dates for options on SPY, QQQ, and IWM from five to two expirations; and (2) expand the Short Term Option Series program to permit the listing and trading of options series with Tuesday and Thursday expirations for options on SPY and QQQ listed pursuant to the Short Term Option Series Program, subject to the same proposed limitation of two expirations.

Curtail Short Term Option Expiration Dates and Re-Organize Short Term Option Daily Expiration Rules

Currently, the Exchange may open for trading on any Tuesday or Wednesday that is a business day series of options on SPY, QQQ, and IWM to expire on any Wednesday of the month that is a business day and is not a Wednesday in which Quarterly Options Series expire (''Wednesday Expirations''). The Exchange also may open for trading on any Friday or Monday that is a business day series of options on the SPY, QQQ, or IWM to expire on any Monday of the month that is a business day and is not a Monday in which Quarterly Options Series expire (''Monday Expirations''), provided that Monday Expirations that are listed on a Friday must be listed at least one business week and one business day prior to the expiration. Currently, the Exchange may list up to five consecutive Wednesday Expirations and five consecutive Monday Expirations on each of SPY, QQQ, and IWM. The Exchange proposes to curtail the number of Short Term Option Expiration Dates from five to two per symbol for Monday Expirations and Wednesday Expirations.

Further, in conjunction with the proposal to add Tuesday and Thursday Expirations (as described below), the Exchange proposes to create a new category of Short Term Options called ''Short Term Option Daily Expirations,'' which will encompass the Monday, Tuesday, Wednesday, and Thursday

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95841 (September 20, 2022), 87 FR 58399 (''Notice'').

[4] For a full description of the proposal, refer to the Notice, *supra* note 3.

Expirations. The Exchange proposes to include a table, labelled ''Table 1'', within Supplementary Material .03 to Options 4, Section 5 to specify each symbol that qualifies as a Short Term Option Daily Expiration as well the number of expirations for each symbol on each expiration day. The Exchange is also proposing to specify that Monday and Wednesday expirations may not expire on the same day in which monthly options series expire.[5] Finally, the Exchange is amending Supplementary Material .03(b) to Options 4, Section 5, to replace the reference to Monday and Wednesday Expirations with ''Short Term Option Daily Expirations,'' which would permit Monday, Tuesday, Wednesday, and Thursday Expirations to expire in the same week in which monthly option series on the same class expire.

Short Term Options Series with Friday expirations on SPY, QQQ, IWM, and other symbols will continue to have a total of five Short Term Option Expiration Dates. These Friday expirations would be referred to as ''Short Term Option Weekly Expirations'' to distinguish them from the proposed Short Term Option Daily Expirations.

Tuesday and Thursday Expirations

The Exchange proposes to expand the Short Term Option Series Program to permit the Exchange to open for trading on any Monday or Tuesday that is a business day series of options on SPY and QQQ that expire at the close of business on each of the next two Tuesdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Tuesday Expirations''). If the Tuesday Expiration falls on a Tuesday that is not a business day, the series shall expire on the first business day immediately prior to that Tuesday.

Similarly, the proposal would permit the Exchange to open for trading on any Wednesday or Thursday that is a business day series of options on SPY and QQQ that expire at the close of business on each of the next two Thursdays that are business days and are not business days in which monthly options series or Quarterly Options Series expire (''Thursday Expirations''). If the Thursday Expiration falls on a Thursday that is not a business day, the series shall expire on the first business day immediately prior to that Thursday.[6]

Tuesday and Thursday Expirations would be subject to Supplementary Material .03 of Options 4, Section 5, as proposed to be amended. As noted above, the Exchange proposes to amend Commentary .11(b) to Options 4, Section 5 to permit Tuesday Expirations and Thursday Expirations to expire in the same week in which monthly options series on the same class expire. Otherwise, Tuesday Expirations and Thursday Expirations will be subject to the same rules as other Short Term Option Series.[7]

The Exchange does not believe that any market disruptions would be encountered with the introduction of Tuesday and Thursday Expirations.[8] The Exchange believes that it has the necessary capacity and surveillance programs in place to support and properly monitor trading in the proposed Tuesday and Thursday Expirations.[9] The Exchange currently trades Short Term Option Series that expire Monday and Wednesday for SPY, QQQ and IWM and stated that it has not experienced any market disruptions nor issues with capacity.[10]

Implementation

The Exchange proposes to implement this rule change on or before November 14, 2022. The Exchange would issue an Options Trader Alert to notify Members of the implementation date. The Exchange states that Monday and Wednesday Expirations in SPY, QQQ, and IWM that were listed prior to the date of implementation would continue to be listed on the Exchange until those options expire pursuant to current Short Term Option Series rules within Supplementary Material .03 of Options 4, Section 5.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[12] The Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposal reduces the number of Short Term Option Expirations to be listed on ISE.[14] This reduction may remove impediments to and perfect the mechanism of a free and open market by encouraging market makers to deploy capital more efficiently and improve displayed market quality. The Exchange stated that it believes that despite the proposed curtailment of expirations, its members would continue to be able to expand hedging tools and tailor their investment and hedging needs more effectively in SPY, QQQ, and IWM.[15] Therefore, the Commission believes that the proposal is reasonably designed to effectuate the Exchange's goal of balancing a reduction in the number of Short Term Option Expirations with the needs of market participants.

The Exchange's proposal to permit SPY and QQQ Tuesday and Thursday Expirations may provide the investing public and other market participants more flexibility to closely tailor their investment and hedging decisions in SPY and QQQ options, thus allowing them to better manage their risk exposure. In addition, the Tuesday and Thursday Expirations would be subject to rules similar to existing Exchange rules permitting the listing and trading of Monday and Wednesday Expirations in SPY and QQQ options.[16] Further, the Exchange has represented that it has an adequate surveillance program in place to detect manipulative trading in SPY and QQQ Tuesday and Thursday Expirations and has the necessary

[5] The Exchange notes that practically speaking, Monday and Wednesday Expirations would not expire on the same day as a monthly expiration. *See* Notice, *supra* note 3 at 58401. As is currently the case, Monday and Wednesday Expirations may not expire on the same day as a Quarterly Options Series. *See* Supplementary Material .03 of Options 4, Section 5.

[6] Further, in order to accommodate the listing of Tuesday and Thursday Expirations, the Exchange also proposes to amend the definition of Short Term Options Series at Options 1, Section 1(a)(49) to add Tuesday and Thursdays to the permitted expiration days, which currently only include Monday, Wednesday, and Friday.

[7] For example, the Tuesday Expirations and Thursday Expirations would be subject to the same strike interval rules and series limitations as other Short Term Option Series. *See* Notice, *supra* note 3, at 58401.

[8] *See id.*

[9] *See id.*

[10] *See id.*

[11] *See id.* at 58403.

[12] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Notice, *supra* note 3 at 58400.

[15] *See id.* at 58403.

[16] *See id.* at 58400.

systems capacity to support the new options series.[17]

Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act [18] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–ISE–2022–18), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24888 Filed 11–15–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96289; File No. SR–NYSEArca–2022–72]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change To Add Violations of Rule 2.1210 to the Exchange's Minor Rule Violation Plan for the Equities and Options Markets

November 9, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 26, 2022, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to (1) add Rule 2.1210 to the list of minor rule violations in Rule 10.9217 for both the equities and options markets, and (2) make certain non-substantive clarifying changes to Rule 10.9217. The proposed change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to (1) add Rule 2.1210 (Registration Requirements) to the list of minor rule violations in Rule 10.9217 for both the equities and options markets, and (2) make certain non-substantive clarifying changes to Rule 10.9217.

Addition of Rule 2.1210 to the List of Rules Eligible for a Minor Fine

Rule 10.9217 sets forth the list of rules under which a ETP Holder, OTP Holder or OTP Firm or covered person may be subject to a fine under a minor rule violation plan as described in Rule 10.9216(b) for both its equities and options markets.

Rule 2.1210, which was adopted in 2018,[4] sets forth the requirements for persons engaged in the investment banking or securities business of an ETP Holder, OTP Holder or OTP Firm to be registered with the Exchange as a representative or principal in each category of registration appropriate to his or her functions and responsibilities as specified in Rule 2.1220.

The Exchange proposes to add Rule 2.1210 to the list of rules in Rule 10.9217 eligible for disposition pursuant to a minor fine under Rule 10.9216(b). Specifically, the Exchange proposes to add Rule 2.1210 to Rule 10.9217(g) as new item 13 applicable to both equities and options permit holders. NYSE Arca Rule 2.1210 is substantially similar to Rule 1210 adopted by the Exchange's affiliate New York Stock Exchange LLC (''NYSE'') in 2018 [5] which is currently eligible for minor rule fines under the NYSE's version of Rule 10.9217.[6] The Exchange believes that having the ability to issue a minor rule fine for failing to comply with the registration requirements of Rule 2.1210 would be consistent with and complement the Exchange's current ability to issue minor rule fines for other registration violations (*e.g.,* Rule 2.24 (Registration—Employees of ETP Holders)). The Exchange further believes that the violations of the registration requirements are particularly suited to minor rule fines because minor fines provide a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations.

The Exchange further proposes to add fine levels for violations of Rule 2.1210 to both the equities and the options fine schedules. First, the Exchange would add proposed first, second and third level fines for violations of Rule 2.1210 to the options fine schedule as proposed Rule 10.9217(h)(iii)(12) of $1,000 for the first violation, $2,500 for the second violation and $3,500 for the third and subsequent violations. The proposed fine levels would be the same as those in the Exchange's current Rule 10.9217(h)(iii)(11) for violations of Rule 2.23. Second, the Exchange would add proposed first, second and third level fines for violations of Rule 2.1210 to the equities fine schedule as proposed Rule 10.9217(i)(2)(12) of $1,000 for the first violation, $2,500 for the second violation and $3,500 for the third and subsequent violations. The proposed fine levels would be the same as those in the Exchange's current Rule 10.9217(i)(2)(11) for violations of Rule 2.24.

The Exchange believes that the proposed change would strengthen the

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[17] *See id.* at 58401.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 84389 (October 10, 2018), 83 FR 52272 (October 16, 2018) (SR–NYSEArca–2018–71) (Notice of Filing and Immediate Effectiveness of Amendments to Rules Regarding Qualification, Registration and Continuing Education Applicable to Equity Trading Permit Holders, Options Trading Permit Holders or OTP Firms).

[5] *See* Securities Exchange Act Release No. 84336 (October 2, 2018), 83 FR 50727 (October 9, 2018) (SR–NYSE–2018–44) (Notice of Filing and Immediate Effectiveness of Amendments To Rules Regarding Qualification, Registration and Continuing Education Applicable to Members and Member Organizations).

[6] *See* NYSE Rule 9217. *See generally* Securities Exchange Act Release No. 87212 (October 3, 2019), 84 FR 54193 (October 9, 2019) (SR–NYSE–2019–44) (Order Granting Approval of a Proposed Rule Change, as Modified by Amendment No. 1, To Add Certain Rules to the List of Minor Rule Violations in Rule 9217, Delete Obsolete Rules, and Increase the Maximum Fine for Minor Rule Violations).

Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation.

Non-Substantive Clarifying Changes to Rule 10.9217

The Exchange proposes the following non-substantive clarifying changes to Rule 10.9217.

First, the Exchange proposes to correct a typographical error in Rule 10.9217(h)(i)(23). Rule 10.9217(h)(i)(23) sets forth the proposed fine levels for violations of the rule governing reporting of options positions. Rule 10.9217(h)(i)(23), however, refers to Rule 6.4–O(a) (Series of Options Open for Trading) and not Rule 6.6–O(a), which governs reporting of options positions, which is correctly referred to in Rule 10.9217(e)(23). The Exchange accordingly proposes to correct the error.

Second, the Exchange proposes to add clarifying language regarding the disposition of minor rule fines for violations of the CAT Compliance Rules in the Rule 11.6800 Series based on language adopted by the Exchange's affiliates. Specifically, the Exchange would add a new footnote 4 to current Rule 10.9217(h)(iii)(13) and a new footnote 3 to current Rule 10.9217(i)(2)(14) (governing minor rule fine levels of the options and equities markets, respectively) that would provide as follows:

> For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 11.6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.

The language is identical to that adopted by the Exchange's affiliates NYSE and NYSE Chicago, Inc.[7] In addition, ''Up to $2,500.00'' would be deleted from current Rule 10.9217(i)(2)(14) and 10.9217(h)(iii)(13) as redundant of proposed footnote 3. The proposed change is not intended to make a substantive change. Violations of the CAT Compliance Rules are currently eligible for minor rule fines and $2,500 is currently the maximum eligible fine.

Third, the Exchange would add a missing footnote number ''2'' to the end of Rule 10.9217(i)(2)(11), governing failure to comply with the employee registration or other requirements of Rule 2.24. The numbered footnote text appears in the rule, but the footnote number was inadvertently omitted from Rule 10.9217(i)(2)(11).

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(5),[9] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest.

Minor rule fines provide a meaningful sanction for minor or technical violations of rules when the conduct at issue does not warrant stronger, immediately reportable disciplinary sanctions. The inclusion of a rule in Rule 10.9217 does not minimize the importance of compliance with the rule, nor does it preclude the Exchange from choosing to pursue violations of eligible rules through formal disciplinary action if the nature of the violations or prior disciplinary history warrants more significant sanctions. Rather, the Exchange believes that the proposed rule change will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities in cases where full disciplinary proceedings are unwarranted in view of the minor nature of the particular violation. The option to impose a minor rule sanction gives the Exchange additional flexibility to administer its enforcement program in the most effective and efficient manner while still fully meeting the Exchange's remedial objectives in addressing violative conduct. The proposed rule change is thus designed to prevent fraudulent and manipulative acts and practices because it will provide the Exchange the ability to issue a minor rule fine for violations of the registration requirements set forth in Rule 2.1210 where a more formal disciplinary action may not be warranted or appropriate. In addition, the Exchange believes that adding rules based on the rules of its affiliate to the Exchange's minor rule plan, and adding associated fine levels based on current treatment of violations of its registration rules, would promote fairness and consistency in the marketplace by permitting the Exchange to issue a minor rule fine for violations of substantially similar rules that are already eligible for minor rule treatment, thereby harmonizing minor rule plan fines across affiliated exchanges for the same conduct.

The Exchange further believes that the proposed amendments to Rule 10.9217 are consistent with Section 6(b)(6) of the Act,[10] which provides that members and persons associated with members shall be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder and the rules of the exchange, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction. As noted, the proposed rule change would provide the Exchange ability to sanction minor or technical violations of proposed Rule 2.1210 pursuant to the Exchange's rules. Finally, the Exchange also believes that the proposed changes are designed to provide a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d) of the Act.[11] Rule 10.9217 does not preclude an ETP Holder, OTP Holder or OTP Firm or covered person from contesting an alleged violation and receiving a hearing on the matter with procedural rights through a litigated disciplinary proceeding.

In addition, the Exchange believes that the proposed non-substantive clarifying changes described above to correct a typographical error, add clarifying language regarding the disposition of minor rule fines for violations of the CAT Compliance Rules in the Rule 11.6800 Series based on language adopted by the Exchange's affiliates, and to insert a missing footnote number would add clarity and consistency to the Exchange's rules. The Exchange believes that adding such clarity would also be consistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity, thereby reducing potential confusion. In addition, the Exchange believes that incorporating language relating to violations of the CAT Compliance Rules adopted by the Exchange's affiliates would promote fairness and consistency in the marketplace by eliminating differences and harmonizing language related to

[7] *See* NYSE Rule 9217(d) (''For failures to comply with the Consolidated Audit Trail Compliance Rule requirements of the Rule 6800 Series, the Exchange may impose a minor rule violation fine of up to $2,500. For more serious violations, other disciplinary action may be sought.''); NYSE Chicago Rule 10.9217(f), n. ** (same).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(6).

[11] 15 U.S.C. 78f(b)(7) and 78f(d).

minor rule treatment of similar rule violations across affiliates. The proposed change is not intended to make any substantive change to the applicability of minor rule fines to violations of the CAT Compliance Rules or the amount of those fines.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is not designed to address any competitive issue but rather to update the Exchange's rules to strengthen the Exchange's ability to carry out its oversight and enforcement functions and deter potential violative conduct.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2022–72 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2022–72. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2022–72 and should be submitted on or before December 8, 2022.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act[14] which require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act,[15] which governs minor rule violation plans.

As stated above, the Exchange proposes to amend Rule 10.9217 by: (1) adding Rule 2.1210 (Registration Requirements) to the list of minor rule violations, including in the fine schedules, for both the equities and options markets; and (2) making other clarifying and non-substantive changes.

The Commission believes that Rules 10.9216(b) and 10.9217 are an effective way to discipline a member for a minor violation of a rule. More specifically, the Commission believes that the proposed addition of Rule 2.1210 (Registration Requirements) to the Exchange's list of current minor rule violations provides a reasonable means of addressing violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission also believes that amending the associated fine schedule is consistent with the Act because it may help the Exchange's ability to better carry out its oversight and enforcement responsibilities by levying appropriate fines for minor violations of the rules included in Rule 10.9217, including minor violations of Rule 2.1210. Finally, the Commission believes that the Exchange's proposal to make certain non-substantive changes to Rule 10.9217 are consistent with the Act because these changes will add clarity to the Exchange's rules.

In approving the proposed rule change, the Commission in no way minimizes the importance of compliance with the Exchange's rules and all other rules subject to fines under Rules 10.9216(b) and 10.9217. The Commission believes that a violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, Rules 10.9216(b) and 10.9217 provide a reasonable means of addressing rule violations that may not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that the Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under Rules 10.9216(b) and 10.9217 or whether a violation requires formal disciplinary action.

For the same reasons as discussed above, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[16] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The proposal will

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

[15] 17 CFR 240.19d–1(c)(2).

[16] 15 U.S.C. 78s(b)(2).

assist the Exchange in preventing fraudulent and manipulative practices by allowing the Exchange to adequately enforce compliance with, and provide appropriate discipline for, violations of Exchange rules. Moreover, the proposed changes raise no new or novel issues. Accordingly, the Commission believes that a full notice-and-comment period is not necessary before approving the proposal.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [17] and Rule 19d–1(c)(2) thereunder,[18] that the proposed rule change (SR–NYSEArca–2022–72) be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Sherry R. Haywood,

Assistant Secretary.

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[17] 15 U.S.C. 78s(b)(2).

[18] 17 CFR 240.19d–1(c)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96297; File No. SR–FINRA–2022–021]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Supplementary Material .18 (Remote Inspections Pilot Program) Under FINRA Rule 3110 (Supervision)

November 10, 2022.

I. Introduction

On July 28, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FINRA–2022–021 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b–4 [2] thereunder to adopt a voluntary, three-year remote inspection pilot program (''Pilot'') to allow broker-dealers to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms.[3] The proposed rule change was published for public comment in the **Federal Register** on August 15, 2022.[4] On September 23, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 11, 2022.[5] On November 9, 2022, FINRA filed a letter stating it was still considering the comments to the Notice, and anticipates submitting a response to comments and amendments to the Notice in the near future.[6]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act [7] to solicit comments on the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

As stated in the Notice, the COVID–19 pandemic prompted FINRA to provide temporary relief to member firms from certain regulatory requirements.[8] For example, FINRA adopted temporary Rule 3110.17, effective since November 2020, to provide member firms the option to conduct inspections of their branch offices and non-branch locations remotely, subject to specified terms [9] FINRA stated in the Notice that it believes now is the time to assess possible longer-term rule changes regarding its inspection program and is, therefore, proposing a voluntary, three-year remote inspections pilot program.[10]

B. The Proposed Rule Change

The Notice states that Rule 3110(c)(1) currently provides that an inspection of an office or location must occur on a designated frequency, and that the periodicity of the required inspection varies depending on the classification of the location as an office of supervisory jurisdiction (''OSJ''), branch office, or non-branch location.[11] FINRA is proposing to amend FINRA Rule 3110 (Supervision) to adopt a voluntary, three-year remote inspection pilot program to allow member firms to elect to fulfill their obligation under Rule 3110(c) (Internal Inspections) by conducting inspections of some or all branch offices and non-branch locations remotely without an on-site visit to such office or location, subject to specified terms described below (such members hereinafter referred to as ''participating members'').

i. Scope of Pilot

Proposed Rule 3110.18(b)(1) would provide that a participating member may elect to conduct the inspection of an office or location during the pilot period remotely when the member reasonably determines that the purposes of the rule can be accomplished by conducting such required inspection remotely. Proposed Rule 3110.18(b)(1) would require a participating member to develop a reasonable risk-based approach to using remote inspections and conduct and document a risk assessment for an office or location prior to electing to conduct a remote inspection for that office or location. The risk assessment must document the factors considered, including the factors set forth in Rule 3110.12, and must take into account any higher risk activities that take place or higher risk associated persons that are assigned to that location.[12]

ii. Inelegible Offices and Locations

Under proposed Rule 3110.18(b)(2)(A), a member firm would be ineligible to conduct remote inspections of any of its offices or locations if any time during the period of the proposed pilot program, the member is or becomes designated as: (1) a Restricted Firm under Rule 4111

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 4.

[4] Exchange Act Release No. 95452 (Aug. 9, 2022), 87 FR 50144 (Aug. 15, 2022) (File No. SR–FINRA–2022–021) (''Notice'').

[5] *See* letter from Sarah Kwak, Associate General Counsel, Office of General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated September 23, 2022.

[6] *See* letter from Sarah Kwak, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 9, 2022, available at *https://www.finra.org/sites/default/files/2022-11/FINRA-2022-021-Response-to-Comments-11-09-2022.pdf.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] *See* Notice at 50147 and notes 28 and 29.

[9] *See* Exchange Act Release No. 90454 (Nov. 18, 2020), 85 FR 75097 (Nov. 24, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2020–040). *See also* Exchange Act Release No. 93002 (Sept. 15, 2021), 86 FR 52508 (Sept. 21, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2021–023); Exchange Act Release No. 94018 (Jan. 20, 2022), 87 FR 4072 (Jan. 26, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–001); Exchange Act Release No. 96241 (Nov. 4, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–030). If the proposed rule change is approved, Rule 3110.17 would automatically sunset on the effective date of proposed Rule 3110.18, if it has not already expired by its own terms. *See* Notice at 50152.

[10] *See* Notice at 50145.

[11] *See id.* at 50146.

[12] *See id.* at 50148–49.

(Restricted Firm Obligations); or (2) a Taping Firm under Rule 3170 (Tape Recording of Registered Persons by Certain Firms). Under proposed Rule 3110.18(b)(2)(B), a specific office or location of an otherwise eligible member would be ineligible for a remote inspection if at any time during the period of the proposed pilot program, an associated person at such office or location is or becomes: (1) subject to a mandatory heightened supervisory plan under the rules of the Commission, FINRA, or state regulatory agency; (2) statutorily disqualified, unless such disqualified person has been approved (or is otherwise permitted pursuant to FINRA rules and the federal securities laws) to associate with a member and is not subject to a mandatory heightened supervisory plan under proposed Rule 3110.18(b)(2)(B)(i) or otherwise as a condition to approval or permission for such association; (3) subject to Rule 1017(a)(7) as a result of one or more associated persons at such location; or (4) one or more associated persons at such location has an event in the prior three years that required a ''yes'' response to any item in Questions 14A(1)(a) and 2(a), 14B(1)(a) and 2(a), 14C, 14D and 14E on Form U4.[13]

iii. Written Supervisory Procedures

Proposed Rule 3110.18(c) would require a participating firm to adopt written supervisory procedures (''WSPs'') regarding conducting remote inspections that are reasonably designed to detect and prevent violations of and achieve compliance with applicable securities laws and regulations, and with applicable FINRA rules. Proposed Rule 3110.18(c) also states that reasonably designed procedures for conducting remote inspections of offices or locations should include, among other things: (1) a description of the methodology, including technology, that may be used to conduct remote inspections; (2) the factors considered in the risk assessment made for each applicable office or location pursuant to proposed Rule 3110.18(b); and (3) the use of other risk-based systems employed generally by the participating member to identify and prioritize for review those areas that pose the greatest risk of potential violations of applicable securities laws and regulations, and of applicable FINRA rules.[14]

iv. Effective Supervisory System

Proposed Rule 3110.18(d) would reiterate that the requirement to conduct inspections of offices and locations is one part of a member's overall obligation to have an effective supervisory system, and therefore a member must continue with its ongoing review of the activities and functions occurring at all offices and locations, whether or not the member conducts inspections remotely. In addition, proposed Rule 3110.18(d) would provide that a participating member's remote inspection of an office or location would be held to the same standards for review applicable to on-site inspections as set forth under Rule 3110.12. Further, proposed Rule 3110.18(d) would provide that where a participating member's remote inspection of an office or location identifies any indicators of irregularities or misconduct (*i.e.,* ''red flags''), the member may need to impose additional supervisory procedures for that office or location, or may need to provide for more frequent monitoring of that office or location, including potentially a subsequent physical, on-site visit on an announced or unannounced basis.[15]

v. Documentation

Proposed Rule 3110.18(e) would require a participating member to maintain and preserve a centralized record for each of the ''pilot years'' [16] that separately identifies: (1) all offices or locations that were inspected remotely; and (2) any offices or locations for which the member determined to impose additional supervisory procedures or more frequent monitoring, as provided in proposed Rule 3110.18(d). In addition, under proposed Rule 3110.18(e) a participating member's documentation of the results of a remote inspection for an office or location must identify any additional supervisory procedures or more frequent monitoring for that office or location that were imposed as a result of the remote inspection, including whether an on-site inspection was conducted at such office.[17]

vi. Data and Information To Be Provided to FINRA

a. Data Collection

Proposed Rule 3110.18(f)(1) would require a participating member to collect separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations, consistent with Rule 3110(c)(1), of:

(A) the number of locations with an inspection—on-site or remote—completed during each calendar quarter;

(B) the number of locations in item (A) that were inspected remotely;

(C) the number of locations in item (A) that were inspected on-site;

(D) the number of locations in item (C) that were inspected on-site because of a ''finding''; [18]

(E) the number of locations in item (B) where findings were identified, the number of those findings, and a list of the most significant findings; and

(F) the number of locations in item (C) where findings were identified, the number of those findings, and a list of the most significant findings. (Hereinafter collectively referred to as the ''Collected Data'').[19]

Proposed Rule 3110.18(f)(1) would require a participating member to provide the Collected Data to FINRA, on a periodic basis (not to exceed quarterly), and in a manner and format determined by FINRA.[20]

b. Written Supervisory Procedures

Proposed Rule 3110.18(f)(1) would also require participating members to provide FINRA the requirements of their WSPs for remote inspections that account for: (1) procedures for escalating significant findings; (2) procedures for new hires; (3) procedures for supervising brokers with a significant history of misconduct; and (4) procedures related to outside business activities and ''doing business as'' (DBA) designations. Proposed Rule 3110.18(f) would require participating members to provide FINRA this information with the first delivery of the Collected Data, and thereafter with the first delivery of Collected Data made

[13] *See id.*

[14] *See id.* at 50150.

[15] *See id.*

[16] Proposed Rule 3110.18(h) would define the term ''pilot year.''

[17] *See* Notice at 50150.

[18] Proposed Rule 3110.18(f) would define ''finding'' as an item that led to any remedial action or was listed on the member's inspection report. *See* Notice at 50151.

[19] *See* Notice at 50150–51. If ''pilot year one'', as defined by proposed Rule 3110.18(h), covers a period that is less than a full calendar year, proposed Rule 3110.18(f)(2) would require a participating member to collect separate counts for OSJs, supervisory branch offices, non-supervisory branch offices, and non-branch locations, consistent with Rule 3110(c)(1), of: (A) the number of locations with an inspection completed during the full calendar year of pilot year one; (B) the number of locations in item (A) that were inspected remotely during the full calendar year of pilot year one; and (C) the number of locations in item (A) that were inspected on-site during the full calendar year of pilot year one. (Hereinafter collectively referred to as the ''Pilot Year One Collected Data''). Proposed Rule 3110.18(f)(2) would require a participating member to provide Pilot Year One Collected Data to FINRA no later than December 31 of such first pilot year, and in a manner and format determined by FINRA. *See* Notice at 50151.

[20] *See* Notice at 50150–51.

after any amendments to their WSPs for remote inspections.[21]

In addition, proposed Rule 3110.18(f)(3) would require participating members to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the data and information collection, and transmission requirements of proposed Rule 3110.18(f).[22]

vii. Notice of Opting In and Opting Out of Proposed Pilot Program

Proposed Rule 3110.18(g) would require a participating member, at least five calendar days before the beginning each pilot year,[23] to provide FINRA an opt-in notice in the manner and format determined by FINRA. By providing such opt-in notice to FINRA, the participating member agrees to participate in the proposed pilot program for the duration of the pilot year and to comply with the requirements of Rule 3110.18. A participating member that provides the opt-in notice for a pilot year would be automatically deemed to have elected and agreed to participate in the proposed pilot program for subsequent pilot years until the pilot program expires. Proposed Rule 3110.18(g) would also require a participating member withdrawing from subsequent pilot years to, at least five calendar days before the end of the then current pilot year, provide FINRA with an opt-out notice in the manner and format determined by FINRA.[24]

viii. Failure To Satisfy Conditions

Under proposed Rule 3110.18(i), a member firm that fails to satisfy the conditions of proposed Rule 3110.18 would be ineligible to participate in the proposed pilot program and must conduct on-site inspections of each office and location on the required cycle in accordance with Rule 3110(c).[25]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2022–021 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.[26] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[27] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[28]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by December 7, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 21, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2022–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2022–021. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File No. SR–FINRA–2022–021 and should be submitted on or before December 7, 2022. If comments are received, any rebuttal comments should be submitted on or before December 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2022–24958 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

[21] *See id.* at 50151.

[22] *See id.*

[23] *See supra* note 16.

[24] *See* Notice at 50151. Proposed Rule 3110.18(g) would give FINRA authority to waive the applicable timeframes for the required opt-in or opt-out notices in exceptional cases and where good cause is shown. *See id.*

[25] *See* Notice at 50151–52.

[26] 15 U.S.C. 78s(b)(2)(B).

[27] *Id.*

[28] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[29] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96286; File No. SR–Phlx–2022–45]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

November 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2022, Nasdaq PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the expiration date of the temporary amendments in SR–Phlx–2020–53 from October 31, 2022, to January 31, 2023.[4] The proposed rule change would not make any changes to the text of the Exchange rules.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/phlx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue to harmonize Exchange Rule General 3, Section 16 with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its Rule 1015 in response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities.[5] The Exchange originally filed proposed rule change SR–Phlx–2020–53, which allows the Exchange Review Council (''ERC'') to conduct hearings in connection with appeals of Membership Application Program decisions, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In July 2022, the Exchange filed a proposed rule change, SR–Phlx–2022–32, to extend the expiration date of the temporary amendments in SR–Phlx–2020–53 from July 31, 2022, to October 31, 2022.[6] Although there has been a downward trend in the number of COVID–19 cases since July 2022, the Exchange believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, the Exchange notes that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[7] and approximately 19 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[8] Much uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking[9] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.

As set forth in SR–Phlx–2020–53, the Exchange also relies on COVID–19 data and criteria to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference. Based on that data and criteria, the Exchange believes that there will be a continued need for this temporary relief beyond October 31, 2022. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR–Phlx–2020–53 from October 31, 2022, to January 31, 2023. The extension of the temporary amendments allowing for specified ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances—enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

[5] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–029). (''FINRA Filing''). The Exchange notes that the FINRA Filing also proposed to temporarily amend FINRA Rules 9261, 9524, and 9830, which govern hearings in connection with appeals of disciplinary actions, eligibility proceedings, and temporary and permanent cease and desist orders. The Exchange's Rules 9261, 9524, and 9830 incorporate by reference The Nasdaq Stock Market LLC rules, which are the subject of a separate filing. *See* SR–NASDAQ–2022–059. Therefore, the Exchange is not proposing to adopt that aspect of the FINRA Filing.

[6] *See* Securities Exchange Act Release No. 95435 (August 5, 2022), 87 FR 49635 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2022–32); *see also* Securities Exchange Act Release No. 94611 (April 5, 2022), 87 FR 21230 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2022–15); Securities Exchange Act Release No. 93853 (December 22, 2021), 86 FR 74164 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2021–75); Securities Exchange Act Release No. 92906 (September 9, 2021), 86 FR 51404 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2021–49); Securities Exchange Act Release No. 91766 (May 4, 2021), 86 FR 25014 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2021–27); Securities Exchange Act Release No. 90758 (December 21, 2020), 85 FR 85782 (December 29, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–Phlx–2020–053).

[7] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 24, 2022).

[8] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels* (last visited Oct. 24, 2022).

[9] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 24, 2022).

orderly markets—while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by providing greater harmonization between the Exchange rules and FINRA rules of similar purpose,[12] resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR–Phlx–2020–53, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing ERC hearings to proceed by video conference, the Exchange might be required to postpone some or almost all hearings for a significant period of time. The Exchange must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID–19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR–Phlx–2020–53, this temporary relief allowing ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–Phlx–2020–53, the proposed rule change is intended solely to extend temporary relief necessitated by the continued presence of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[13] and subparagraph (f)(6) of Rule 19b–4 thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6)[15] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange believes the COVID–19 related health concerns necessitating this relief will continue beyond October 31, 2022.[17] Importantly, extending the temporary relief provided in SR–Phlx–2020–53 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[18] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–Phlx–2020–53.[19] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[20] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[21]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 5.

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii).

[17] *See supra* Item II.

[18] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[19] *See supra* note 6.

[20] *See supra* note 4. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[21] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2022–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2022–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2022–45 and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–24891 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96298; File No. SR–FINRA–2022–024]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of Amendment No. 1 and Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change, As modified by Amendment No. 1, To Amend the Codes of Arbitration Procedure To Modify the Current Process Relating to the Expungement of Customer Dispute Information

November 10, 2022.

I. Introduction

On July 29, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FINRA–2022–024 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4[2] thereunder to modify the current process relating to the expungement of customer dispute information.[3] The proposed rule change was published for public comment in the **Federal Register** on August 15, 2022.[4] On September 27, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to November 11, 2022.[5] On November 10, 2022, FINRA responded to the comment letters received in response to the Notice and filed an amendment to modify the proposed rule change (''Amendment No. 1'').[6]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act[7] to solicit comments on the proposed rule change, as modified by Amendment No. 1, and to institute proceedings to determine whether to approve or disapprove the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change, as Modified by Amendment No. 1

A. Background

The Central Registration Depository (''CRD'') is a licensing and registration system used by the Commission, state securities regulators, and self-regulatory organizations (''SROs'') as a source of regulatory information on, among other things, broker-dealers and their associated persons. Certain information on CRD is also released to the public through FINRA's BrokerCheck system.[8] FINRA stated that it publishes on BrokerCheck extensive disclosure information, including customer dispute information for associated persons who are currently or were formerly registered with FINRA, to help investors make informed choices about the associated persons and broker-dealer firms with whom they may conduct business.[9]

FINRA rules allow broker-dealers and their associated persons to seek expungement of customer dispute information from the CRD and BrokerCheck systems in certain circumstances.[10] An associated person may seek expungement of customer dispute information through the FINRA arbitration process or by going directly to court without first going to arbitration.[11]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See infra* note 4. ''Customer dispute information'' includes complaints, arbitration claims, and court filings made by customers against broker-dealers and their associated persons. *Id.* at 50172.

[4] Exchange Act Release No. 34–95455 (August 9, 2022), 87 FR 50170 (August 15, 2022) (File No. SR–FINRA–2022–024) (''Notice''), available at *https://www.govinfo.gov/content/pkg/FR-2022-08-15/pdf/2022-17430.pdf.*

[5] *See* letter from Mignon McLemore, Associate General Counsel, Office of General Counsel, FINRA, to Lourdes Gonzalez, Assistant Chief Counsel, Division of Trading and Markets, Commission, dated September 27, 2022, available at *https://www.finra.org/sites/default/files/2022-09/sr-finra-2022-024-extension1.pdf.*

[6] *See* letter from Mignon McLemore, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated November 10, 2022 (''FINRA Response''), available at *https://www.sec.gov/comments/sr-finra-2022-024/srfinra2022024.htm.*

[7] 15 U.S.C. 78s(b)(2)(B).

[8] A detailed description of the information made available through BrokerCheck is available at *http://www.finra.org/investors/about-brokercheck. See* Notice at note 22. The BrokerCheck website is available at *brokercheck.finra.org.*

[9] *See* Notice at 50172.

[10] *See, e.g.,* FINRA Rules 12805 (Expungement of Customer Dispute Information under Rule 2080), 13805 (Expungement of Customer Dispute Information under Rule 2080), and 2080 (Obtaining an Order of Expungement of Customer Dispute Information from the Central Registration Depository (CRD) System).

[11] *See id.; see also* Notice at 50191.

B. The Proposed Rule Change

FINRA is proposing to amend the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and the Code of Arbitration Procedure for Industry Disputes (''Industry Code'') (together, ''Codes'') to modify the current process relating to the expungement of customer dispute information. The proposed rule change would impose requirements on expungement requests: (a) filed by an associated person during an investment-related, customer initiated arbitration (''customer arbitration''), or filed by a party to the customer arbitration on behalf of an associated person (''on-behalf-of request''), or (b) filed by an associated person separate from a customer arbitration (''straight-in request'').[12]

Specifically, the proposed rule change would: (1) require that a straight-in request be decided by a three-person panel that is randomly selected from a roster of experienced public arbitrators with enhanced expungement training;[13] (2) prohibit parties to a straight-in request from agreeing to fewer than three arbitrators to consider their expungement requests, from striking any of the selected arbitrators, from stipulating to an arbitrator's removal, or from stipulating to the use of pre-selected arbitrators; (3) provide notification to state securities regulators of all expungement requests and a mechanism for state securities regulators to attend and participate in expungement hearings in straight-in requests; (4) impose time limits on the filing of straight-in requests; (5) codify and update the best practices in the Notice to Arbitrators and Parties on Expanded Expungement Guidance applicable to all expungement hearings, including amendments to establish additional requirements for expungement hearings, to facilitate customer attendance and participation in expungement hearings, and to codify the panel's[14] ability to request any evidence relevant to the expungement request;[15] (6) require the unanimous agreement of the panel to issue an award containing expungement relief; and (7) establish procedural requirements for filing expungement requests, including for on-behalf-of requests. The proposed rule change would also amend the Customer Code to specify procedures for requesting expungement of customer dispute information during simplified arbitrations.[16]

Amendment No. 1 would modify the proposed rule change in three ways. First, it would amend proposed Rules 12805(c)(3)(A) and 13805(c)(3)(A) to state that all customers whose customer arbitrations, civil litigations or customer complaints are a subject of the expungement request are entitled to attend and participate in all aspects of the prehearing conferences and the expungement hearing. Second, it would modify proposed Rules 12805(c)(8)(C) and 13805(c)(9)(C) to state that a panel shall not give any evidentiary weight to a decision by a customer or an authorized representative not to attend or participate in an expungement hearing when making a determination of whether expungement is appropriate. Finally, Amendment No. 1 would modify the proposed rule change to provide that an associated person shall not file a claim requesting expungement of customer dispute information from the CRD system if the customer dispute information is associated with a customer arbitration or civil litigation in which a panel or court of competent jurisdiction previously found the associated person liable.[17]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2022–024 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved.[18] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change, as modified by Amendment No. 1. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change, as modified by Amendment No. 1.

Pursuant to Section 19(b)(2)(B) of the Exchange Act,[19] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change, as modified by Amendment No. 1. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change, as modified by Amendment No. 1, is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[20]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change, as modified by Amendment No. 1, should be approved or disapproved by December 7, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by December 21, 2022.

Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File No. SR–FINRA–2022–024 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[12] *See* Notice at 50170.

[13] Among other requirements, public arbitrators are not employed in the securities industry and do not devote 20 percent or more of their professional work to the securities industry or to parties in disputes concerning investment accounts or transactions or employment relationships within the financial industry. *See* FINRA Rules 12100(aa) and 13100(x). Notice at note 3.

[14] Under the Codes, the term ''panel'' means the arbitration panel, whether it consists of one or more arbitrators. *See* FINRA Rules 12100(u) and 13100(s). Notice at note 4.

[15] *See* FINRA Dispute Resolution Services, Notice to Arbitrators and Parties on Expanded Expungement Guidance, *https://www.finra.org/arbitration-mediation/notice-arbitrators-and-parties-expanded-expungement-guidance* (last updated Sept. 2017).

[16] *See* Notice at 50170.

[17] *See* Amendment No. 1; *see also* FINRA Response.

[18] 15 U.S.C. 78s(b)(2)(B).

[19] *Id.*

[20] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. SR–FINRA–2022–024. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as modified by Amendment No. 1, that are filed with the Commission, and all written communications relating to the proposed rule change, as modified by Amendment No. 1, between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. If comments are received, any rebuttal comments should be submitted on or before December 21, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24959 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96296; File No. SR–NYSEAMER–2022–51]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update and Harmonize the Exchange's Reimbursement Schedule for Forwarding Proxy and Other Issuer Material

November 10, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 4, 2022, NYSE American LLC (''NYSE American'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE American Rules 576, 585, 451—Equities and 465—Equities, and the related provisions of Section 722 of the NYSE American Company Guide (the ''Company Guide''), which provide a schedule for the reimbursement of expenses by issuers to NYSE American member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name.[4] The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Exchange notes that the proposed schedule for the reimbursement of expenses was first adopted by the New York Stock Exchange and FINRA in 2014 and has been applied industry wide since that time, as intended. *See, infra,* Footnote 5. This rule proposal does not propose any changes to that schedule. Instead, this proposal seeks only to make conforming changes to the Exchange's rules and the Company Guide.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend NYSE American Rules 576, 585, 451—Equities and 465—Equities, and the related provisions of Section 722 of the NYSE American Company Guide, which provide a schedule for the reimbursement of expenses by issuers to NYSE American member organizations for the processing of proxy materials and other issuer communications provided to investors holding securities in street name. The proposed amendments to Rules 576, 585, 451—Equities and 465—Equities and Section 722 of the Company Guide will conform NYSE American's reimbursement schedule to one previously adopted by the New York Stock Exchange LLC (the ''NYSE'').[5] The NYSE adopted the changes to its reimbursement schedule upon the recommendation of the Proxy Fee Advisory Committee (''PFAC'' or the ''Committee'') which was formed in 2010 to review the then-existing fee structure and report its findings to the NYSE.[6]

The Exchange notes that Rules 576 and 585 duplicate Rules 451—Equities and 465—Equities. Rules 576 and 585 appear in the ''Office Rules'' section of

[5] *See* Securities Exchange Act Release No. 70720, October 18, 2013, 78 FR 63530, October 24, 2013, approving SR–NYSE–2013–07 (the ''NYSE Approval Order'') and Securities Exchange Act Release No. 71273, January 9, 2014, 79 FR 2702, January 15, 2014 (SR–NYSE–2013–83). FINRA has adopted a fee structure identical to the schedule that was adopted by the NYSE. *See* Securities Exchange Act Release No. 71272, January 9, 2014, 79 FR 2741, January 15, 2014 (SR–FINRA–2013–056).

[6] The NYSE Approval Order contained discussion, and corresponding rule text, related to enhanced brokers' internet platforms. The Exchange is not proposing to adopt the portion of NYSE Rule 451 related to the Enhanced Brokers' internet Platform Fee as that fee expired in 2018 and is no longer relevant.

the NYSE American Rule Book and are legacy to the American Stock Exchange LLC (a predecessor entity to the Exchange; references hereafter to the Exchange will refer to the American Stock Exchange LLC or NYSE American LLC, as applicable). NYSE Euronext, the then-owner of the NYSE, acquired the Exchange in 2008. In connection with that acquisition, trading in securities listed on the Exchange was transferred onto the trading platform used by the NYSE. To facilitate that transfer, the Exchange adopted certain NYSE equity trading rules, including Rules 451—Equities and 465—Equities, which appear in the ''Equities Rules'' section of the NYSE American Rule Book.[7] To eliminate confusion, the Exchange proposes to adopt the proposed revised schedule for reimbursement in Rules 451—Equities (which corresponds to the comparable NYSE rule) and amend Rules 576, 585 and 465—Equities to provide a cross reference to the applicable provisions of Rule 451—Equities.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'') generally.[8] Section 6(b)(4)[9] requires that exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using the facilities of an exchange. Section 6(b)(5)[10] requires, among other things, that exchange rules promote just and equitable principles of trade and that they are not designed to permit unfair discrimination between issuers, brokers or dealers. Section 6(b)(8)[11] prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

As amended, Rules 576, 585, 451—Equities and 465—Equities will be substantively identical to NYSE Rules 451 and 465 and FINRA Rule 2251. The Commission has previously found that NYSE Rules 451 and 465 and FINRA Rule 2251 are consistent with Section 6(b) of the Act, generally, and Sections 6(b)(4) and 6(b)(5), in particular.[12] As the proposed amendments to Rules 576, 585, 451—Equities and 465—Equities will simply conform such rules to the corresponding, and previously approved, rules of the NYSE and FINRA, the Exchange believes that its proposal is consistent with Section 6(b) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that Rules 576, 585, 451—Equities and 465—Equities as amended by the proposed amendments do not impose any burdens on competition. As amended, Rules 576, 585, 451—Equities and 465—Equities will be substantively identical to NYSE Rules 451 and 465 and FINRA Rule 2251. The Commission has previously found that NYSE Rules 451 and 465 and FINRA Rule 2251 do not impose any burden on competition.[13] Therefore, the Exchanges believes that the amendments to NYSE Rules 451 and 465 and FINRA Rule 2251 will similarly not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6)[15] thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative upon filing. The Exchange states that waiver of the operative delay will not significantly affect the protection of investors and the public interest because it will ensure regulatory clarity and harmonization with respect to proxy rate reimbursement. Further, the Exchange states the proposed schedule of reimbursement is already being applied industry-wide and this proposal seeks only to conform the Exchange's rules with those of NYSE and FINRA. For these reasons, and because the proposed rule change does not raise any novel regulatory issues, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAMER–2022–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAMER–2022–51. This

[7] SEC Release No. 58705, October 1, 2008, 73 FR 58995, October 8, 2008, approving SR–Amex–2008–63.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(8).

[12] *See, supra,* Footnote 5.

[13] *Id.*

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAMER–2022–51 and should be submitted on or before December 7,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24957 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96279; File No. SR–FINRA–2022–025]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Amend FINRA Rule 11880 (Settlement of Syndicate Accounts) To Revise the Syndicate Account Settlement Timeframe for Corporate Debt Offerings

November 9, 2022.

I. Introduction

On August 5, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings. The proposed rule change was published for comment in the **Federal Register** on August 18, 2022.[3] On September 28, 2022, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission received comment letters on the proposal.[6] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

In its filing, FINRA states that underwriting groups ordinarily form syndicate accounts to process the income and expenses of the syndicate.[7] The syndicate manager is responsible for maintaining syndicate account records and must provide to each selling syndicate member an itemized statement of syndicate expenses no later than the date of the final settlement of the syndicate account.[8] Syndicate members record the expected payments from the syndicate manager as ''receivables'' on their books and records but generally syndicate managers do not provide the payments for up to 90 days after the syndicate settlement date.[9] FINRA Rule 11880(b) provides that the syndicate manager in a public offering of corporate securities must effect the final settlement of syndicate accounts within 90 days following the ''syndicate settlement date.'' [10]

FINRA is proposing to amend FINRA Rule 11880 (Settlement of Syndicate Accounts) to revise the syndicate account settlement timeframe for corporate debt offerings. Specifically, FINRA is proposing to establish a two-stage syndicate account settlement approach whereby the syndicate manager for corporate debt offerings would be required to remit to each syndicate member at least 70 percent of the gross amount due to such syndicate member within 30 days following the syndicate settlement date, with any final balance due remitted within 90 days following the syndicate settlement date.

FINRA states its belief that the proposed rule change will benefit syndicate members by reducing the exposure of syndicate members to the credit risk of the syndicate manager during the pendency of account settlements.[11] FINRA also states that the proposed rule change will benefit syndicate members, including capital-constrained small firms, by allowing them to obtain earlier access to the funds earned from an offering without significantly increasing the risks of resettlements.[12] In addition, FINRA states that the proposed staged approach will provide these benefits to syndicate members while easing compliance for syndicate managers by permitting them to retain 30 percent of the gross amount earned by syndicate members to cover expenses and remit any balance due to the syndicate members within the current 90-day period following the syndicate settlement date.[13]

FINRA has stated that it will announce an effective date for the rule change of January 1, 2023 in a *Regulatory Notice.*[14]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95494 (Aug. 12, 2022), 87 FR 50896 (Aug. 18, 2022) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 95937 (Sept. 28, 2022), 87 FR 60230 (Oct. 4, 2022).

[6] Comments received on the proposed rule change are available at *https://www.sec.gov/comments/sr-finra-2022-025/srfinra2022025.htm.*

[7] *See* Notice, 87 FR at 50896.

[8] *See id.*

[9] *See id.*

[10] *See* FINRA Rule 11880(a)(4) (defining ''syndicate settlement date'' as ''the date upon which corporate securities of a public offering are delivered by the issuer to or for the account of the syndicate members'').

[11] *See* Notice, 87 FR at 50896–7.

[12] *See id.* at 50897.

[13] *See id.*

[14] *See id.*

III. Discussion and Commission Findings

After careful review of the proposal and the comment letters, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[16] which requires, among other things, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change is reasonably designed to reduce a number of risks associated with syndicate debt issuances, including counterparty and liquidity risk. Specifically, it would reduce the exposure of syndicate members to the potential deterioration of the credit of syndicate managers during the pendency of account settlement. Further, a shorter syndicate settlement timeframe would result in lower liquidity risk for certain syndicate members by providing syndicate members with earlier access to capital and improve the syndicate member's liquidity position where their own net capital is limited. Additionally, because the proposed rule change is expected to benefit smaller firms, especially those that are capital-constrained, the Commission believes that the proposed rule change is reasonably designed to have positive effects on competition and thereby to remove impediments to, and perfect the mechanism of a free and open market. Alleviation of liquidity constraints would create opportunities for the syndicate members, especially those that are capital-constrained, to participate in more new offerings and enhance their ability to compete with other firms, maintain business operations, or use the funds for other purposes. This may reduce barriers to entering the corporate debt underwriting market and could ultimately result in an increase in the supply of underwriters and lower costs for corporate debt issuers and investors.

At the same time, the Commission believes that the proposed rule change is reasonably designed not to impact negatively the ability of syndicate managers to run the syndicate settlement account process or unduly burden syndicate managers, given the technological advances that have been made since the 90-day syndicate account settlement timeframe was adopted in 1987, such as electronic order entry and accounting systems.[17] Specifically, FINRA stated that in more than 95% of offerings from 2016 to 2018, the debt security is priced, allocated to investors, and starts trading in the secondary market all within the same day, meaning a large part of syndicate income can be accounted for within days after the date of issuance.[18]

Commenters supported approval of the proposed rule change[19] and some commenters encouraged the Commission to act quickly to approve it so that FINRA can meet its proposed January 1, 2023 effective date.

For the reasons noted above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–FINRA–2022–025) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24887 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

[15] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f); *infra* Section III.

[16] 15 U.S.C. 78*o*–3(b)(6).

[17] *See* Notice, 87 FR at 50900.

[18] *See id.* at 50898.

[19] *See* Letter from Michael Decker, Senior Vice President for Public Policy, Bond Dealers of America, to Secretary, Commission, dated September 8, 2022; Letter from Joseph Corcoran, Managing Director, Associate General Counsel, SIFMA, to Vanessa Countryman, Secretary, Commission, dated September 8, 2022; Letter from Anonymous, dated October 12, 2022.

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96291; File No. SR–CboeEDGA–2022–017]

Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 11.10(d) To Permit Affiliated Users To Enable EdgeRisk Self Trade Prevention

November 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 27, 2022, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') proposes to amend Exchange Rule 11.10(d) (''EdgeRisk Self Trade Prevention (''ERSTP'') Modifiers'') to permit affiliated Users to enable Self Trade Prevention at the parent company level. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Rule 11.10(d) (''EdgeRisk Self Trade Prevention (''ERSTP'') Modifiers'') to add the term ''affiliate identifier'' to the definition of ''Unique Identifier'' while also adding a description of eligibility to utilize the proposed affiliate identifier.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

Adding an affiliate identifier for ERSTP functionality on the Exchange would allow affiliated Users [5] to enable ERSTP at the affiliate level, in addition to the current ERSTP functionality based on market participant identifier (''MPID''), Exchange Member identifier, or ERSTP Group identifier (any such existing identifier, a ''Unique Identifier'').[6] Currently, the Exchange's ERSTP functionality prevents certain contra side orders entered by a User from executing, provided that each order has been marked with the same Unique Identifier.[7] ERSTP functionality is currently available only to individual Users on the Exchange, and cannot be enabled by affiliated Users who each maintain individual Exchange memberships or Sponsored Participant relationships.

As noted above, there are currently three Unique Identifiers that a User may choose from when submitting an order subject to ERSTP: (i) MPID; [8] (ii) Exchange Member identifier; and (iii) ERSTP Group identifier.[9] Use of ERSTP functionality is optional and is not automatically implemented by the Exchange. Both the buy and the sell order must include the same Unique Identifier in order to prevent an execution from occurring and to effect a cancel instruction. For example, a User who enables ERSTP functionality using the MPID Unique Identifier will prevent contra side executions between the same MPID from occurring. A User who enables ERSTP using the Exchange Member Unique Identifier would prevent contra side executions between any MPID associated with that User and not just a single MPID. The ERSTP Group Unique Identifier permits Users to prevent matched trades amongst traders or desks within a certain firm, but allows orders from outside such group or desk to interact with other firm orders. The Exchange is not proposing any change in functionality for the current Unique Identifiers described above.

The Exchange now proposes to amend Rule 11.10(d) and enhance its existing ERSTP functionality by introducing a fourth Unique Identifier, affiliate identifier, which will allow a User to prevent its orders from matching with another User that is an affiliate of the User. In addition to the proposed addition of the affiliate identifier, the Exchange also proposes to add language to Rule 11.9(f) in order to provide clarity to Users about how eligibility for the use of the affiliate identifier will be determined.[10] The proposed addition of the affiliate identifier does not present any new or novel ERSTP functionality, but rather would extend existing ERSTP functionality to a User who demonstrates an affiliate relationship with another User who maintains a separate membership or Sponsored Participant relationship on the Exchange. Generally speaking, an affiliated entity is an organization that directly or indirectly controls another entity, or is directly controlled by another entity, or which is under common control alongside another entity. The concept of affiliation is formally recognized in securities law, particularly Rule 405 of the Securities Act of 1933.[11] As applied to the Exchange, there are situations where two separate entities (*i.e.,* Users) maintain individual memberships or Sponsored Participant relationships on the Exchange even as Firm A owns a controlling percentage of Firm B (*i.e.,* Firm A and Firm B are affiliated entities). The proposed functionality would serve as an additional tool that Users may enable in order to assist with compliance with the various securities laws relating to potentially manipulative trading activity such as wash sales [12] and self-trades.[13] Additionally, the proposed functionality would provide Users an additional solution to manage order flow by preventing undesirable executions against the User's affiliates. As is the case with the existing risk tools, Users, and not the Exchange, have full responsibility for ensuring that their orders comply with applicable securities rules, laws, and regulations. Furthermore, as is the case with the existing risk settings, the Exchange does not believe that the use of the proposed ERSTP functionality can replace User-managed risk management solutions.

The Exchange is proposing to allow affiliated Users that maintain individual Exchange memberships to utilize ERSTP where one User is an affiliate of another User.[14] Specifically, the Exchange is proposing to allow affiliated Users to use ERSTP functionality in order to prevent executions from occurring between those individual Users. When a User requests ERSTP at the affiliate level and an affiliate relationship is confirmed by the Exchange, the Exchange will assign an identical affiliate identifier to each User that will be used to prevent executions between contra side orders entered by the Users using the same affiliate identifier. The purpose of this proposed change is to extend ERSTP functionality to affiliated Users in order to prevent transactions between Users who maintain individual memberships on the Exchange but where an affiliate relationship exists for which ERSTP functionality may be useful.

To demonstrate how ERSTP will operate with the proposed affiliate identifier, the Exchange has included examples of potential scenarios in which ERSTP may be used by affiliated Users. For all examples below, Firm A and Firm B are presumed to have a controlling affiliate relationship and

[5] *See* Exchange Rule 1.5(ee). ''User'' is defined as ''[a]ny Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' The ''System'' is ''[t]he electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc). The term ''Member'' means any registered broker or dealer that has been admitted to membership in the Exchange. *See* Exchange Rule 1.5(n).

[6] *See* Exchange Rule 11.10(d).

[7] *Id.*

[8] An MPID is a four-character unique identifier that is approved by the Exchange and assigned to a Member for use on the Exchange to identify the Member firm on the orders sent to the Exchange and resulting executions.

[9] *See* Securities Exchange Act Release No. 63427 (December 3, 2010), 75 FR 76768 (December 9, 2010) SR–EDGA–2010–19 (''Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend EDGA Rule 11.9 To Offer Anti-Internalization Qualifier (''AIQ'') Functionality to Exchange Users''). *See also* Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) SR–EDGA–2014–20 (''Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend EDGA Rule 1.5 and Chapter XI Regarding Current System Functionality Including the Operation of Order Types and Order Instructions''), in which AIQ functionality was renamed ERSTP.

[10] *Infra* note 14.

[11] *See* 17 CFR 230.405. An *affiliate* of, or person *affiliated* with, a specified person, is a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

[12] A ''wash sale'' is generally defined as a trade involving no change in beneficial ownership that is intended to produce the false appearance of trading and is strictly prohibited under both the federal securities laws and FINRA rules. *See, e.g.,* 15 U.S.C 78i(a)(1); FINRA Rule 6140(b) (''Other Trading Practices'').

[13] Self-trades are ''transactions in a security resulting from the unintentional interaction of orders originating from the same firm that involve no change in beneficial ownership of the security.'' FINRA requires members to have policies and procedures in place that are reasonably designed to review trading activity for, and prevent, a pattern or practice of self-trades resulting from orders originating from a single algorithm or trading desk, or related algorithms or trading desks. *See* FINRA Rule 5210, Supplementary Material .02.

[14] The Exchange will consider a User to be an affiliate of another User if: (i) Greater than 50% ownership is identified in a User's Form BD; and (ii) the Users execute an affidavit stating that a control relationship exists between the two Users.

will use an affiliate identifier of ''A'' when requesting ERSTP at the affiliate level. Firm C is unaffiliated with Firms A and B and uses an affiliate identifier of ''C''.

Affiliate Level ERSTP

Scenario 1: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm C has not enabled ERSTP. Firm A's buy order is prevented from executing with Firm B's sell order as each firm has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order will be permitted to execute with Firm C's sell order because Firm C has not enabled ERSTP.

Scenario 2: Firm A submits a buy order. Firm B submits a sell order. Firm C also submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has not enabled ERSTP. Firm C has enabled ERSTP at the affiliate level using an affiliate identifier of C. Firm A's order will be eligible to trade with both Firm B and Firm C. Firm A's order is eligible to trade with Firm B because Firm B did not enable ERSTP. In order for ERSTP to prevent the matching of contra side orders, both the buy and sell order must contain an ERSTP modifier. Firm A's order is also eligible to trade with Firm C because even though Firm A and Firm C have both enabled ERSTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

Scenario 3: Firm A submits a buy order and a sell order. Firm B submits a buy order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's sell order is not eligible to execute with Firm B's buy order because both Firm A and Firm B have enabled ERSTP at the affiliate level using an affiliate identifier of A.

Scenario 4: Firm A submits a buy order and a sell order. Firm B submits a sell order. Firm C submits a sell order. Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm B has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm C has enabled ERSTP at the affiliate level using an affiliate identifier of C. Firm A's buy order is not eligible to execute with Firm A's sell order because Firm A has enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is not eligible to execute with Firm B's sell order because both Firm A and Firm B have enabled ERSTP at the affiliate level using an affiliate identifier of A. Firm A's buy order is eligible to execute with Firm C's sell order because while Firm A and Firm C have enabled ERSTP at the affiliate level, Firm A and Firm C have been assigned different affiliate identifiers.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[15] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that the proposed affiliate level ERSTP functionality promotes just and equitable principles of trade by allowing Users to better manage order flow and prevent undesirable trading activity such as wash sales''[18] or self-trades[19] that may occur as a result of the velocity of trading in today's high-speed marketplace. The proposed affiliate identifier and description of eligibility to utilize the proposed affiliate identifier does not introduce any new or novel functionality, but rather will extend the Exchange's ERSTP functionality in a manner generally consistent with the functionality currently offered at the MPID, Exchange Member, and ERSTP Group identifier levels because the proposed Users are required to have control over the affiliated User and transactions entered by the firms may be viewed as functionally originating from one User.[20] For instance, the Users may share traders or trading strategies, and elected to not impose information barriers between trading desks. In this regard, Users may desire ERSTP functionality on an affiliate level that will help them achieve compliance[21] with regulatory rules regarding wash sales and self-trades in a very similar manner to the way that the current ERSTP functionality applies on the existing Unique Identifier level. In this regard, the proposed affiliate level ERSTP functionality will permit Users that have separate memberships but who also maintain an affiliate relationship, to prevent the execution of transactions by and between the Users.

The Exchange also believes that the proposed rule change is fair and equitable, and is not designed to permit unfair discrimination. By way of example, subject to appropriate information barriers, many firms that are Users of the Exchange operate both a principal market making desk, which is responsible for handling and executing orders for the benefit of the User, and an agency trading desk that is responsible for handling and executing customer orders. In such instances, the User may elect to utilize ERSTP to prevent transactions between their market maker desk and their agency trading desk. In contrast, other firms may be part of a corporate structure that separates those business lines into separate, but affiliated, entities either for business, compliance, or historical reasons, with each entity maintaining its own Exchange membership. In scenarios where one User indirectly or directly controls the other User (*e.g.,*

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] *Supra* note 5.

[19] *Supra* note 6.

[20] The Exchange notes that the proposed rule filing is similar in in concept to how derivatives markets sometimes contemplate ownership and relationship between accounts. Specifically, in the derivatives markets, rules have developed around of the idea of ''beneficial ownership'', and whether separate accounts have common ownership. For example, the CME Group (''CME''), an operator of global derivatives markets, recognizes that ''buy and sell orders for different accounts with common beneficial ownership . . . shall also be deemed to violate the prohibition on wash trades.'' *See* CME Rule 534. *See also https://www.cmegroup.com/rulebook/files/cme-group-Rule-534.pdf,* FAQ Q2, which describes ''common beneficial ownership'' as accounts with common beneficial ownership that is less than 100%.

[21] The Exchange reminds Users that while they may utilize ERSTP to help develop potential transactions such as wash sales or self-trades, Users, not the Exchange, are ultimately responsible for ensuring that their orders comply with applicable rules, laws, and regulations.

voting power, shared traders and algorithms, shared trading strategies, shared technology, etc.), it is logical that the Users, though separate entities, may determine that transactions between their firms would potentially run afoul of certain securities rules, laws, or regulations, such as wash sales and self-trades. In this regard, absent the proposed rule change, such affiliated entities would not receive the same treatment as firms operating similar business lines within a single entity that is a User of the Exchange. Accordingly, the Exchange believes that its proposed policy is fair and equitable, and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. ERSTP is an optional functionality offered by the Exchange and Users are free to decide whether to use ERSTP in their decision-making process when submitting orders to the Exchange.

The Exchange believes that the proposed affiliate identifier does not impose any intramarket competition as it seeks to enhance an existing functionality available to all Users. The Exchange is not proposing to introduce any new or novel functionality, but rather is proposing to provide an extension of its existing ERSTP functionality to Users who have an affiliate relationship with another User of the Exchange. Additionally, the proposed rule specifies which Users are eligible to use the proposed affiliate identifier, which will be available to any User who satisfies such criteria. ERSTP will continue to be an optional functionality offered by the Exchange and the addition of affiliate level ERSTP will not change how the current Unique Identifiers and ERSTP functionality operate.

The Exchange believes that the proposed affiliate identifier does not impose any undue burden on intermarket competition. ERSTP is an optional functionality offered by the Exchange and Users are not required to use ERSTP functionality when submitting orders to the Exchange. Further, the Exchange is not required to offer ERSTP and is choosing to do so as a benefit for Users who wish to enable ERSTP functionality. Moreover, the proposed change is not being submitted for competitive reasons, but rather to provide Users enhanced order processing functionality that may prevent undesirable executions by affiliated Users such as wash sales or self-trades.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [22] and Rule 19b–4(f)(6) [23] thereunder because the proposal does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) by its terms, become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.[24]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act [25] normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) [26] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange states that waiver of the 30-day operative delay would permit affiliated Users to immediately enable ERSTP functionality in order to better manage order flow and assist with preventing undesirable executions in the same manner as individual Users who currently enable ERSTP at either the MPID, Exchange Member identifier, or ERSTP Group identifier levels. The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change does not raise any new or novel issues. Accordingly, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[27]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[28]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGA–2022–017.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGA–2022–017. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal

[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(6).

[24] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[25] 17 CFR 240.19b–4(f)(6).

[26] 17 CFR 240.19b–4(f)(6)(iii).

[27] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[28] 15 U.S.C. 78s(b)(3)(C).

office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGA–2022–017, and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24894 Filed 11–15–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96282; File No. SR–NASDAQ–2022–059]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Extend the Expiration Date of the Temporary Amendments Concerning Video Conference Hearings

November 9, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the expiration date of the temporary amendments in SR–NASDAQ–2020–076 from October 31, 2022, to January 31, 2023.[4] The proposed rule change would not make any changes to the text of the Exchange rules.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to continue to harmonize Exchange Rules 1015, 9261, 9524 and 9830 with recent changes by the Financial Industry Regulatory Authority, Inc. (''FINRA'') to its Rules 1015, 9261, 9524 and 9830 in response to the COVID–19 global health crisis and the corresponding need to restrict in-person activities. The Exchange originally filed proposed rule change SR–NASDAQ–2020–076, which allows the Exchange's Office of Hearing Officers (''OHO'') and the Exchange Review Council (''ERC'') to conduct hearings, on a temporary basis, by video conference, if warranted by the current COVID–19-related public health risks posed by an in-person hearing. In July 2022, the Exchange filed a proposed rule change, SR–NASDAQ–2022–044, to extend the expiration date of the temporary amendments in SR-NASDAQ–2020–076 from July 31, 2022, to October 31, 2022.[5] Due to the continued presence and uncertainty of COVID–19, the Exchange proposes to extend the expiration date of the temporary rule amendments in SR–NASDAQ–2020–076 from October 31, 2022, to January 31, 2023.

On November 5, 2020, the Exchange filed, and subsequently extended to October 31, 2022, SR–NASDAQ–2020–076, to temporarily amend Exchange Rules 1015, 9261, 9524 and 9830 to grant OHO and the ERC authority[6] to conduct hearings in connection with appeals of Membership Application Program decisions, disciplinary actions, eligibility proceedings and temporary and permanent cease and desist orders by video conference, if warranted by the COVID–19-related public health risks posed by an in-person hearing.[7]

Although there has been a downward trend in the number of COVID–19 cases since July 2022, the Exchange believes there is a continued need for temporary relief beyond October 31, 2022. In this regard, the Exchange notes that COVID–19 still remains a public health concern. For example, according to the Centers for Disease Control and Prevention (''CDC''), the 7-day moving average of new deaths from COVID–19 in the United States during September 2022 ranged from approximately 300 to 500 deaths per day,[8] and approximately 19 percent of counties in the United States have a medium or high COVID–19 Community Level based on the CDC's most recent calculations.[9] Much

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] If the Exchange seeks to provide additional temporary relief from the rule requirements identified in this proposed rule change beyond January 31, 2023, the Exchange will submit a separate rule filing to further extend the temporary extension of time. The amended Exchange rules will revert to their original form at the conclusion of the temporary relief period and any extension thereof.

[5] *See* Securities Exchange Act Release No. 95436 (August 5, 2022), 87 FR 49624 (August 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2022–044).

[6] For OHO hearings under Exchange Rules 9261 and 9830, the proposed rule change temporarily grants authority to the Chief or Deputy Chief Hearing Officer to order that a hearing be conducted by video conference. For ERC hearings under Exchange Rules 1015 and 9524, this temporary authority is granted to the ERC or relevant Subcommittee.

[7] *See* Securities Exchange Act Release No. 90390 (November 10, 2020), 85 FR 73302 (November 17, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–076); *see also* Securities Exchange Act Release No. 90774 (December 22, 2020), 85 FR 86614 (December 30, 2020) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2020–092); Securities Exchange Act Release No. 91763 (May 4, 2021), 86 FR 25055 (May 10, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–033); Securities Exchange Act Release No. 92911 (September 9, 2021), 86 FR 51395 (September 15, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–067); Securities Exchange Act Release No. 93852 (December 22, 2021), 86 FR 74201 (December 29, 2021) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2021–104); Securities Exchange Act Release No. 94610 (April 5, 2022), 87 FR 21225 (April 11, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–NASDAQ–2022–028); *supra* note 5.

[8] *See* CDC, COVID Data Tracker—Trends in Number of COVID–19 Cases and Deaths in the US Reported to CDC, by State/Territory, *https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths_select_00* (last visited Oct. 24, 2022).

[9] *See* CDC, COVID Data Tracker—COVID–19 Integrated County View, *https://covid.cdc.gov/*

uncertainty also remains as to whether there will be a significant increase in the number of cases of COVID–19 in the future given the emergence of new Omicron variants that the CDC currently is tracking [10] and the dissimilar vaccination rates (completed primary series and a first booster dose) throughout the United States.

As set forth in the previous filings, the Exchange also relies on COVID–19 data and the guidance issued by public health authorities to determine whether the current public health risks presented by an in-person hearing may warrant a hearing by video conference.[11] Based on that data and guidance, the Exchange believes that there will be a continued need for this temporary relief beyond October 31, 2022. Accordingly, the Exchange proposes to extend the expiration date of the temporary rule amendments originally set forth in SR–NASDAQ–2020–076 from October 31, 2022, to January 31, 2023. The extension of these temporary amendments allowing for specified OHO and ERC hearings to proceed by video conference will allow the Exchange's critical adjudicatory functions to continue to operate effectively in these extraordinary circumstances—enabling the Exchange to fulfill its statutory obligations to protect investors and maintain fair and orderly markets—while also protecting the health and safety of hearing participants.

The Exchange has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, so the Exchange can implement the proposed rule change immediately.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest, by continuing to provide greater harmonization between the Exchange rules and FINRA rules of similar purpose,[14] resulting in less burdensome and more efficient regulatory compliance.

The proposed rule change, which extends the expiration date of the temporary amendments to the Exchange rules set forth in SR–NASDAQ–2020–076, will continue to aid the Exchange's efforts to timely conduct hearings in connection with its core adjudicatory functions. Given that COVID–19 remains a public health concern and the uncertainty around a potential spike in cases of the disease, without this relief allowing OHO and ERC hearings to proceed by video conference, the Exchange might be required to postpone some or almost all hearings for a significant period of time. The Exchange must be able to perform its critical adjudicatory functions to fulfill its statutory obligations to protect investors and maintain fair and orderly markets. As such, this relief is essential to the Exchange's ability to fulfill its statutory obligations and allows hearing participants to avoid the serious COVID–19-related health and safety risks associated with in-person hearings.

Among other things, this relief will allow OHO to conduct temporary cease and desist proceedings by video conference so that the Exchange can take immediate action to stop ongoing customer harm and will allow the ERC to timely provide members, disqualified individuals and other applicants an approval or denial of their applications. As set forth in detail in SR–NASDAQ–2020–076, this temporary relief allowing OHO and ERC hearings to proceed by video conference accounts for fair process considerations and will continue to provide fair process while avoiding the COVID–19-related public health risks for hearing participants. Accordingly, the proposed rule change extending this temporary relief is in the public interest and consistent with the Act's purpose.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the temporary proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. As set forth in SR–NASDAQ–2020–076, the proposed rule change is intended solely to extend temporary relief necessitated by the continued presence of COVID–19 and the related health and safety risks of conducting in-person activities. The Exchange believes that the proposed rule change will prevent unnecessary impediments to its critical adjudicatory processes and its ability to fulfill its statutory obligations to protect investors and maintain fair and orderly markets that would otherwise result if the temporary amendments were to expire on October 31, 2022.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [15] and subparagraph (f)(6) of Rule 19b–4 thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange has indicated that there is a continued need to extend the temporary relief because the Exchange believes the COVID–19 related health concerns necessitating this relief will

covid-data-tracker/#county-view?list_select_state=all_states&list_select_county=all_counties&data-type=CommunityLevels&null=CommunityLevels (last visited Oct. 24, 2022).

[10] These new Omicron variants include BA.4.6, BF.7, and BA.2.75. *See* CDC, COVID Data Tracker—Variant Proportions, *https://covid.cdc.gov/covid-data-tracker/#variant-proportions* (last visited Oct. 24, 2022).

[11] As noted in SR–NASDAQ–2020–076, the temporary proposed rule change grants discretion to OHO and the ERC to order a video conference hearing. In deciding whether to schedule a hearing by video conference, OHO and the ERC may consider a variety of other factors in addition to COVID–19 trends.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *See* Securities Exchange Act Release No. 96107 (October 19, 2022), 87 FR 64526 (October 25, 2022) (Notice of Filing and Immediate Effectiveness of File No. SR–FINRA–2022–029).

[15] 15 U.S.C. 78s(b)(3)(A)(iii).

[16] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 240.19b–4(f)(6)(iii).

continue beyond October 31, 2022.[19] Importantly, extending the temporary relief provided in SR–NASDAQ–2020–076 immediately upon filing and without a 30-day operative delay will allow the Exchange to continue critical adjudicatory and review processes in a reasonable and fair manner and meet its critical investor protection goals, while also following best practices with respect to the health and safety of hearing participants.[20] The Commission also notes that this proposal extends without change the temporary relief previously provided by SR–NASDAQ–2020–076.[21] As proposed, the temporary changes would be in place through January 31, 2023 and the amended rules will revert back to their original state at the conclusion of the temporary relief period and, if applicable, any extension thereof.[22] For these reasons, the Commission believes that waiver of the 30-day operative delay for this proposal is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[23]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2022–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2022–059. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–NASDAQ–2022–059 and should be submitted on or before December 7, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2022–24889 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

[19] *See supra* Item II.

[20] *See* 87 FR 64526, at 64528–29 (noting the same in granting FINRA's request to waive the 30-day operative delay so that SR–FINRA–2022–029 would become operative immediately upon filing).

[21] *See supra* note 7.

[22] *See supra* note 4. As noted above, the Exchange states that if it requires temporary relief from the rule requirements identified in this proposal beyond January 31, 2023, it may submit a separate rule filing to extend the effectiveness of the temporary relief under these rules.

[23] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96290; File No. SR–MRX–2022–19]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 5 To Add Membership and Trading Rights Fees

November 9, 2022.

On October 5, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess membership and trading rights fees. The proposed rule change was published for comment in the **Federal Register** on October 18, 2022.[3]

On November 1, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–19).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–24893 Filed 11–15–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Meeting of the Interagency Task Force on Veterans Small Business Development

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for the next meeting of the Interagency Task Force on Veterans Small Business Development (IATF).

DATES: Wednesday, December 7, 2022, from 1 p.m. to 3 p.m. EST.

ADDRESSES: Due to the coronavirus pandemic, the meeting will be held via Microsoft Teams.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the public should email *veteransbusiness@sba.gov* with subject line—''RSVP for December 7, 2022,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 96047 (October 12, 2022), 87 FR 63131.

[4] 17 CFR 200.30–3(a)(12).

IATF Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line—''Response for December 7, 2022, IATF Public Meeting'' no later than November 28, 2022, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period.

Participants can join the meeting via computer at this link: *https://bit.ly/IATF_Dec2022* or by phone. Call in (audio only): Dial: 202–765–1264: Phone Conference ID: 978 023 539#.

Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* All applicable documents will be posted on the IATF website prior to the meeting: *https://www.sba.gov/page/interagency-task-force-veterans-small-business-development.* For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Interagency Task Force on Veterans Small Business Development (IAFT). The IATF is established pursuant to Executive Order 13540 to coordinate the efforts of Federal agencies to improve capital, business development opportunities, and pre-established federal contracting goals for small business concerns owned and controlled by veterans and service-disabled veterans. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the IATF's objectives for fiscal year 2022.

Dated: November 4, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–24896 Filed 11–15–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

Meeting of the Advisory Committee on Veterans Business Affairs

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Notice of open Federal Advisory Committee meeting.

SUMMARY: The SBA is issuing this notice to announce the date, time, and agenda for a meeting of the Advisory Committee on Veterans Business Affairs (ACVBA).

DATES: Thursday, December 8, 2022, from 9 a.m. to 1:30 p.m. EST.

ADDRESSES: Due to the coronavirus pandemic, the meeting will be held via Microsoft Teams using a call-in number listed below.

FOR FURTHER INFORMATION CONTACT: The meeting is open to the public; however advance notice of attendance is strongly encouraged. To RSVP and confirm attendance, the general public should email *veteransbusiness@sba.gov* with subject line—''RSVP for December 8, 2022, ACVBA Public Meeting.'' To submit a written comment, individuals should email *veteransbusiness@sba.gov* with subject line—''Response for December 8, 2022, ACVBA Public Meeting'' no later than November 28, 2022, or contact Timothy Green, Deputy Associate Administrator, Office of Veterans Business Development (OVBD) at (202) 205–6773. Comments received in advanced will be addressed as time allows during the public comment period. All other submitted comments will be included in the meeting record. During the live meeting, those who wish to comment will be able to do so during the public comment period.

Participants can join the meeting via computer *https://bit.ly/ACVBA_Dec2022* or by phone. Call in (audio only): Dial: 202–765–1264: Phone Conference ID: 674 127 009#.

Special accommodation requests should be directed to OVBD at (202) 205–6773 or *veteransbusiness@sba.gov.* All applicable documents will be posted on the ACVBA website prior to the meeting: *https://www.sba.gov/page/advisory-committee-veterans-business-affairs.* For more information on veteran-owned small business programs, please visit *www.sba.gov/ovbd.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix 2), SBA announces the meeting of the Advisory Committee on Veterans Business Affairs. The ACVBA is established pursuant to 15 U.S.C. 657(b) note and serves as an independent source of advice and policy. The purpose of this meeting is to discuss efforts that support veteran-owned small businesses, updates on past and current events, and the ACVBA's objectives for fiscal year 2022.

Dated: November 4, 2022.

Andrienne Johnson,

Committee Management Officer.

[FR Doc. 2022–24897 Filed 11–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0082]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 15, 2022, BNSF Railway Company (BNSF) 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 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment). FRA assigned the petition Docket Number FRA–2022–0082.

Specifically, BNSF seeks relief with respect to the application of 49 CFR 232.205(c)(1)(ii)(B), *Class I brake test–initial terminal inspection,* and 232.207(b)(1), *Class IA brake tests–1,000-mile inspection,* for trains operating in distributive power mode. BNSF requests to extend the maximum allowable brake pipe air flow from the present regulatory limit of 90 cubic feet per minute (CFM) to 120 CFM for distributed power-equipped trains under specified operating conditions.

In support of its petition, BNSF submitted a report from the air flow tests conducted by BNSF in Staples, Minnesota, in June 2022. BNSF also states that ''increasing the allowable flow to 120 CFM will even further reduce'' walking exposures that employees encounter and that the use of distributive power ''enhances safer train handling in cold weather operations.''

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 January 16, 2023 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. 2022–24961 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0094]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 12, 2022, Heart of Georgia Railroad (HOG) 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–2022–0094.

Specifically, HOG requests relief as part of its proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^3RS) Program. HOG seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in §§ 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 January 16, 2023 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. 2022–24964 Filed 11–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2016–0086]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that by letter dated October 12, 2022, Canadian National Railway Company (CN) petitioned the Federal Railroad Administration (FRA) to join an existing waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR parts 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices), and 229 (Railroad Locomotive Safety Standards). The relevant FRA Docket Number is FRA–2016–0086.

Specifically, CN requests to join a waiver previously granted to CSX Transportation (CSX), BNSF Railway (BNSF), and Kansas City Southern Railway Company (KCS), and be granted relief from 49 CFR 232.205(c)(1)(iii), *Class I brake test-initial terminal inspection,* and 229.29(b), *Air brake system calibration, maintenance, and testing,* related to air flow method (AFM) indicator calibration intervals. The relief granted to CSX, BNSF, and KCS allows the railroads to test extending the AFM test intervals from 92 days to 184 days on locomotives equipped with the New York Air Brake (NYAB) CCB–II air brake systems. CN seeks to form a test waiver team operating under the current test committee overseeing the relief in FRA–2016–0086 to test CN's 772 NYAB CCBII-equipped locomotives. CN states that it has been an active member of the Association of American Railroads Locomotive Committee and is familiar with the work performed by the FRA–2016–0086 test committee.

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 January 16, 2023 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. 2022–24960 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0093]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on October 12, 2022, Georgia Central Railway (GC) 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–2022–0093.

Specifically, GC requests relief as part of its proposed implementation of and participation in FRA's Confidential Close Call Reporting System (C^3RS) Program. GC seeks to shield reporting employees and the railroad from mandatory punitive sanctions that would otherwise arise as provided in §§ 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 January 16, 2023 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. 2022–24963 Filed 11–15–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0091]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

Under part 235 of title 49 Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this document provides the public notice that on September 20, 2022, Puget Sound & Pacific Railroad (PSAP) petitioned the Federal Railroad Administration (FRA) seeking approval to discontinue or modify a signal system. FRA assigned the petition Docket Number FRA–2022–0091.

Specifically, PSAP requests permission to discontinue the signal interlocking system on the Elma Mainline Subdivision in Aberdeen, Washington, at the swing bridge at mile post (MP) 68.8. This permanent change would include removing block signals at MP 68.5 and 68.7 and the distant signal at 68.3. Additionally, the signals would be turned facing the field and removed. PSAP requests the change because the interlocking system is ''no longer essential for the safe movement of traffic'' and the discontinuance will ''improve the efficient operations of the railroad.'' In support of its petition, PSAP states that ''there has been no navigational traffic requested for the bridge to be turned in over two years'' and that ''the bridge stays lined for mainline movement.''

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 January 16, 2023 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. 2022–24962 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2022–0130]

Office of the Assistant Secretary for Research and Technology (OST–R); Agency Information Collection Activities: Comment Request; Data Security Requirements for Accessing Confidential Data

AGENCY: Bureau of Transportation Statistics (BTS) Office of the Assistant Secretary for Research and Technology (OST–R), DOT.

ACTION: Notice.

SUMMARY: The Bureau of Transportation Statistics (BTS) within the Department of Transportation (DOT) invites the general public and other Federal agencies to comment on a proposed information collection. BTS plans to collect information from the public to fulfill its data security requirements when providing access to restricted use microdata for the purpose of evidence building. BTS's data security agreements and other paperwork along with the corresponding security protocols allow BTS to maintain careful controls on confidentiality and privacy, as required by law. The purpose of this notice is to allow for 60 days of public comment on the proposed data security information collection, prior to submission of the information collection request (ICR) to the Office of Management and Budget (OMB).

DATES: Written comments on this notice must be received by January 17, 2023 to be assured of consideration. Comments received after that date will be considered to the extent practicable. Send comments to the address below.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of BTS, including whether the information will have practical utility; (b) the accuracy of BTS's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on 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.

FOR FURTHER INFORMATION CONTACT: Clara Reschovsky, BTS Confidentiality Officer, BTS, OST–R, Department of Transportation, 1200 New Jersey Ave. SE, Room E36–324, Washington, DC 20590, (202) 768–4994, Office hours are from 8:00 a.m. to 5:30 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The Foundations for Evidence-Based Policymaking Act of 2018 mandates that the Office of Management and Budget (OMB) establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. While the adoption of the SAP is required for statistical agencies and units designated under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA), it is recognized that other agencies and organizational units within the Executive branch may benefit from the adoption of the SAP to accept applications for access to confidential data assets. The SAP is to be a process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply to access confidential data assets held by a federal statistical agency or unit for the purposes of developing evidence. With the Interagency Council on Statistical Policy (ICSP) as advisors, the entities upon whom this requirement is levied are working with the SAP Project Management Office (PMO) and with OMB to implement the SAP. The SAP Portal is to be a single web-based common application for the public to request access to confidential data assets from federal statistical agencies and units. The National Center for Science and Engineering Statistics (NCSES), within the National Science Foundation (NSF), submitted a **Federal Register** Notice in September 2022 announcing plans to collect information through the SAP Portal (87 FR 53793).

Once an application for confidential data is approved through the SAP Portal, BTS will collect information to meet its data security requirements. This collection will occur outside of the SAP Portal.

Title of collection: Data Security Requirements for Accessing Confidential Data

OMB Control Number: DOT–OST–2022–0130

Expiration Date of Current Approval: Not Applicable.

Type of Request: Intent to seek approval to collect information from the public to fulfill BTS security requirements allowing individuals to access confidential data assets for the purposes of building evidence.

Abstract: Title III of the Foundations for Evidence-Based Policymaking Act of 2018 (hereafter referred to as the Evidence Act) mandates that OMB establish a Standard Application Process (SAP) for requesting access to certain confidential data assets. Specifically, the Evidence Act requires OMB to establish a common application process through which agencies, the Congressional Budget Office, State, local, and Tribal governments, researchers, and other individuals, as appropriate, may apply for access to confidential data assets collected, accessed, or acquired by a statistical agency or unit. This new process will be implemented while maintaining stringent controls to protect confidentiality and privacy, as required by law.

Data collected, accessed, or acquired by statistical agencies and units is vital for developing evidence on conditions, characteristics, and behaviors of the public and on the operations and outcomes of public programs and policies. This evidence can benefit the stakeholders in the programs, the broader public, as well as policymakers and program managers at the local, State, Tribal, and National levels. The many benefits of access to data for evidence building notwithstanding, BTS is required by law to maintain careful controls that allow it to minimize disclosure risk while protecting confidentiality and privacy. The fulfillment of BTS's data security requirements places a degree of burden on the public, which is outlined below.

The SAP Portal is a web-based application for the public to request access to confidential data assets from

federal statistical agencies and units. The objective of the SAP Portal is to increase public access to confidential data for the purposes of evidence building and reduce the burden of applying for confidential data. Once an individual's application in the SAP Portal has received a positive determination, the data-owning agency(ies) or unit(s) will begin the process of collecting information to fulfill their data security requirements.

The paragraphs below outline the SAP Policy, the steps to complete an application through the SAP Portal, and the process for agencies to collect information fulfilling their data security requirements.

The SAP Policy

At the recommendation of the ICSP, the SAP Policy establishes the SAP to be implemented by statistical agencies and units and incorporates directives from the Evidence Act. The policy is intended to provide guidance as to the application and review processes using the SAP Portal, setting forth clear standards that enable statistical agencies and units to implement a common application form and a uniform review process. The SAP Policy was submitted to the public for comment in January 2022 (87 FR 2459). The policy is currently under review and has not yet been finalized.

The SAP Portal

The SAP Portal is an application interface connecting applicants seeking data with a catalog of data assets owned by the federal statistical agencies and units. The SAP Portal is not a new data repository or warehouse; confidential data assets will continue to be stored in secure data access facilities owned and hosted by the federal statistical agencies and units. The Portal will provide a streamlined application process across agencies, reducing redundancies in the application process. This single SAP Portal will improve the process for applicants, tracking and communicating the application process throughout its lifecycle. This reduces redundancies and burden on applicants that request access to data from multiple agencies. The SAP Portal will automate key tasks to save resources and time and will bring agencies into compliance with the Evidence Act statutory requirements.

Data Discovery

Individuals begin the process of accessing restricted use data by discovering confidential data assets through the SAP data catalog, maintained by federal statistical agencies at *www.researchdatagov.org.* Potential applicants can search by agency, topic, or keyword to identify data of interest or relevance. Once they have identified data of interest, applicants can view metadata outlining the title, description or abstract, scope and coverage, and detailed methodology related to a specific data asset to determine its relevance to their research.

While statistical agencies and units shall endeavor to include metadata in the SAP data catalog on all confidential data assets for which they accept applications, it may not be feasible to include metadata for some data assets (*e.g.,* potential curated versions of administrative data). A statistical agency or unit may still accept an application through the SAP Portal even if the requested data asset is not listed in the SAP data catalog.

SAP Application Process

Individuals who have identified and wish to access confidential data assets will be able to apply for access through the SAP Portal when it is released to the public in late 2022. Applicants must create an account and follow all steps to complete the application. Applicants begin by entering their personal, contact, and institutional information, as well as the personal, contact, and institutional information of all individuals on their research team. Applicants proceed to provide summary information about their proposed project, to include project title, duration, funding, timeline, and other details including the data asset(s) they are requesting and any proposed linkages to data not listed in the SAP data catalog, including non-federal data sources. Applicants then proceed to enter detailed information regarding their proposed project, including a project abstract, research question(s), literature review, project scope, research methodology, project products, and anticipated output. Applicants must demonstrate a need for confidential data, outlining why their research question cannot be answered using publicly available information.

Submission for Review

Upon submission of their application, applicants will receive a notification that their application has been received and is under review by the data owning agency or agencies (in the event where data assets are requested from multiple agencies). At this point, applicants will also be notified that application approval does not alone grant access to confidential data, and that, if approved, applicants must comply with the data-owning agency's security requirements outside of the SAP Portal, which may include a background check.

In accordance with the Evidence Act and the direction of the ICSP, agencies will approve or reject an application within a prompt timeframe. In some cases, agencies may determine that additional clarity, information, or modification is needed and request the applicant to ''revise and resubmit'' their application.

Data discovery, the SAP application process, and the submission for review are planned to take place within the web-based SAP Portal. As noted above, the notice announcing plans to collect information through the SAP Portal has been published separately (87 FR 53793).

Access to Restricted Use Data

In the event of a positive determination, the applicant will be notified that their proposal has been accepted. The positive or final adverse determination concludes the SAP Portal process. In the instance of a positive determination, the data-owning agency (or agencies) will contact the applicant to provide instructions on the agency's security requirements that must be completed to gain access to the confidential data. The completion and submission of the agency's security requirements will take place outside of the SAP Portal.

Collection of Information for Data Security Requirements

In the instance of a positive determination for an application requesting access to a BTS confidential data asset, BTS will contact the applicant(s) to initiate the process of collecting information to fulfill their security requirements. These include additional requirements necessary for the statistical agency or unit to place the applicant(s) in a trusted category that may include the applicant's successful completion of a background investigation, confidentiality training, nondisclosure, and data use agreements.

Estimate of Burden: The amount of time to complete the agreements and other paperwork that comprise BTS's security requirements will vary based on the confidential data assets requested and the access modality. To obtain access to BTS confidential data assets, it is estimated that the average time to complete and submit BTS's data security agreements and other paperwork is 90 minutes. This estimate does not include the time needed to complete and submit an application within the SAP Portal. All efforts related to SAP Portal applications occur prior to and separate from BTS's effort to collect

information related to data security requirements.

The expected number of applications in the SAP Portal that receive a positive determination from BTS in a given year may vary. Overall, per year, BTS estimates it will collect data security information for five application submissions that received a positive determination within the SAP Portal. BTS estimates that the total burden for the collection of information for data security requirements over the course of the three-year OMB clearance will be about 22.5 hours and, as a result, an average annual burden of 7.5 hours.

Issued in Washington, DC on the 10th of November 2022.

Cha-Chi Fan,

Director, Office of Data Development and Standards, Bureau of Transportation Statistics, Office of the Assistant Secretary for Research and Technology.

[FR Doc. 2022–24899 Filed 11–15–22; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 14417 and 14417–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Reimbursable Agreement—Non-Federal Entities and Statistics of Income—User Fee.

DATES: Written comments should be received on or before January 17, 2023 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 *pra.comments@irs.gov.* Include ''OMB Number 1545–2235—Reimbursable Agreement—Non-Federal Entities and Statistics of Income—User Fee'' in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this collection should be directed to Martha R. Brinson, at (202) 317–5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reimbursable Agreement—Non-Federal Entities and Statistics of Income—User Fee.

OMB Number: 1545–2235.

Form Numbers: 14417 and 14417–A.

Abstract: Form 14417, Reimbursable Agreement—Non-Federal Entities, was developed for funds in reimbursable agreements with non-federal entities such as state, local, foreign governments and non-federal public entities. Form 14417–A, Statistics of Income-User Fee, was developed to be used after a customer contacts the Statistics of Income (SOI) Division requesting data not already available on our TaxStats IRS website.

Current Actions: There are no changes in the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: State, Local, and Tribal Governments.

Estimated Number of Respondents: 310.

Estimated Time per Respondent: 31 mins.

Estimated Total Annual Burden Hours: 160.

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. Comments will be 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 has 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 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: November 9, 2022.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2022–24922 Filed 11–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Extension of Information Collection Request Submitted for Public Comment; Comment Request Concerning Information Reporting on Required Returns in the Case of Real Estate Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the IRS is soliciting comments concerning the burden related to Revenue Procedure 2007–12, *Certification for Information Reporting on Real Estate Transactions.*

DATES: Written comments should be received on or before January 17, 2023 to be assured of consideration.

ADDRESSES: Direct all written comments to Andrés Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW Washington, DC 20224, or by email to *pra.comments@irs.gov.* Please include, ''OMB Number: 1545–1592—Public Comment Request Notice'' in the Subject line.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Ronald J. Durbala, at (202) 317–5746, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW Washington, DC 20224, or through the internet at *RJoseph.Durbala@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Information reporting requirements in section 6045(e).

OMB Number: 1545–1592.

Regulation Project Number: Rev. Proc. 2007–12.

Abstract: This revenue procedure sets forth the acceptable form of the written

assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except such sale or exchange from the information reporting requirements for real estate transactions under section 6045(e)(5) of the Internal Revenue Code.

Current Actions: There is no change to the burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,300,000.

Estimated Time per Respondent: 11 minutes.

Estimated Total Annual Burden Hours: 420,500.

The following paragraph applies to all the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Desired Focus of Comments: The Internal Revenue Service (IRS) is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or included in the ICR for OMB approval of the extension of the information collection; they will also become a matter of public record.

Approved: November 10, 2022.

Ronald J. Durbala,

IRS Tax Analyst.

[FR Doc. 2022–24936 Filed 11–15–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Privacy Act of 1974; System of Records

AGENCY: Treasury Inspector General for Tax Administration, Department of the Treasury.

ACTION: Notice of modified systems of records.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of the Treasury (''Treasury'' or the ''Department''), Treasury Inspector General for Tax Administration is publishing its inventory of Privacy Act systems of records.

DATES: Submit comments on or before December 16, 2022. The new routine uses will be applicable on December 16, 2022 unless Treasury receives comments and determines that changes to the system of records notice are necessary.

ADDRESSES: Comments may be submitted to the Federal eRulemaking Portal electronically at *http://www.regulations.gov.* Comments can also be sent to the Deputy Assistant Secretary for Privacy, Transparency, and Records, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220, Attention: Revisions to Privacy Act Systems of Records. All comments received, including attachments and other supporting documents, are part of the public record and subject to public disclosure. All comments received will be posted without change to *www.regulations.gov,* including any personal information provided. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: For general questions and for privacy issues please contact: Deputy Assistant Secretary for Privacy, Transparency, and Records (202–622–5710), Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, 5 U.S.C. 552a, and the Office of Management and Budget (OMB), Circular No. A–108, the Department of the Treasury, Departmental Offices, Treasury Inspector General for Tax Administration (TIGTA) has completed a review of its Privacy Act systems of records notices to identify changes that will more accurately describe these records and is publishing an inventory of them.

TIGTA is making changes to the addresses of various TIGTA offices, typographical corrections to one of its routine uses and a change to SORN .301—General Personnel and Payroll, to address credentialing records maintained by TIGTA.

Treasury has provided a report of this system of records to the Committee on Oversight and Government Reform of the House of Representatives, the Committee on Homeland Security and Governmental Affairs of the Senate, and OMB, pursuant to 5 U.S.C. 552a(r) and OMB Circular A–108, ''Federal Agency Responsibilities for Review, Reporting, and Publication under the Privacy Act,'' dated December 23, 2016.

Dated: November 10, 2022.

Ryan Law,

Deputy Assistant Secretary for Privacy, Transparency, and Records.

TREASURY/DO .301

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .301—TIGTA General Personnel and Payroll.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Headquarters, 901 D Street SW, Washington, DC 20024, field offices listed in Appendices A, B and C, Bureau of the Fiscal Service, 200 Third Street, Parkersburg, WV 26106–1328, and Transaction Processing Center, U.S. Department of Agriculture, National Finance Center.

SYSTEM MANAGER(S):

General Personnel Records—Deputy Inspector General for Mission Support/Chief Financial Officer. Time-reporting records: (1) For Office of Audit employees—Deputy Inspector General for Audit; (2) For Office of Chief Counsel employees—Chief Counsel; (3) For Office of Investigations employees—Deputy Inspector General for Investigations; (4) For Office of Inspections and Evaluations employees—Deputy Inspector General for Inspections and Evaluations; (5) For Office of Information Technology employees—Chief Information Officer; (6) For Office of Mission Support/Chief Financial Officer employees—Deputy Inspector General for Mission Support/Chief Financial Officer; and (7) For Inspector General staff employees—

Principal Deputy Inspector General—901 D Street SW, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301, 1302, 2951, 4506, and Ch. 83, 87, and 89.

PURPOSE(S) OF THE SYSTEM:

This system consists of records compiled for personnel, payroll, credentialing and time-reporting purposes. In addition, this system contains all records created and/or maintained about employees as required by OPM as well as documents relating to personnel matters and determinations. Retirement, life, and health insurance benefit records are collected and maintained in order to administer the Federal Employee's Retirement System (FERS), Civil Service Retirement System (CSRS), Federal Employee's Group Life Insurance Plan, and, the Federal Employees' Health Benefit Program.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Treasury Inspector General for Tax Administration (TIGTA) employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of a variety of records relating to personnel actions and determinations made about TIGTA employees. These records contain data on individuals required by OPM and which may also be contained in the Official Personnel Folder (OPF). This system may also contain letters of commendation, recommendations for awards, awards, reprimands, adverse or disciplinary charges, and other records which OPM and TIGTA require or permit to be maintained. This system may include records that are maintained in support of a personnel action such as a position management or position classification action, a reduction-in-force action, and priority placement actions. Other records maintained about an individual in this system are performance appraisals and related records, expectation and payout records, employee performance file records, suggestion files, award files, financial and tax records, back pay files, jury duty records, outside employment statements, clearance upon separation documents, unemployment compensation records, adverse and disciplinary action files, supervisory drop files, records relating to personnel actions, furlough and recall records, work measurement records, emergency notification records, credentialing and access control records, and employee locator and current address records. This system includes records created and maintained for purposes of administering the payroll system. Time-reporting records include timesheets and records indicating the number of hours by TIGTA employee attributable to a particular project, task, or audit. This system also includes records related to travel expenses and/or costs. This system includes records concerning employee participation in the telework or remote work program. This system also contains records relating to life and health insurance, retirement coverage, designations of beneficiaries, and claims for survivor or death benefits.

RECORD SOURCE CATEGORIES:

Information in this system of records either comes from the individual to whom it applies, is derived from information supplied by that individual, or is provided by Department of the Treasury and other Federal agency personnel and records.

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

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when: (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party of the litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to educational institutions for recruitment and cooperative education purposes;

(11) Provide information to a Federal, State, or local agency so that the agency may adjudicate an individual's eligibility for a benefit;

(12) Provide information to a Federal, State, or local agency or to a financial institution as required by law for payroll purposes;

(13) Provide information to Federal agencies to effect inter-agency salary offset and administrative offset;

(14) Provide information to a debt collection agency for debt collection services;

(15) Respond to State and local authorities for support garnishment interrogatories;

(16) Provide information to private creditors for the purpose of garnishment

of wages of an employee if a debt has been reduced to a judgment;

(17) Provide information to a prospective employer of a current or former TIGTA employee;

(18) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(19) Provide information to the Office of Workers' Compensation Programs, Department of Veterans Affairs Benefits Administration, Social Security and Medicare Programs, Federal civilian employee retirement systems, and other Federal agencies when requested by that program, for use in determining an individual's claim for benefits;

(20) Provide information necessary to support a claim for health insurance benefits under the Federal Employees' Health Benefits Program to a health insurance carrier or plan participating in the program;

(21) Provide information to hospitals and similar institutions to verify an employee's coverage in the Federal Employees' Health Benefits Program;

(22) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.;

(23) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

(24) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Electronic media and paper records.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by name, Social Security Number, and/or claim number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules 2.1 through 2.7 and 5.6.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies. Access to the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of this system of records was last published in full in the **Federal Register** on May 4, 2020 (85 FR 26521) as the Department of the Treasury, DO .301—TIGTA General Personnel and Payroll.

TREASURY/DO .302

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .302—TIGTA Medical Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

(1) Health Improvement Plan Records—Office of Investigations, 901 D Street SW, Suite 600, Washington, DC 20024 and field division offices listed in Appendix A; and, (2) All other records of: (a) Applicants and current TIGTA employees: Office of Mission Support/Chief Financial Officer, TIGTA, 901 D Street SW, Washington, DC 20024 and/or Bureau of the Fiscal Service, 200 Third Street, Parkersburg, WV 26106–1328; and, (b) former TIGTA employees: National Personnel Records Center, 9700 Page Boulevard, St. Louis, MO 63132.

SYSTEM MANAGERS:

(1) Health Improvement Program records—Deputy Inspector General for Investigations, TIGTA, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500); and, (2) All other records—Deputy Inspector General for Mission Support/Chief Financial Officer, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301, 3301, 7301, 7901, and Ch. 81, 87 and 89.

PURPOSE(S) OF THE SYSTEM:

To maintain records related to employee physical exams, fitness-for-duty evaluations, drug testing, disability retirement claims, participation in the Health Improvement Program, and worker's compensation claims. In addition, these records may be used for purposes of making suitability and fitness-for duty determinations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for TIGTA employment; (2) Current and former TIGTA employees; (3) Applicants for disability retirement; and, (4) Visitors to TIGTA offices who require medical attention while on the premises.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Documents relating to an applicant's mental/physical ability to perform the duties of a position; (2) Information relating to an applicant's rejection for a position because of medical reasons; (3) Documents relating to a current or former TIGTA employee's mental/physical ability to perform the duties of the employee's position; (4) Disability retirement records; (5) Health history questionnaires, medical records, and other similar information for employees participating in the Health Improvement Program; (6) Fitness-for-duty examination reports; (7) Employee assistance records; (8) Injury compensation records relating to on-the-job injuries of current or former TIGTA employees; and, (9) Records relating to the drug testing program.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Medical personnel and institutions; (3) Office of Workers' Compensation personnel and records; (4) Military Retired Pay Systems Records; (5) Federal civilian retirement systems; (6) OPM Retirement, Life Insurance and Health Benefits Records System and Personnel Management Records System; (7) Department of Labor; (8) Federal Occupational Health and other health care professionals; and (9) Drug testing providers.

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

With the exception of Routine Uses (1) and (9) none of the other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564, Drug-Free Federal Workplace. Further, such records shall be disclosed only on a need to know basis, generally only to the agency Medical Review Official (MRO), the administrators of the agency Employee Assistance Program and Drug-Free Workplace program, and the management officials empowered to recommend or take adverse action affecting the individual.

Records may be used to:

(1) Disclose the results of a drug test of a Federal employee in a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action;

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(3) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(6) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(7) Provide information to third parties in order to obtain information pertinent and necessary for the hiring or retention of an individual and/or to obtain information pertinent to an investigation;

(8) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to Federal or State agencies responsible for administering Federal benefits programs and private contractors engaged in providing benefits under Federal contracts;

(11) Disclose information to an individual's private physician where medical considerations or the content of medical records indicate that such release is appropriate;

(12) Disclose information to other Federal or State agencies to the extent provided by law or regulation;

(13) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger;

(14) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(15) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm, and:

(16) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national

security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records, electronic media, and x-rays.

POLICIES AND PRACTICES FOR RETRIVAL OF RECORDS:

Records are retrievable by name, Social Security Number, date of birth and/or claim number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORD:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules Nos. 2.1 through 2.4 and 2.7.

ADMINISTRATIVE, TECHINCAL, AND PHYSICAL SAFEGAURDS:

Records in this system are safeguarded in accordance with applicable rules and policies. Access to the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart c, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024.

EXEMPTIONS PROMULATED FOR THE SYSTEM:

None.

TREASURY/DO .303

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .303—TIGTA General Correspondence.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Headquarters, 901 D Street SW, Washington, DC 20024, and field offices listed in Appendices A, B, and C.

SYSTEM MANAGER(S):

Principal Deputy Inspector General, TIGTA, 901 D Street SW, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system consists of correspondence received by TIGTA from individuals and their representatives, oversight committees, and others who conduct business with TIGTA and the responses thereto; it serves as a record of incoming correspondence and the steps taken to respond thereto.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Initiators of correspondence; and, (2) Persons upon whose behalf the correspondence was initiated.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Correspondence received by TIGTA and responses generated thereto; and, (2) Records used to respond to incoming correspondence. Special categories of correspondence may be included in other systems of records described by specific notices.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt sources of information include: (1) Initiators of the correspondence; and (2) Federal Treasury personnel and records.

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

Disclosures of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal law proceedings or in response to a subpoena where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to a Congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector

General Act of 1978, as amended, 5 U.S.C. app.;

(10) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm; and

(11) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by name of the correspondent and/or name of the individual to whom the record applies.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper records are maintained and disposed of in accordance with TIGTA Records Schedule 1, which has been approved by the National Archives Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURE:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a (c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2) and (k)(2). See 31 CFR 1.36.

TREASURY/DO .304

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .304—TIGTA General Training Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Headquarters, 901 D Street SW, Suite 600, Washington, DC 20024 and Federal Law Enforcement Training Center (FLETC), Glynco, GA 31524.

SYSTEM MANAGER(S):

(1) For records concerning Office of Investigations employees—Deputy Inspector General for Investigations; (2) For records concerning Office of Audit employees—Deputy Inspector General for Audit; (3) For Office of Chief Counsel employees—Chief Counsel; (4) For Office of Inspections and Evaluations—Deputy Inspector General for Inspections and Evaluations; (5) For Office of Information Technology employees—Chief Information Officer; (6) For Office of Mission Support/Chief Financial Officer employees—Deputy Inspector General for Mission Support/ Chief Financial Officer; and, (7) For Inspector General staff employees—Principal Deputy Inspector General—901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301 and Ch. 41, and Executive Order 11348, as amended by Executive Order 12107.

PURPOSE(S) OF THE SYSTEM:

These records are collected and maintained to document training received by TIGTA employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) TIGTA employees; and, (2) Other Federal or non-Government individuals who have participated in or assisted with training programs as instructors, course developers, or interpreters.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Course rosters; (2) Student registration forms; (3) Nomination forms; (4) Course evaluations; (5) Instructor lists; (6) Individual Development Plans (IDPs); (7) Counseling records; (8) Examination and testing materials; (9) Payment records; (10) Continuing professional education requirements; (11) Officer safety files and firearm qualification records; and, (12) Other training records necessary for reporting and evaluative purposes.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; and, (2) Treasury personnel and records.

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

Records may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to

appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the training request or requirements and/or in the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(11) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm and;

(12) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic media.

POLICIES AND PRACTICES FOR RETRIVAL OF RECORDS:

Records are retrievable by employee name, course title, date of training, and/or location of training.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed in accordance with National Archives and Records Administration General Records Schedule 2.6.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORDS ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

TREASURY/DO .305

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .305—TIGTA Personal Property Management Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Information Technology, TIGTA, 4800 Buford Hwy., Chamblee, GA.

SYSTEM MANAGER(S):

Deputy Inspector General for Mission Support/Chief Financial Officer, Office of Mission Support/Chief Financial Officer, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENCE OF THE SYSTEM:

5 U.S.C. app., 5 U.S.C. 301, and 41 CFR Subtitle C Ch. 101 and 102.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain records concerning personal property, including but not limited to, laptop and desktop computers and other Information Technology and related accessories, fixed assets, motor vehicles, firearms and other law enforcement equipment, and communications equipment, for use in official duties.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Information concerning personal property assigned to TIGTA employees including descriptions and identifying information about the property, maintenance records, and other similar records.

RECORDS SOURCE CATEGORIES:

(1) The subject of the record; (2) Treasury personnel and records; (3)

Vehicle maintenance facilities; (4) Property manufacturer; and, (5) Vehicle registration and licensing agencies.

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

Records may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(11) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm and;

(12) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic media.

POLICIES AND PRACTICES FOR RETRIVAL OF RECORDS:

Records are indexed by name and/or identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedules 5.4 Items 4 and 10.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024.

EXEMPTIONS PROMUGLATED FOR THE SYSTEM:

None.

TREASURY/DO .306

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .306—TIGTA Recruiting and Placement Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Mission Support/Chief Financial Officer, 901 D Street SW, Suite 600, Washington, DC 20024 and/or Bureau of the Fiscal Service, 200 Third Street, Parkersburg, WV 26106–1328.

SYSTEM MANAGERS:

Deputy Inspector General for Mission Support/Chief Financial Officer, 901 D

Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENCE OF THE SYSTEM:

5 U.S.C. app., 5 U.S.C. 301 and Ch. 33, and Executive Orders 10577 and 11103.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to maintain records received from applicants applying for positions with TIGTA and relating to determining eligibility for employment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Applicants for employment; and, (2) Current and former TIGTA employees.

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

(1) Application packages and resumes; (2) Related correspondence; and, (3) Documents generated as part of the recruitment and hiring process.

RECORD SOURCE CATEGORIES:

(1) The subject of the record; (2) Office of Personnel Management; and, (3) Treasury personnel and records.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties to the extent necessary to obtain information pertinent to the recruitment, hiring, and/or placement determination and/or during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Disclose information to officials of Federal agencies for purposes of consideration for placement, transfer, reassignment, and/or promotion of TIGTA employees;

(11) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(12) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm and;

(13) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are indexed by name, Social Security Number, and/or vacancy announcement number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records in this system are maintained and disposed of in accordance with the appropriate National Archives and Records Administration General Records Schedule 2.1 Item 60.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to personnel on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access disposal.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(k)(5) and (k)(6).

EXEMPTIONS PROMUGLATED FOR THE SYSTEM:

Some records in this system have been designated as 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) pursuant to 5 U.S.C. 552a(k)(5) and (k)(6). See 31 CFR 1.36.

TREASURY/DO .307

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .307—TIGTA Employee Relations Matters, Appeals, Grievances, and Complaint Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Mission Support/Chief Financial Officer, TIGTA, 901 D Street SW, Suite 600, Washington, DC 20024.

SYSTEM MANAGER(S):

Deputy Inspector General for Mission Support/Chief Financial Officer, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301 and Ch. 13, 31, 33, 73, and 75.

PURPOSE(S) OF THE SYSTEM:

This system consists of records compiled for administrative purposes concerning personnel matters affecting current, former, and/or prospective TIGTA employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current, former, and prospective TIGTA employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests, (2) Appeals, (3) Complaints, (4) Letters or notices to the subject of the record, (5) Materials relied upon in making any decision or determination, (6) Affidavits or statements, (7) Investigative reports, and, (8) Documents effectuating any decisions or determinations.

RECORD SOURCE CATEGORIES:

(1) The subject of the records; (2) Treasury personnel and records; (3) Witnesses; (4) Documents relating to the appeal, grievance, or complaint; and, (5) EEOC, MSPB, and other similar organizations.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and Government Accountability Office in order to obtain legal and/or policy guidance;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(11) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(12) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed

breach or to prevent, minimize, or remedy such harm and;

(13) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by indexed by the name of the individual and case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records are maintained and disposed of in accordance with National Archives and Records Administration General Records Schedule 2.3 Item 060.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to TIGTA personnel on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS PROMUGLATED FOR THE SYSTEM:

This system may contain investigative records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .308

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .308—TIGTA Data Extracts.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Headquarters, 1401 H Street NW, Washington, DC 20005, Office of Information Technology, 4800 Buford Highway, Chamblee, GA 30341, and Office of Investigations, Frauds and Schemes Division, 550 Main Street, Cincinnati, OH 45202.

SYSTEM MANAGER(S):

Deputy Inspector General for Investigations, TIGTA and Deputy Inspector General for Audit, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system consists of data extracts from various electronic systems of records maintained by governmental agencies and other entities. The data extracts generated by TIGTA are used for audit and investigative purposes and are necessary to identify and deter fraud, waste, and abuse in the programs and operations of the IRS and related entities as well as to promote economy, efficiency, and integrity in the administration of the internal revenue laws and detect and deter wrongdoing by IRS and TIGTA employees.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) Individuals who have filed, are required to file tax returns, or are included on tax returns, forms, or other information filings; (3) Entities who have filed or are required to file tax returns, Internal Revenue (IRS) forms, or information filings as well as any individuals listed on the returns, forms and filings; and, (4) Taxpayer representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data extracts from various databases maintained by the IRS consisting of records collected in performance of its tax administration responsibilities as well as records maintained by other governmental agencies, entities, and public record sources. This system also contains information obtained via TIGTA's program of computer matches.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative

proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(10) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(11) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm and;

(12) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and electronic media.

POLICIES AND PRACTICES FOR RETRIVAL OF RECORDS:

Records are retrieved by name, Social Security Number, Taxpayer Identification Number, and/or employee identification number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper records are maintained and disposed of in accordance with TIGTA Records Schedule 1 approved by the National Archives Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to TIGTA personnel on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS PROMUGLATED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .309

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .309—TIGTA Chief Counsel Case Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Chief Counsel, 901 D Street SW, Suite 600, Washington, DC 20024.

SYSTEM MANAGERS:

Deputy Chief Counsel, TIGTA, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

This system contains records created and maintained by the Office of Chief Counsel for purposes of providing legal and programmatic service to TIGTA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Parties to and persons involved in litigations, actions, personnel matters, administrative claims, administrative appeals, complaints, grievances, advisories, and other matters assigned to, or under the jurisdiction of, the Office of Chief Counsel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Memoranda, (2) Complaints, (3) Claim forms, (4) Reports of Investigations, (5) Accident reports, (6) Witness statements and affidavits, (7) Pleadings, (8) Correspondence, (9) Administrative files, (10) Case management documents, and (11) Other records collected or generated in response to matters assigned to the Office of Chief Counsel.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed

pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) The subject of the record, (3) Witnesses, (4) Parties to disputed matters of fact or law, (5) Congressional inquiries, and, (6) Other Federal agencies including, but not limited to, the Office of Personnel Management, the Merit Systems Protection Board, and the Equal Employment Opportunities Commission.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to, or necessary to, the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purposes of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to Executive agencies, including, but not limited to the Office of Personnel Management, Office of Government Ethics, and Government Accountability Office;

(10) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing any personnel actions or conducting administrative hearings or appeals, or if needed in the performance of authorized duties;

(11) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(12) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm

(13) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures of debt information concerning a claim against an individual may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by the name of the person to whom they apply and/or by case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper records are maintained and disposed of in accordance with TIGTA Record Schedule 1 which has been approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHINCAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies. Access to the records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS PROMUGLATED FOR THE SYSTEM:

Some of the records in this system are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (d)(5)(e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C.552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .310

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .310—TIGTA Chief Counsel Disclosure Branch Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Office of Chief Counsel, Disclosure Branch, TIGTA, 901 D Street SW, Suite 600, Washington, DC 20024.

SYSTEM MANAGER(S):

Chief Counsel, TIGTA, 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–4068).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 552a, 26 U.S.C 6103, and 31 CFR 1.11.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system is to enable compliance with applicable Federal disclosure laws and regulations, including statutory record-keeping requirements. In addition, this system will be utilized to maintain records obtained and/or generated for purposes of responding to requests for access, amendment, and disclosure of TIGTA records.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Requestors for access and amendment pursuant to the Privacy Act of 1974, 5 U.S.C. 552a; (2) Subjects of requests for disclosure of records; (3) Requestors for access to records pursuant to 26 U.S.C. 6103; (4) TIGTA employees who have been subpoenaed or requested to produce TIGTA documents or testimony on behalf of TIGTA in judicial or administrative proceedings; (5) Subjects of investigations who have been referred to another law enforcement authority; (6) Subjects of investigations who are parties to a judicial or administrative proceeding in which testimony of TIGTA employees or production of TIGTA documents has been sought; and, (7) Individuals initiating correspondence or inquiries processed or controlled by the Disclosure Branch.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Requests for access to and/or amendment of records, (2) Responses to such requests, (3) Records processed and released in response to such requests, (4) Processing records, (5) Requests or subpoenas for testimony, (6) Testimony authorizations, (7) Referral letters, (8) Documents referred, (9) Record of disclosure forms, and (10) Other supporting documentation.

RECORD SOURCE CATEGORIES:

Some records in this system are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: (1) Department of Treasury personnel and records, (2) Incoming requests, and (3) Subpoenas and requests for records and/or testimony.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when: (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to an investigation or matter under consideration.

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and

(10) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a

breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm and;

(11) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and/or electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by name of the requestor, name of the subject of the investigation, and/or name of the employee requested to produce documents or to testify.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Paper records are maintained and disposed of in accordance with TIGTA Record Schedule 1, which has been approved by the National Archives and Records.

ADMINISTRATIVE, TECHNICAL AND PHYSICAL RECORDS:

The records are accessible to TIGTA personnel, all of whom have been the subject of background investigations, on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PROCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS PROMUGLATED FOR THE SYSTEM:

This system may contain records that are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2),(e)(3),(e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36.)

TREASURY/DO .311

SYSTEM NAME AND NUMBER:

Department of the Treasury, Departmental Offices .311—TIGTA Office of Investigations Files.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

National Headquarters, Office of Investigations, 901 D Street SW, Suite 600, Washington, DC 20024 and Field Division offices listed in Appendix A.

SYSTEM MANAGER(S):

Deputy Inspector General for Investigations, Office of Investigations, TIGTA 901 D Street SW, Suite 600, Washington, DC 20024, (202–622–6500).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. app. and 5 U.S.C. 301.

PURPOSE(S) OF THE SYSTEM:

The purpose of this system of records is to maintain information relevant to complaints received by TIGTA and collected as part of investigations conducted by TIGTA's Office of Investigations. This system also includes investigative material compiled by the IRS's Office of the Chief Inspector, which was previously maintained in the following systems of records: Treasury/IRS 60.001–60.007 and 60.009–60.010.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) The subjects or potential subjects of investigations; (2) The subjects of complaints received by TIGTA; (3) Persons who have filed complaints with TIGTA; (4) Confidential informants; and (5) TIGTA Special Agents.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Reports of investigations, which may include, but are not limited to, witness statements, affidavits, transcripts, police reports, photographs, documentation concerning requests and approval for consensual telephone and consensual non-telephone monitoring, the subject's prior criminal record, vehicle maintenance records, medical records, accident reports, insurance policies, and other exhibits and documents collected during an investigation; (2) Status and disposition information concerning a complaint or investigation including prosecutive action and/or administrative action; (3) Complaints or requests to investigate; (4) General case materials and documentation including, but not limited to, Chronological Case Worksheets (CCW), fact sheets, agent work papers, Record of Disclosure forms, and other case management documentation; (5) Subpoenas and evidence obtained in response to a subpoena; (6) Evidence logs; (7) Pen registers; (8) Correspondence; (9) Records of seized money and/or property; (10) Reports of laboratory examination, photographs, and evidentiary reports; (11) Digital image files of physical evidence; (12) Documents generated for purposes of TIGTA's undercover activities; (13) Documents pertaining to the identity of confidential informants; and (14) Other documents collected and/or generated by the Office of Investigations during the course of official duties.

RECORD SOURCE CATEGORIES:

Some records contained within this system of records are exempt from the requirement that the record source categories be disclosed pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2). Non-exempt record source categories include the following: Department of the Treasury personnel and records, complainants, witnesses, governmental agencies, tax returns and related documents, subjects of investigations, persons acquainted with the individual under investigation, third party witnesses, Notices of Federal Tax Liens, court documents, property records, newspapers or periodicals, financial institutions and other business

records, medical records, and insurance companies.

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

Disclosure of returns and return information may be made only as provided by 26 U.S.C. 6103. Records other than returns and return information may be used to:

(1) Disclose to appropriate Federal, State, local, tribal, or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law, or regulation;

(2) Disclose information to a Federal, State, local, or other public authority maintaining civil, criminal, or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's, bureau's, or authority's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information in a proceeding before a court, adjudicative body, or other administrative body before which TIGTA is authorized to appear when (a) the agency, or (b) any employee of the agency in his or her official capacity, or (c) any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee, or (d) the United States, when the agency determines that litigation is likely to affect the agency, is a party to litigation or has an interest in such litigation, and the use of such records by the agency is deemed to be relevant and necessary to the litigation or administrative proceeding and not otherwise privileged;

(4) Disclose information to a court, magistrate or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witness in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal law proceedings or in response to a court order where arguably relevant to a proceeding;

(5) Disclose information to the Department of Justice for the purpose of litigating an action or seeking legal advice;

(6) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Disclose information to the news media, where such disclosure is a matter of material public interest or in coordination with the Department of Justice in accordance with applicable guidelines that relate to an agency's functions relating to civil and criminal proceedings;

(9) Disclose information to the Equal Employment Opportunity Commission, Merit Systems Protection Board, arbitrators, and other parties responsible for processing personnel actions or conducting administrative hearings or appeals, or if needed in the performance of other authorized duties;

(10) In situations involving an imminent danger of death or physical injury, disclose relevant information to an individual or individuals who are in danger; and

(11) Provide information to other Offices of Inspectors General, the Council of the Inspectors General for Integrity and Efficiency, and the Department of Justice, in connection with their review of TIGTA's exercise of statutory law enforcement authority, pursuant to section 6(e) of the Inspector General Act of 1978, as amended, 5 U.S.C. app.; and,

(12) Disclose information to complainants, victims, or their representatives (defined for purposes here to be a complainant's or victim's legal counsel or a Senator or Representative whose assistance the complainant or victim has solicited) concerning the status and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim, including, once the investigative subject has exhausted all reasonable appeals, any action taken. Information concerning the status of the investigation or case is limited strictly to whether the investigation or case is open or closed. Information concerning the results of the investigation or case is limited strictly to whether the allegations made in the complaint were substantiated or were not substantiated and, if the subject has exhausted all reasonable appeals, any action taken.

(13) To appropriate agencies, entities, and person when (1) the Department of the Treasury and/or TIGTA suspects or has confirmed that there has been a breach of the system of records; (2) the Department of the Treasury and/or TIGTA has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department of the Treasury and/or TIGTA (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department of the Treasury's and/or TIGTA's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm and;

(14) To another Federal agency or Federal entity, when the Department of the Treasury and/or TIGTA determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Paper records and electronic media.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrievable by name, Social Security Number, and/or case number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records in this system are maintained and disposed of in accordance with TIGTA Records Schedule 1 which has been approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHINCAL, AND PHYSICAL SAFEGUARDS:

The records are accessible to TIGTA personnel on a need-to-know basis. Disclosure of information through remote terminals is restricted through the use of passwords and sign-on protocols, which are periodically changed; these terminals are accessible only to authorized persons. Paper records are maintained in locked facilities and/or cabinets with restricted access.

RECORD ACCESS PROCEDURES:

See ''Notification Procedures'' below.

CONTESTING RECORD PREOCEDURES:

See ''Notification Procedures'' below.

NOTIFICATION PROCEDURES:

Individuals seeking notification and access to any record contained in this

system of records, or seeking to contest its content, may inquire in writing in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix A. Written inquiries should be addressed to the Office of Chief Counsel, Disclosure Branch, Treasury Inspector General for Tax Administration, 901 D Street SW, Suite 600, Washington, DC 20024. This system of records may contain records that are exempt from the notification, access, and contesting records requirements pursuant to the provisions of 5 U.S.C. 552a(j)(2) and (k)(2).

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

Some records contained within this system of records are exempt from 5 U.S.C. 552a(c)(3), (c)(4), (d)(1), (d)(2), (d)(3), (d)(4), (e)(1), (e)(2), (e)(3), (e)(4)(G), (e)(4)(H), (e)(4)(I), (e)(5), (e)(8), (f), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). (See 31 CFR 1.36)

Appendix A—Office of Investigations, TIGTA

Field Division SAC Offices

Treasury IG for Tax Administration, 1919 Smith Street, Room 2270, Stop 3300, Houston, TX 77002.

Treasury IG for Tax Administration, 1999 Broadway, Suite 2406, MS3300DEN, Denver, CO 80202.

Treasury IG for Tax Administration, 201 Varick Street, Room 1050, New York, NY 10014.

Treasury IG for Tax Administration, Ronald Dellums Federal Bldg., 300 N Los Angeles Street, Suite 4334, Los Angeles, CA 912.

Treasury IG for Tax Administration, 400 N 8th Street, Room 516, Richmond, VA 23219.

Treasury IG for Tax Administration, 12119 Indian Creek Court, Beltsville, MD 20705.

Treasury IG for Tax Administration, 550 Main Street, Room 5610, Cincinnati, OH 45202.

Treasury IG for Tax Administration, 401 W Peachtree St. NW, Room 513, Stop 1300–D, Atlanta, GA 30308.

Appendix B—Audit Field Offices, TIGTA

Treasury IG for Tax Administration, 310 Lowell Street, Stop 903, Andover, MA 01812.

Treasury IG for Tax Administration, 401 W Peachtree St., Room 540 Stop 190–R, Atlanta, GA 30308–3539.

Treasury IG for Tax Administration, 12119 Indian Creek Court, Beltsville, MD 20705.

Treasury IG for Tax Administration, Atlanta Service Center, 4800 Buford Highway, Mail Stop 15, Chamblee, GA 39901.

Treasury IG for Tax Administration, 3651 South Interstate 35, Mail Stop 3200 AUSC, Austin, TX 78741.

Treasury IG for Tax Administration, 31 Hopkins Plaza, Fallon Federal Building, Suite 1410, Baltimore, MD 21201.

Treasury IG for Tax Administration, 1040 Waverly Ave., Stop 900, Holtsville, NY 11742.

Treasury IG for Tax Administration, 200 W Adams, Suite 450, Chicago, IL 60606.

Treasury IG for Tax Administration, Peck Federal Office Bldg., 550 Main Street, Room 5461, Cincinnati, OH 45201.

Treasury IG for Tax Administration, 4050 Alpha Road, Mail Stop 3200 NDAL, Dallas, TX 75244.

Treasury IG for Tax Administration, 1999 Broadway, Suite 2406 MS 3300DEN, Denver, CO 80202.

Treasury IG for Tax Administration, Fresno Service Center, 855 M Street, Suite 250, Fresno, CA 93721.

Treasury IG for Tax Administration, 7850 SW 6th Court, Room 120, Stop 8430, Plantation, FL 33324.

Treasury IG for Tax Administration, 333 West Pershing Road, P–L Mail Stop 3000, Kansas City, MO 64108.

Treasury Inspector General for Tax Administration—Audit, 24000 Avila Road, Room 2509, Laguna Niguel, CA 92677.

Treasury IG for Tax Administration, 300 N Los Angeles Street, Room 4334, Los Angeles, CA 90012.

Treasury IG for Tax Administration, 5333 Getwell Rd., Stop 72, Room H–147, Memphis, TN 38118.

Treasury IG for Tax Administration, 1160 West 1200 South, MS 3400, Ogden, Utah 84201.

Treasury IG for Tax Administration, Federal Office Building, 600 Arch Street, Room 4218, Philadelphia, PA 19106.

Treasury IG for Tax Administration, 915 2nd Avenue, Room 2640, MS 690, Seattle, WA 98174.

Treasury IG for Tax Administration, 1222 Spruce, Room 2, 102F2 Stop, St. Louis, MO 63103.

Treasury IG for Tax Administration, Ronald Dellums Federal Bldg., 1301 Clay Street, Suite 1120S North, Oakland, CA 94612.

Treasury IG for Tax Administration, 5000 Ellin Road, Room B2–203, Lanham, MD 20706.

Treasury IG for Tax Administration, 250 Murall Drive, Room #1008A, Martinsburg, WV.

Appendix C—Inspections and Evaluations Field Offices, TIGTA

Treasury IG for Tax Administration, 401 W Peachtree St., Atlanta, GA 30308–3539.

Treasury IG for Tax Administration, 4050 Alpha Road, Dallas, TX 75244.

[FR Doc. 2022–24978 Filed 11–15–22; 8:45 am]

BILLING CODE 4810–04–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0525]

Agency Information Collection Activity: VA MATIC Enrollment/Change

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before January 16, 2023.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0525'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0525'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct

or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA MATIC ENROLLMENT/CHANGE (2900–0525).

OMB Control Number: 2900–0525.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by the insured to enroll or change the account number and/or bank from which a VA MATIC deduction was previously authorized. The information requested is authorized by law, 38 U.S.C. 1908.

Affected Public: Individuals and households.

Estimated Annual Burden: 417 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 5000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–24872 Filed 11–15–22; 8:45 am]

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FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 275, and 279

Outsourcing by Investment Advisers; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275, and 279

[Release Nos. IA–6176; File No. S7–25–22]

RIN 3235–AN18

Outsourcing by Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing a new rule under the Investment Advisers Act of 1940 (''Advisers Act'') to prohibit registered investment advisers (''advisers'') from outsourcing certain services or functions without first meeting minimum requirements. The proposed rule would require advisers to conduct due diligence prior to engaging a service provider to perform certain services or functions. It would further require advisers to periodically monitor the performance and reassess the retention of the service provider in accordance with due diligence requirements to reasonably determine that it is appropriate to continue to outsource those services or functions to that service provider. We also are proposing corresponding amendments to the investment adviser registration form to collect census-type information about the service providers defined in the proposed rule. In addition, we are proposing related amendments to the Advisers Act books and records rule, including a new provision requiring advisers that rely on a third party to make and/or keep books and records to conduct due diligence and monitoring of that third party and obtain certain reasonable assurances that the third party will meet certain standards.

DATES: Comments should be received on or before December 27, 2022.

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 Number S7–25–22 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 S7–25–22. The file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all comments on the Commission's website (*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 edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

Studies, memoranda, or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Christopher Chase, Senior Counsel; Christian Corkery, Senior Counsel; Juliet Han, Senior Counsel; Mark Stewart, Senior Counsel; Jennifer Porter, Senior Special Counsel; Holly Miller, Senior Financial Analyst; Melissa Roverts Harke, Assistant Director, Investment Adviser Regulation Office, Division of Investment Management, at (202) 551–6787, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment 17 CFR 275.206(4)-11 (''proposed rule 206(4)-11'') under the Advisers Act [15 U.S.C. 80b–1 *et seq.*]; and amendments to 17 CFR 275.204–2 (rule 204–2) and Form ADV [17 CFR 279.1] under the Advisers Act.[1]

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[1] Unless otherwise noted, when we refer to the Advisers Act, we are referring to 15 U.S.C. 80b, and when we refer to rules under the Advisers Act, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR 275]. In addition, unless otherwise noted, when we refer to the Investment Company Act, we are referring to 15 U.S.C. 80a.

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I. Introduction

A. Background

The asset management industry has evolved greatly since Congress adopted the Investment Advisers Act of 1940 (''Advisers Act'' or ''Act''). For instance, many advisers now seek to provide full service wealth management and financial planning (*e.g.,* tax, retirement, estate, education, and insurance), and they use electronic systems to provide those services and keep their records.[2] Clients and investors also are seeking to invest in types of securities and other assets that were not commonly traded or did not exist at that time, including, for example, derivatives and exchange-traded funds.[3] At the same time, fee pressures for advisers have increased.[4] As a result, advisers are under pressure to meet evolving and increasingly complex client demands in a cost-effective way.[5] The demand for advisory services has grown as well.[6] For example, regulatory assets under management (''RAUM'') have increased from $47 trillion to $128 trillion over the past 10 years; while RAUM managed for non-high net worth advisory clients have increased from approximately $3.7 trillion to approximately $7 trillion.[7]

Many advisers are adapting to the changes discussed above by engaging service providers to perform certain functions (''outsourcing'').[8] In some cases, service providers may support the investment adviser's advisory services and processes. Supporting functions may include, for example, investment research and data analytics, trading and risk management, and compliance. In other cases, advisers hire service providers to perform or assist with functions that support middle- and back-office functions essential to asset management (*e.g.,* collateral management, settlement services, pricing or valuation services, and performance measurement). Additionally, investment advisers have engaged service providers to perform activities that form a central part of their advisory services.[9] Advisers increasingly have engaged index providers to develop bespoke indexes that an adviser may replicate or track in portfolios for its clients, advisers engage subadvisers to manage some or all of a client's portfolio, and advisers use third parties to provide technology platforms for offering robo-advisory services.

Service providers may give the adviser or the adviser's clients access to certain specializations or areas of expertise, reduce risks of keeping a function in-house that the adviser is not equipped to perform, or otherwise offer efficiencies that are unavailable to or unachievable by an adviser alone. Use of service providers can provide staffing flexibility by reducing the burdens on advisers' existing personnel and may mitigate the need to hire new personnel (which generally entails hiring and onboarding costs in addition to salaries and benefits). This flexibility may be particularly useful for services that the adviser uses on a periodic or ad hoc basis but may not need or wish to dedicate permanent staffing. Advisers with few personnel in particular may find benefits by allowing service providers to handle tasks that would otherwise be time-consuming or costly given the lack of economies of scale. Engaging a service provider also may prove efficient because it allows an adviser to allocate specific duties to a single service provider, rather than relying on multiple internal personnel to complete a function. Clients also can benefit from outsourcing, including through better quality of service, lower fees (if the adviser passes along any cost savings), or some combination.

There is a risk that clients could be significantly harmed, however, when an adviser outsources to a service provider a function that is necessary for the provision of advisory services without appropriate adviser oversight. The risk is in addition to any risks that would exist from the adviser providing these functions and should be managed. For example, a significant disruption or interruption to an adviser's outsourced services could affect an adviser's ability to provide its services to its clients. Outsourcing a service also presents a conflict of interest between an adviser providing a sufficient amount of oversight versus the costs of providing that oversight or the cost of the adviser providing the function itself. Poor oversight could lead to financial losses for the adviser's clients, including through market losses and as a result of

[2] *See Financial Advisers Now Help with College Plans, Family Counseling, Cremains,* The Wall Street Journal (Aug. 23, 2019), *available at https://www.wsj.com/articles/financial-advisers-now-help-with-college-plans-family-counseling-cremains-11566558002; Beyond Finances: Holistic Life Planning Trends Among Advisors,* Investment News (2020), *available at https://www.investmentnews.com/beyond-finances-holistic-life-planning-trends-among-advisors.*

[3] *See Young, Confident, Digitally Connected—Meet America's New Day Traders,* Reuters (Feb. 2, 2021), *available at https://www.reuters.com/article/us-retail-trading-investors-age/young-confident-digitally-connected-meet-americas-new-day-traders-idUSKBN2A21GW; College Students Are Buying Stocks—But Do They Know What They're Doing?,* CNBC (Aug. 4, 2020), *available at https://www.cnbc.com/2020/08/04/college-students-are-buying-stocks-but-do-they-know-what-theyre-doing.html.*

[4] *See, e.g., Adviser Industry Fee Pressures in Focus,* Planadviser (Feb. 4, 2022), *available at https://www.planadviser.com/exclusives/adviser-industry-fee-pressures-focus/* (stating that fee compression has impacted adviser revenue models in recent years due to increasing automation, stiffer competition and ongoing industry consolidation); *CaseyQuirk Remarks and Discussion,* U.S. Securities and Exchange Commission Asset Management Advisory Committee (Jan. 14, 2020), *available at https://www.sec.gov/files/BenPhillips-CaseyQuirk-Deloitte.pdf* (stating that buyers are becoming more fee-sensitive and showing an annualized reduction in global effective fees between 2015 and 2018).

[5] A recent survey indicated that advisers are reducing their own expenses in response to fee compression, with 52% of surveyed respondents planning to reduce expense ratios on some products. *C-Suite Asset Management Survey,* Brown Brothers Harriman & Co. (2020), at 6 (''C-Suite Asset Management Survey''), *available at https://www.bbh.com/content/dam/bbh/external/www/investor-services/insights/c-suite-asset-manager-survey/C-Suite%20Asset%20Manager%20Survey%20PDF_data.pdf* (finding more than half of respondent asset managers are planning to reduce expense ratios or fees in the following year). *See also Fees Were Already Under Pressure. Then the Pandemic Hit,* Institutional Investor (Dec. 8, 2020), *available at https://www.institutionalinvestor.com/article/b1plj6z9wsv5nf/Fees-Were-Already-Under-Pressure-Then-the-Pandemic-Hit.*

[6] *See AWM: From 'A Brave New World' to a New Normal,* PwC (2020), at 6, *available at https://www.pwc.lu/en/asset-management/awm-from-a-brave-new-world-to-a-new-normal.html* (calculating worldwide assets under management in 2019 as $110.9 trillion, including a 9% compound annual growth rate since 2015).

[7] Registered investment advisers report $7.096 trillion in RAUM for non-high net worth advisory clients, based on analysis of data reported on Form ADV through the Investment Adviser Registration Depository (IARD) system as of April 30, 2022. The data consists of assets that are reported by both advisers and sub-advisers, including mutual fund and ETF assets. Prior to the October 2017 changes to Form ADV, clients and client RAUM were estimated based on the midpoint of ranges reported.

[8] *See, e.g., The Race to Scalability 2020: Current Insights from a Decade of Advisor Research on Investment Management Trends,* Flexshares (2020), *available at https://go.flexshares.com/outsourcing;* Christopher Newman, *Asset Managers Continue to Outsource Middle Office Functions,* EisnerAmper (Oct. 21, 2020), *available at https://www.eisneramper.com/asset-managers-outsource-ai-blog-1020/.*

[9] *See Smart Outsourcing Can Be a Game-Changer for RIAs,* ThinkAdvisor (Mar. 18, 2021), *available at https://www.thinkadvisor.com/2021/03/18/smart-outsourcing-can-be-a-game-changer-for-rias/* (describing benefits to registered investment advisers of using service providers, including outsourcing management of individual portfolios and possibility of ''keep[ing] some core functions in-house and outsourc[ing] others'').

increased transaction costs or the loss of investment opportunities. Excessive oversight can result in costs to the adviser, and potentially its clients, that outweigh the intended benefits. Outsourcing also has the potential to defraud, mislead or deceive clients. For example, outsourcing necessary advisory functions could have a material negative impact on clients, such as: inaccurate pricing and performance information that advisory clients rely on to make decisions about hiring and retaining the adviser and that advisers rely on to calculate advisory fees; [10] compliance gaps that enable fraudulent, deceptive or manipulative activity by employees and agents of such service providers to occur or continue unaddressed; [11] or poor operational management or risk measurement that leads to client losses. A service provider's major technical difficulties could prevent the adviser from executing an investment strategy or accessing an account. Additionally, sensitive client information and data could be lost [12] and used to the client's detriment, or client holdings or trade order information could be negligently maintained by a service provider and misused by the service provider's employees or other market participants in trading ahead or front-running activities. Clients also may be harmed when a service provider has significant operations in a single geographic region because weather events, power outages, geopolitical events and public health events in that location raises concerns that the service provider can continue to perform its functions during these events.

Risks related to a service provider's conflicts of interests also may cause harm to an adviser's clients. There may be conflict of interest risks when a service provider recommends or otherwise highlights investments to advisory clients that the service provider also owns or manages for others. In that circumstance, the service provider has an incentive to influence investing behavior in a way that benefits the service provider to the detriment of the adviser's clients. For example, an index provider that holds an investment it subsequently adds to its widely followed index has a conflict of interest because it would directly benefit from creating or increasing demand for that investment and clients could be harmed if the investment does not perform as well as other investments the index provider could have added instead.

The risks of harm may be particularly pronounced where services that are necessary for the provision of advisory services are highly technical or proprietary to the service provider, or where the services require expertise or data the adviser lacks. For example, if an adviser engages a service provider that uses proprietary technology to measure portfolio risk or performance of client investments, the adviser likely would not be able to replicate such measurements for its clients. If such technology fails to provide accurate measurements, it would be difficult for the adviser to detect such issues and manage the portfolios or report performance for its clients without the adviser having a plan in place for managing and mitigating the risks of such a failure. The risks of harm are also heightened where the service provider has further outsourced one or more necessary functions to another service provider (possibly without the adviser's awareness or influence), or where the service provider delivers some services from locations outside of the United States, which introduces potential oversight and regulatory gaps or oversight challenges. In each of these cases, the disruption, interruption, or failures in the service provider's services could affect the ability of every adviser using that service provider to deliver advisory services to its clients or otherwise meet its obligations, including under the Advisers Act or other Federal securities laws.

The use of service providers could create broader market-wide effects or systemic risks as well, particularly where the failure of a single service provider would cause operational failures at multiple advisers.[13] For example, there could be concentration risks to the extent that one service provider supplies several services to an adviser or multiple service providers merge to become a single market leader. Multiple regulated entities could use a common service provider,[14] particularly because service providers have become more specialized in recent years,[15] and for certain functions there may be only a few entities offering relevant (often information technology-dependent) services. If a large number of investment advisers and their clients use a common service provider, operational risks could be correspondingly concentrated, which could, in turn, lead to an increased risk of broader market effects during times of market instability. One example where the failure of a service provider had a broad impact occurred when a corrupted software update to accounting systems at a widely used fund accounting provider caused industry-wide concern over the accuracy of fund values for several days.[16] An estimated 66 advisers and 1,200 funds were unable to obtain system-generated net asset values (''NAVs'') for several days, suggesting that an error in a system used by many advisers could disrupt entire markets.[17]

[10] *See* Armental, Maria, *BNY Mellon to Pay $3 Million to Resolve Massachusetts Probe Over Glitch,* The Wall Street Journal (Mar. 21, 2016), *available at https://www.wsj.com/articles/bny-mellon-to-pay-3-million-to-resolve-massachusetts-probe-over-glitch-1458581998.*

[11] *See* In the Matter of Aegis Capital, LLC, Investment Advisers Release No. 4054 (Mar. 30, 2015) (settled order) (failures of an outsourced Chief Compliance Officer and the adviser's Chief Operating Officer resulted in Form ADV filings that grossly overstated the registrant's AUM and total number of clients).

[12] *See* Tokar, Dylan *et. al., Fund Administrator of Fortress, Pimco and Others Suffers Data Breach Through Vendor,* The Wall Street Journal (Jul. 27, 2020), *available at https://www.wsj.com/articles/fund-administrator-for-fortress-pimco-and-others-suffers-data-breach-through-vendor-11595857765.*

[13] *See, e.g.,* The International Organization of Securities Commissions (''IOSCO'') FR07/2021, *Principles on Outsourcing: Final Report* (Oct. 2021), (''IOSCO Report''), *available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD687.pdf.* The IOSCO Report cites examples of risks that could lead to systemic risk if multiple entities use a common service provider including: (1) if the service provider suddenly and unexpectedly becomes unable to perform services that are material or critical to the business of a significant number of regulated entities, each entity will be similarly disabled, (2) a latent flaw in the design of a product or service that multiple regulated entities rely upon may affect all these users, (3) a vulnerability in application software that multiple regulated entities rely upon may permit an intruder to disable or corrupt the systems or data of some or all users, and (4) if multiple regulated entities depend upon the same provider of business continuity services (*e.g.,* a common disaster recovery site), a disruption that affects a large number of those entities may reduce the capacity of the business continuity service.

[14] Financial Stability Board, *Regulatory and Supervisory Issues Relating to Outsourcing Third Party Relationships: Discussion Paper* (Nov. 9, 2020), at 2 (''FSB Discussion Paper''), *available at https://www.fsb.org/wp-content/uploads/P091120.pdf.*

[15] The IOSCO Report, *supra* footnote 13.

[16] *See* Armental, Maria, *BNY Mellon to Pay $3 Million to Resolve Massachusetts Probe Over Glitch,* The Wall Street Journal (Mar. 21, 2016), *available at https://www.wsj.com/articles/bny-mellon-to-pay-3-million-to-resolve-massachusetts-probe-over-glitch-1458581998.*

[17] *See id. See also, e.g., BlackRock: The monolith and the markets,* The Economist (Dec. 7, 2013), *available at https://www.economist.com/briefing/2013/12/07/the-monolith-and-the-markets* (stating that 7% of the world's $225 trillion of financial assets were supported by the same system and stating, ''If that much money is being managed by people who all think with the same tools, it may be managed by people all predisposed to the same mistakes.''); IOSCO FR06/22, *Operational resilience of trading venues and market intermediaries during the COVID–19 pandemic & lessons for future disruptions: Final Report,* at 23 (July 2022), *available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD706.pdf* (stating that disruption of outsourced services could lead to losses, such as clients unable to access accounts or have orders executed during market volatility).

Our observations underscore the risks associated with advisers outsourcing functions to service providers. We have observed an increase in such outsourcing and issues related to the outsourcing and advisers' oversight. One recent example is an enforcement action for alleged violations of section 206 of the Advisers Act against investment advisers that used models and volatility guidelines from a third-party subadviser without first confirming that they worked as intended.[18] In another recent action, an adviser allegedly failed to oversee a third-party vendor that did not properly safeguard customers' personal identifying information.[19] Additionally, we are troubled that the Commission staff have observed some advisers unable to provide timely responses to examination and enforcement requests because of outsourcing. In response to our staff's requests for documents, some advisers have not provided the information necessary to demonstrate compliance with the Advisers Act and its rules because of outsourcing. For example, some advisers that use client relationship management providers have asserted that they have complied with rule 204–3 because brochure delivery is programmed into the providers' software, though they cannot produce records to evidence that delivery took place.[20]

These observations illustrate that despite the existing legal framework regarding the duties and obligations of investment advisers, more needs to be done to protect clients and enhance oversight of advisers' outsourced functions. An adviser has a fiduciary duty to its clients. The Advisers Act establishes a federal fiduciary duty for investment advisers that comprises a duty of loyalty and a duty of care and is made enforceable by the antifraud provisions of the Advisers Act.[21] This combination of obligations has been characterized as requiring the investment adviser to act in the best interests of its client at all times.[22]

When an investment adviser holds itself out to clients and potential clients as providing advisory services, the adviser implies that it remains responsible for the performance of those services and will act in the best interest of the client in doing so.[23] Outsourcing a particular function or service does not change an adviser's obligations under the Advisers Act and the other Federal securities laws. In addition, the adviser is typically responsible for the advisory services through an agreement with the client that represents or implies the adviser is performing all the functions necessary to provide the advisory services. An adviser remains liable for its obligations, including under the Advisers Act, the other Federal securities laws and any contract entered into with the client, even if the adviser outsources functions. In addition, an adviser cannot waive its fiduciary duty. Accordingly, an adviser should be overseeing outsourced functions to ensure the adviser's legal obligations are continuing to be met despite the adviser not performing those functions itself.

As a fiduciary, an investment adviser cannot just ''set it and forget it'' when outsourcing. In this regard, we are concerned that outsourcing these necessary functions (defined as ''Covered Functions'' in proposed rule 206(4)–11) in particular, without further oversight by the investment adviser, can undermine the adviser's provision of services and compliance with the Federal securities laws, and can directly harm clients. We also believe it is a deceptive sales practice and contrary to the public interest and investor protection for an investment adviser to hold itself out as an investment adviser, but then outsource its functions that are necessary to its provision of advisory services to its clients without taking appropriate steps to ensure that the clients will be provided with the same protections that the adviser must provide under its fiduciary duty and other obligations under the Federal securities laws. We believe a reasonable investor hiring an adviser to provide investment advisory services would expect the adviser to provide those services and, if significant aspects of those services are outsourced to a provider, to oversee those outsourced functions effectively. To do otherwise would be misleading, deceptive, and contrary to the public interest. Moreover, disclosure cannot address this deception. We do not believe any reasonable investor would agree to engage an investment adviser that will not perform functions necessary to provide the advisory services for which it is hired, and instead will outsource those functions to a service provider without effective oversight over the service provider. An adviser's use of service providers should include sufficient oversight by an adviser so as to fulfill the adviser's fiduciary duty, comply with the Federal securities laws, and protect clients from potential harm.

Accordingly, in light of the increase in the use of service providers, the services provided, and the risks of client harm described above, we believe that a consistent oversight framework across investment advisers is needed for outsourcing functions or services that are necessary for the investment adviser to provide its advisory services in compliance with the Federal securities laws. Proposed new rule 206(4)–11 under the Advisers Act is designed to address these issues by requiring investment advisers to comply with specific elements as part of a due diligence and monitoring process to oversee the provision of covered functions.

Given the increasing use of service providers by investment advisers, we are also concerned that the Commission has limited visibility into advisers' outsourcing and thus the potential extent to which advisory clients face outsourcing-related risks. The Commission currently collects only limited information about an adviser's use of certain service providers through forms filed with the Commission, such as third-party keepers of advisers' books and records and certain service providers for private funds reported on Form ADV, or during examinations conducted by Commission staff.[24] If the Commission had additional information about which service providers all registered advisers are using that are necessary to perform their advisory services, for example, it could quickly

[18] *See* In the Matter of Aegon USA Investment Management, LLC, et al, Investment Advisers Act Release No. 4996 (Aug. 27, 2018) (settled order).

[19] *See* Morgan Stanley Smith Barney LLC, Investment Advisers Act Release No. 6138 (Sept. 20, 2022) (settled order).

[20] *See* 17 CFR 275.204–3

[21] *See Transamerica Mortgage Advisors, Inc.* v. *Lewis,* 444 U.S. 11, 17 (1979) (''§ 206 establishes federal fiduciary standards to govern the conduct of investment advisers.'') (quotation marks omitted); *SEC* v. *Capital Gains Research Bureau, Inc.,* 375 U.S. 180, 191 (1963); Commission Interpretation Regarding Standard of Conduct for Investment Advisers, Investment Advisers Act Release No. 5248 (June 5, 2019), at 6–8 [84 FR 33669 (July 12, 2019)] (''Standard of Conduct Release'').

[22] *See SEC* v. *Tambone,* 550 F.3d 106, 146 (1st Cir. 2008) (''Section 206 imposes a fiduciary duty on investment advisers to act at all times in the best interest of the fund . . .''); *SEC* v. *Moran,* 944 F. Supp. 286, 297 (S.D.N.Y 1996) (''Investment advisers are entrusted with the responsibility and duty to act in the best interest of their clients.''). *See also* Standard of Conduct Release, *supra* footnote 21, at 6–8 (discussing various interpretations of an adviser's fiduciary duty spanning several decades).

[23] *See* Standard of Conduct Release, *supra* footnote 21 (discussing various interpretations of an adviser's fiduciary duty spanning several decades). *See also* section 205(a)(2) of the Advisers Act makes it unlawful for an SEC-registered adviser to enter into or perform any investment advisory contract unless the contract provides that no assignment of the contract shall be made by the adviser without client consent.

[24] *See* Form ADV Part 1A, Schedule D, Sections 1.L. and 7.B.1.

analyze the potential breadth of the impact from a market event. In the event of a critical failure at an asset management service provider, the Commission would be able to identify quickly all advisers reporting that firm on Form ADV as a service provider of one or more covered functions, which can help inform the Commission's course of action.

Finally, we are concerned that when an investment adviser outsources its books and records obligations to a third party, the adviser may not be properly ensuring that it can comply with the Commission's recordkeeping requirements. Currently, rule 204–2 requires advisers to make and keep specified records, including standards for keeping those records electronically, but does not expressly impose specific requirements when an adviser outsources recordkeeping functions to a third party.[25] We believe that specific conditions should apply to all advisers using third parties to make and keep records required by rule 204–2.

B. Overview of Rule Proposal

The proposed rule would establish a set of minimum and consistent due diligence and monitoring obligations for an investment adviser outsourcing certain functions to a service provider. Proposed rule 206(4)–11 under the Advisers Act would apply to advisers that are registered or required to be registered with us and that outsource a covered function.[26] The definition of a covered function has two parts: (1) a function or service that is necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws, and (2) that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.[27] Clerical, ministerial, utility, or general office functions or services are excluded from the definition.[28] Before engaging a service provider to perform a covered function, the adviser would have to reasonably identify and determine through due diligence that it would be appropriate to outsource the covered function, and that it would be appropriate to select that service provider, by complying with six specific elements. These elements address:

- The nature and scope of the services;
- Potential risks resulting from the service provider performing the covered function, including how to mitigate and manage such risks;
- The service provider's competence, capacity, and resources necessary to perform the covered function;
- The service provider's subcontracting arrangements related to the covered function;
- Coordination with the service provider for Federal securities law compliance; and
- The orderly termination of the provision of the covered function by the service provider.[29]

The proposed rule also would require the adviser periodically to monitor the service provider's performance and reassess the selection of such a service provider under the due diligence requirements of the rule.[30] Each of these elements is included in the rule to address specific areas of risks and concerns that we have observed, as described above. Although the proposed rule does not require additional explicit written policies and procedures related to service provider oversight, if the proposed rule were adopted, advisers would be required under existing rule 206(4)–7 to have policies and procedures reasonably designed to prevent violations of the Advisers Act and rules under the Act, and this requirement would apply to the proposed rule.

In addition, we are proposing to require advisers to make and keep certain books and records attendant to their obligations under the proposed oversight framework, such as lists or records of covered functions and records documenting their due diligence and monitoring of each service provider.[31] The requirement to make and keep such books and records would help advisers monitor, and determine whether to modify, their approach to outsourcing a particular function. These records would also assist the Commission and its staff in evaluating adviser representations about their services and the extent to which an adviser complies with the rule.

We are also proposing to add a new provision in the recordkeeping rule requiring every investment adviser that relies on a third party to make and/or keep books and records required by the recordkeeping rule to conduct due diligence and monitoring of that third party consistent with the requirements under proposed rule 206(4)–11 and obtain reasonable assurances that the third party will meet four standards. These standards address the third party's ability to: (i) adopt and implement internal processes and/or systems for making and/or keeping records that meet the requirements of the recordkeeping rule applicable to the adviser in providing services to the adviser; (ii) make and/or keep records that meet all of the requirements of the recordkeeping rule applicable to the adviser; (iii) provide access to electronic records; and (iv) ensure the continued availability of records if the third party's operations or relationship with the adviser cease. The requirements are intended to protect required records from loss, alteration, or destruction and to help ensure that such records are accessible to the investment adviser and the Commission staff while allowing investment advisers to continue to contract with a wide variety of service providers to assist with recordkeeping functions.

Finally, we are proposing amendments to Form ADV that are designed to improve visibility for the Commission and advisory clients relating to service providers that perform covered functions. New item 7.C. in Part 1A and Section 7.C. in Schedule D would require advisers to provide census-type information about these providers.[32] These disclosures would provide more information about outsourced functions, enabling clients

[25] Commission staff addressed third party recordkeeping in two staff letters. *See* OMGEO, LLC, SEC Staff No-Action Letter (Aug. 14, 2009), at n.3 (''OMGEO NAL''), *available at https://www.sec.gov/divisions/investment/noaction/2009/omgeo081409.htm* (citing First Call and National Regulatory Services, SEC Staff No-Action Letter (Dec. 2, 1992)); First Call Corporation, SEC Staff No-Action Letter (Sept. 6, 1995) (''First Call NAL''), *available at https://www.sec.gov/divisions/investment/noaction/1995/firstcall090695.pdf*. The staff no-action letters represent the views of the staff of the Division of Investment Management. They are not a rule, regulation, or statement of the Commission. The Commission has neither approved nor disapproved their content. The staff no-action letters, like all staff statements, have no legal force or effect: they do not alter or amend applicable law, and they create no new or additional obligations for any person. *See also infra* section II.F.

[26] Proposed rule 206(4)–11(a). The rule number assigned to the proposed rule 206(4)–11 is based on the numbering for other rule amendments the Commission previously proposed. *See, e.g.,* Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, *available at https://www.sec.gov/rules/proposed/2022/33-11028.pdf* (proposing rule 206(4)–9 related to cybersecurity policies and procedures of investment advisers); Private Fund Advisers: Documentation of Registered Investment Adviser Compliance Reviews, *available at https://www.sec.gov/rules/proposed/2022/ia-5955.pdf* (proposing rule 206(4)–10 related to private fund adviser audits). This number could change based on future Commission actions.

[27] Proposed rule 206(4)–11(b).

[28] Proposed rule 206(4)–11(b).

[29] Proposed rule 206(4)–11(a)(1).

[30] Proposed rule 206(4)–11(a)(2).

[31] *See* proposed rule 204–2(a)(24).

[32] Because Form ADV Part 1A is submitted in a structured, XML-based data language specific to that Form, the information in proposed new Item 7.C would be structured (*i.e.,* machine-readable) as well.

to make better informed decisions about the retention of an adviser and enabling the Commission and its staff to identify and address risks related to outsourcing by advisers and oversee advisers' use of service providers better.

II. Discussion

A. Scope

Under proposed rule 206(4)–11, as a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act, it would be unlawful for an investment adviser registered or required to be registered with the Commission to retain a service provider to perform a covered function unless the investment adviser conducts certain due diligence and monitoring of the service provider.[33] A covered function is defined in the proposed rule as a function or service that is necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws, and that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.[34] The proposed rule defines a service provider as a person or entity that performs one or more covered functions and is not an adviser's supervised person as defined in the Advisers Act.[35] A covered function would not include clerical, ministerial, utility, or general office functions or services.[36]

1. Covered Function

We are proposing to define ''covered function'' more narrowly than all of the functions an investment adviser might outsource to a service provider. Advisers outsource many services beyond their core advisory functions, and the failure of many of those functions could have little to no effect on an adviser's clients. Accordingly, we are targeting those outsourced functions that meet two elements: (1) those necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws; and (2) those that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.[37]

The proposed rule applies if an adviser retains a service provider to perform a covered function, whether by a written agreement or by some other means. The Commission is not specifying how an adviser might retain a service provider to perform a covered function, but an adviser should consider using a written agreement as a best practice. The determination of whether an adviser has retained a service provider to perform such a covered function would depend on the facts and circumstances. For example, an adviser that enters into a written agreement with a valuation provider to value all of its clients' fixed income securities or with a subadviser to manage fixed income portfolios for several of its clients would be considered to retain a service provider under the proposed rule to perform a function that is necessary for the adviser to provide its advisory services. In contrast, custodians that are independently selected and retained through a written agreement directly with the client would not be covered by the proposed rule because the adviser is not retaining the service provider to perform a function that is necessary for the adviser to provide its advisory services.

The determination of what is a covered function also would depend on the facts and circumstances, as the proposed rule is meant to encompass functions or services that are necessary for a particular adviser to provide its investment advisory services. In addition, certain functions may be covered functions for one adviser but not for another adviser, and so certain persons or entities that perform functions on behalf of advisers may be a service provider in the scope of the rule with respect to one adviser but not for another adviser. We are providing examples of potential covered function categories an adviser may wish to consider in the amendments we are proposing to Form ADV, Section 7.C of Schedule D, which would include: Adviser/Subadviser; Client Services; Cybersecurity; Investment Guideline/Restriction Compliance; Investment Risk; Portfolio Management (excluding Adviser/Subadviser); Portfolio Accounting; Pricing; Reconciliation; Regulatory Compliance; Trading Desk; Trade Communication and Allocation; and Valuation.

Advisers outsource functions that are essential to asset management or directly support the adviser's advisory services and processes. Depending on the specific facts and circumstances, when problems arise with these types of functions, clients could experience a material negative impact, such as interruptions in advisory services or the adviser's inability or failure to comply with its legal responsibilities. We believe an adviser should take specific oversight steps required by the proposed rule to reduce the likelihood that these types of problems will occur and to reduce their impact when they do occur. In addition when an investment adviser holds itself out to clients and potential clients as providing advisory services, the adviser implies that it remains responsible for the performance of those services and will act in the best interest of the client in doing so. We believe it is contrary to the public interest and investor protection if the adviser then outsources covered functions without effectively overseeing those outsourced functions. Accordingly, an adviser should be overseeing outsourced functions to ensure the adviser's legal obligations are continuing to be met despite the adviser not performing those functions itself.

Generally, we would consider functions or services that are related to an adviser's investment decision-making process and portfolio management to meet the first element of the definition. For example, some functions and services covered under the first element would be those related to providing investment guidelines (including maintaining restricted trading lists), creating and providing models related to investment advice, creating and providing custom indexes, providing investment risk software or services, providing portfolio management or trading services or software, providing portfolio accounting services, and providing investment advisory services to an adviser or the adviser's clients (subadvisory services).[38] Covered functions can

[33] *See* proposed rule 206(4)–11(a).

[34] Proposed rule 206(4)–11(b).

[35] Proposed rule 206(4)–11(b).

[36] Proposed rule 206(4)–11(b).

[37] *See* proposed rule 206(4)–11.

[38] These providers' activities, in whole or in part, may cause them to meet the definition of ''investment adviser'' under the Advisers Act. In a separate action, the Commission issued a request for public comment related to the status and registration of certain information providers, including index providers, model portfolio providers, and pricing services, under the Advisers Act. *See* Request for Comment on Certain Information Providers Acting as Investment Advisers, Investment Advisers Release No. 6050 (Jun. 15, 2022) [87 FR 37254 (Jun. 22, 2022)] (''Information Providers Request for Comment''), *available at https://www.sec.gov/rules/other/2022/ia-6050.pdf.* The comment letters on the Information Providers Request for Comment (File No. S7–18–22) are available at *https://www.sec.gov/comments/s7-18-22/s71822.htm* and we are continuing to consider all of the comments received. Several commenters noted that many advisers and fund boards oversee information

Continued

include technology integral to an adviser's investment decision-making process and portfolio management or other functions necessary for the adviser to provide its investment advisory services. For example, if an adviser's investment decision-making process relies on artificial intelligence or software as a service, those services may form part of the covered function even though they are provided through technology. As discussed above, certain of these functions may be covered functions for one adviser but not for another adviser, depending on the facts and circumstances. For example, an adviser may choose to engage an index provider for the purposes of developing an investment strategy for its clients, which would be a covered function under the proposed rule, while another may license a widely available index from an index provider to use as a performance hurdle, in which case the proposed rule would not apply. We believe that the services of an index provider, if retained by an adviser for purposes of formulating the adviser's investment advice, would meet the first element of the definition of a covered function because such services would be necessary for the adviser to provide investment advice to its client. Implementing an investment decision also may meet this element, including identifying which portfolios to include or exclude, determining how to allocate a position among portfolios, and submitting the final orders to the broker. In order to provide investment advisory services in compliance with the Federal securities laws, an adviser might also seek to outsource its compliance functions, including outsourced chief compliance officers and other outsourced compliance functions such as making regulatory filings on behalf of the adviser, and valuation and pricing services.[39] Ensuring the adviser complies with the regulatory requirements applicable to its advisory services is a necessary part of providing those services and would be covered under the rule. We would not consider functions performed by marketers and solicitors to be covered functions, however, because such services are not used by an adviser to provide investment advice to its clients.[40]

The second element of the proposed definition of ''covered function'' limits the definition to those functions or services that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.[41] Determining what is a material negative impact would depend on the facts and circumstances, but it could include a material financial loss to a client or a material disruption in the adviser's operations resulting in the inability to effect investment decisions or to do so accurately. An adviser should consider a variety of factors when determining what would be reasonably likely to have a material negative impact, such as the day-to-day operational reliance on the service provider, the existence of a robust internal backup process at the adviser, and whether the service provider is making or maintaining critical records, among other things. For example, if an adviser used a service provider for portfolio management functions that experienced a cyber-incident that caused an inability for the adviser to monitor risks in client portfolios properly, it would be reasonably likely to cause a material negative impact on the adviser's clients and its ability to provide investment advisory services.[42]

A covered function would not include clerical, ministerial, utility, or general office functions or services.[43] These types of functions or services are not functions that an adviser would perform on its own or they are not likely to qualify as a covered function under the proposed rule because they are not necessary for an adviser to provide investment advisory services in compliance with the Federal securities laws or they are not likely to cause a material harm to clients if not performed properly. For example, covered functions would not include the adviser's lease of commercial office space or equipment, use of public utility companies, utility or facility maintenance services, or licensing of general software providers of widely commercially available operating systems, word processing systems, spreadsheets, or other similar off-the-shelf software.

To illustrate how to apply the definition of a covered function, if an adviser engaged an index provider to create or lease an index for the adviser to follow as a strategy for its advisory clients, it would likely fall under both elements of the definition. First, using a bespoke index created specifically for the adviser to follow would serve as a material service that is necessary for the adviser to provide investment advisory services to the extent the index is used by the adviser to provide investment advice and make investments on behalf of the advisory client. Second, if the function is not performed or performed negligently, it would have a material negative impact on the adviser's ability to provide investment advisory services because if, for instance, the service provider failed to provide the index, the adviser would not be able to make investments for the client as needed. Similarly, if an adviser licenses a commonly available index and its stated investment strategy involves management against that index, failure to receive the index or an inaccurate delivery of the index could have a material negative impact on the adviser's ability to manage that portfolio. In contrast, if an adviser purchases a license to utilize a commonly available index solely as a comparison benchmark for performance and not to inform the adviser's investment decisions as part of its advisory services, that index provider would most likely not be providing a covered function because, in that context, the adviser is not using the index to provide investment advice.

2. Service Provider

An investment adviser would be required to comply with the proposed rule if the adviser retains a service provider. The term ''service provider'' is defined as a person or entity that: (1) performs one or more covered functions; and (2) is not a supervised person of the

providers and that advisers are fiduciaries bearing the ultimate responsibility for information providers' services. *See, e.g.,* Comment Letter of ETF BILD (Aug. 16, 2022); Comment Letter of Investment Advises Association (Aug. 16, 2022); Comment Letter of Index Industry Association (Aug. 16, 2022); Comment Letter of Invesco Ltd. (Aug. 16, 2022); Comment Letter of Investment Company Institute (Aug. 16, 2022) (''Comment Letter of ICI''); Comment Letter of Independent Directors Council (Aug. 16, 2022); Comment Letter of NASDAQ (Aug. 16, 2022) (''Comment Letter of NASDAQ''); Comment Letter of S&P Dow Jones Indices (Aug. 16, 2022); Comment Letter of S&P Global Market Intelligence (Aug. 15, 2022); Comment Letter of the Securities Industry and Financial Markets Association (Aug. 16, 2022) (''Comment Letter of SIFMA''). Some commenters also suggested as an alternative to regulating these information providers as investment advisers, that the Commission consider regulating adviser oversight of information providers. *See, e.g.,* Comment Letter of Healthy Markets Association and CFA Institute (Aug. 16, 2022); Comment Letter of ICI; Comment Letter NASDAQ; Comment Letter of SIFMA.

[39] For example, an adviser may use valuation service providers to assist in fair value determinations. Such services would be included under the proposed rule as covered functions, as opposed to, for example, common market data providers providing publicly available information.

[40] Marketers and solicitors must determine whether they are subject to statutory or regulatory requirements under Federal law, including the requirement to register as a broker-dealer pursuant to section 15(b) of the Securities Exchange Act of 1934. *See* 15 U.S.C. 78o(b).

[41] *See* proposed rule 206(4)–11(b).

[42] *See infra* section II.B.4.

[43] Proposed rule 206(4)–11(b).

adviser.[44] The proposed rule excludes supervised persons of an adviser from the definition of a service provider since such persons are already being directly overseen by the adviser.[45] The proposed rule does not, however, make a distinction between third-party providers and affiliated service providers because the risks that the proposed rule are designed to address exist whether the service provider is affiliated or unaffiliated, and the service provider is not necessarily already being overseen by the adviser. For example, the ability to have direct control or full transparency may be limited when an adviser outsources, even to an affiliated service provider, which may increase the risk for failed regulatory compliance. As such, even though the affiliate may be in a control relationship with the adviser, it remains important for the adviser to determine if it is appropriate to retain the affiliate's services and to oversee the affiliate's performance of a covered function.

The proposed rule would not include an exception for service providers that are subject to other provisions of the Advisers Act, including SEC-registered advisers, or other Federal securities laws. An adviser remains liable for its legal and contractual obligations and should be overseeing outsourced functions to ensure the adviser meets its legal and contractual obligations, regardless of whether the service provider has its own legal obligations under the Federal securities laws. For example, if an adviser engages a broker-dealer to provide an electronic trading platform to submit orders from the adviser and allocate trades among the adviser's client accounts after the trades have been executed, then the adviser's engagement of the broker-dealer for those services would not be excepted from the proposed rule. We believe providing orders to a broker-dealer and allocating securities to client accounts after the trade are part of an investment adviser's services and responsibilities that cannot be outsourced without further oversight because, particularly in a discretionary account, instructing a broker-dealer about the trades the adviser is recommending and then allocating trades among client accounts is a critical component of an adviser's provision of investment advisory services. Additionally, we believe it would be reasonable for a client to expect initial and continued adviser oversight of that function, and the broker-dealer's failure to perform or negligent performance of its covered function could be reasonably likely to cause a material harm to the adviser's clients and its ability to provide its advisory services. For example, without proper oversight of this function, failing to perform the function could result in an adviser being unable to submit orders or allocate trades. A service provider performing asset allocations on behalf of the adviser also might allocate shares in a manner that favors certain clients over others or might fail to consider whether allocating additional shares would violate a client' investment guidelines.

If an adviser engages an SEC-registered adviser as a subadviser to manage and evaluate investments within a portfolio, then the adviser would not be excepted from the proposed rule. Even if the subadviser would be subject to its own compliance with the Federal securities laws, the adviser remains responsible for its advisory services and should perform its own due diligence and monitoring of the subadviser to ensure its obligations continue to be met. Moreover, the adviser's compliance with the proposed rule would not alleviate the subadviser's own compliance with the Federal securities laws, including the proposed rule. In the event that an SEC-registered subadviser were to hire a service provider itself, for example to help manage and evaluate the investments within a managed portfolio, the subadviser would be required to comply with the proposed rule with respect to that service provider. The subadviser would have the same obligations and duties to its client as any other SEC-registered adviser, whether the subadviser's client is another adviser or a client of another adviser, and the subadviser should engage in the same oversight requirements as any other adviser. All advisers registered or required to be registered are subject to the proposed rule if they engage a service provider to perform a covered function, regardless of the identities of their clients or their relationships to other advisers.

3. Recordkeeping of Covered Functions

An adviser would first need to determine which functions are covered functions in order to comply with the requirements of the proposed rule. Accordingly, we are proposing to revise the Advisers Act books and records rule to require an adviser to make and keep a list or other record of covered functions that the adviser has outsourced to a service provider and the name of each service provider, along with a record of the factors, corresponding to each listed function, that led the adviser to list it as a covered function.[46]

The recordkeeping requirement might be satisfied by a written agreement between the adviser and service provider, explicitly stating that the function or service provided is a covered function under the proposed rule and the name of each service provider. The written agreement could include the factors that led the function to be deemed a covered function, or that information could be memorialized in a separate record. Alternatively, there might be a written memorandum or other document prepared by the adviser that lists the names of the service providers; that explains how a particular function or service is one that is deemed to be necessary to provide investment advisory services in compliance with the Federal securities laws and that would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services if not performed or performed negligently; and that provides the factors that led the function to be deemed a covered function. The adviser's written compliance policies also could identify the covered functions and the factors considered for each, such as the type of function or service provided or whether the adviser could provide investment advisory services without the covered function.

The method by which the adviser meets this proposed requirement (*e.g.,* written agreement, memorandum to file, etc.) and the factors relevant to the adviser's determination would likely vary depending on each function or service for which an adviser engages a service provider. Accordingly, we are not specifying any particular method for making the list or record of factors to consider.[47]

Due to the unique nature of an adviser's relationship with a service provider, we are also proposing to revise the Advisers Act books and records rule

[44] *See* proposed rule 206(4)–11(b).

[45] *See* proposed rule 206(4)–11(b). A supervised person is defined in section 2(a)(25) of the Advisers Act as any partner, officer, director, (or other person occupying a similar status or performing similar functions), or employee of an adviser, or other person who provides investment advice on behalf of the adviser and is subject to the supervision and control of the adviser.

[46] *See* proposed rule 204–2(a)(24)(i). The rule number assigned to subparagraph (24) of the proposed amendments to rule 204–2(a) is based on the numbering for other rule amendments the Commission previously proposed. *See e.g.,* Private Fund Advisers: Documentation of Registered Investment Adviser Compliance Reviews, *available at https://www.sec.gov/rules/proposed/2022/ia-5955.pdf* (proposing rule 204–2(a)(20) to (23)). The proposed rule's subsection number could change based on future Commission actions.

[47] *See* proposed rule 204–2(e)(1).

to require that the records be maintained in an easily accessible place throughout the time period that the adviser has outsourced a covered function to a service provider, and for a period of five years thereafter.[48] This amendment would help facilitate the Commission's inspection and enforcement capabilities.

We request comment on the proposed scope of the rule:

1. Is the proposed scope of the rule appropriate? Why or why not? In what ways, if any, could the proposed scope of the rule or the proposed definition of covered function better match our policy goals? Does it need to be made clearer?

2. Instead of oversight requirements when an adviser outsources a covered function, should we only require Form ADV disclosure to clients and potential clients of any outsourcing of certain functions? Would it be sufficient for an adviser to disclose that it would outsource these services and not oversee them and would any reasonable investor agree to this approach? Or would a more limited approach to the oversight of service providers be appropriate instead of the proposed requirements? If so, what should that limited approach be?

3. In addition to the proposed oversight requirements when an adviser outsources a covered function, should the rule include an express provision that prohibits an adviser from disclaiming liability when it is not performing a covered function itself?

4. Is the proposed definition of ''covered function'' clear? Why or why not? In what ways, if any, could the proposed definition be made clearer?

5. The proposed rule is designed to apply in the context of outsourcing core advisory functions. The proposed rule does so by qualitatively describing what we believe is a core advisory function—namely, a function or service that is necessary for the investment adviser to provide its investment advisory services in compliance with the Federal securities laws. Does the proposed definition of covered function capture this intended core advisory function scope? Should the rule explicitly state that its application is limited to core investment advisory services? If yes, how would we identify and define what would be considered ''core investment advisory services''?

6. Instead of our proposed definition, should we define ''covered functions'' as a specified list of core investment advisory activities, such as ''services that are central to the selection, trading, valuation, management, monitoring, indexing, and modeling of investments''? Are there other specific functions or services that should be included or excluded from this list? Please explain. Are the services in this list clear? For example, would we need to define trading in this alternative definition to include allocation and communications related to trades? Would it be clear that subadvisers and portfolio management would be included as ''management'' in this alternative definition or that risk management is part of management and monitoring? Would it be confusing to list management and selection as well as indexing and modeling in this alternative definition? Is there overlap among the categories? If there is overlap, should the rule list only certain of these categories, such as selection and management, or would certain core services or functions be inadvertently excluded?

7. Should the Commission include or exclude in the definition of covered function any particular functions or services discussed within the release? Should services related to investment risk identification or monitoring be specifically identified, or would they be assumed to be included as part of the selection or management of investments? Instead should the specified list of covered functions/services be the same as those provided by service provider types listed in the proposed amendments to Form ADV?

8. Are there particular types of service providers to which the rule should apply? For example, should the rule explicitly include the service providers advisers would be required to identify in proposed amendments to Form ADV (portfolio management, trade communication and allocation, pricing services, valuation services, investment risk services, portfolio accounting services, client servicing, subadvisory services, and/or regulatory compliance)? Should we explicitly require the rule to apply to index providers, model providers, valuation agents, or other service providers that may be central to an adviser's investment decision-making process?

9. What would be the advantages and disadvantages of explicitly identifying the types of functions or providers that would trigger the rule? For instance, is there a risk of being over-inclusive and under-inclusive if we take such an approach? Are there certain services or functions that should be considered ''core'' for all advisers, or does what constitutes a ''core'' advisory function vary from one adviser to the next? Should what is considered ''core'' correlate to a certain percentage of clients who receive (and presumably can therefore be affected by) the service provider's services? That is, would a service provider's functions be considered ''core'' to an adviser if they could have an impact on a certain minimum percentage of the adviser's clients? Should it correlate to a certain percentage of regulatory assets under management that receive (and, again, presumably can be affected by) the service provider's services? That is, would a service provider's functions be considered ''core'' to an adviser if they could have an impact on a certain minimum percentage of the adviser's regulatory assets under management? What would be a percentage of either such measurement that should trigger application of the rule? 5%? 10%? 15%? 20%? Please explain your answer.

10. Should data providers be explicitly included within the scope of the rule? Are there specific types of data providers that might be considered ''covered functions,'' such as providers of security master data, corporate action data, or index data?

11. Instead of considering certain compliance functions to be a ''covered function'' under the rule, should we amend rule 206(4)–7 to require advisers to comply with the due diligence and monitoring requirements of proposed rule 206(4)–11 and 204–2(a)(24) for all outsourced compliance functions, as we are proposing for records made and kept by third parties, as described below?

12. Should we revise the proposed exclusion for clerical or ministerial services? Should we provide different or additional specific exclusions from the definition of covered function under the rule? Which ones, if any? For example, should we use the same definition of supervised person as in the Advisers Act? Should we explicitly exclude broad-based and widely published indices or specific clerical or ministerial services such as basic utilities and widely commercially available operating systems, word processing systems, or spreadsheets, utilities, or general office functions or services? Should we exclude functions or categories of services or should we list specific service providers that should be excluded? How should we view these services or functions when they are integral to the provision of a covered function (*e.g.,* when investment performance is calculated in a spreadsheet or an order management system is hosted in the cloud)?

13. Should we define ''covered function'' more broadly or more narrowly, and if so, how? For example, should we only use the first prong of the proposed definition and broaden the

[48] *See* rule 204–2.

definition to any function or service that is necessary for the investment adviser to provide its advisory services in compliance with the Federal securities laws, regardless of the likely impact on clients of non- or negligent performance? Or should we only use the second prong of the definition to apply the rule to any services or functions that, if not performed or performed negligently, could potentially have a material negative impact, regardless of whether they are necessary for the adviser to provide its advisory services in compliance with the Federal securities laws? Should we change the second prong of the definition, for example, by applying the rule to any services or functions that if not performed or performed in a manner materially different from the adviser's representations or undertakings could potentially have a material negative impact?

14. Should the definition of ''covered function'' be expanded to include functions or services necessary for the adviser to comply with the Federal securities laws or with the Advisers Act instead of limiting the definition to functions or services necessary to provide investment advisory services in compliance with the Federal securities laws? Should the definition include other third-party providers of services to the adviser's clients, such as broker-dealers and custodians? Should the definition include any third-party providers that the adviser recommends to clients even if those providers enter into an agreement directly with the client and not with the investment adviser?

15. Is ''necessary for the adviser to provide its advisory services in compliance with the Federal securities laws'' sufficiently clear? Is the term ''necessary'' too restrictive and, if so, should alternate language be used, such as ''supports the adviser in making investment selections and otherwise providing its advisory services in compliance with the Federal securities laws''? Should the proposed rule be limited to providing its advisory services in compliance with obligations only under the Advisers Act?

16. Is the proposed definition of ''service provider'' clear? Why or why not? In what ways, if any, could the proposed definition be made clearer?

17. Are the meanings of ''material negative impact'' and ''reasonably likely'' clear? Why or why not? Should we define these phrases or provide additional guidance? If so, how? Is there a different phrase we should use that conveys the same idea?

18. Should the rule define what it means to retain a service provider to perform a covered function? If so, how? Should we explicitly state that outsourcing would include affiliated entities of an adviser, including parent organizations?

19. Should we define when an adviser would retain a service provider for purposes of the proposed rule? Are there specific factors that should be relevant in determining whether a service provider arrangement should be subject to the rule? For example, should the rule apply where the adviser recommends the service provider to some or all of its clients? Would a relevant factor be the extent to which the adviser makes arrangements for the client to engage the service provider? Should the approach differ depending on whether the client is a fund (registered or not) or a separately managed account and the extent to which the adviser is a control person of the fund or has some control over the fund's contracting arrangements? Or should the proposed rule only include service providers that contract directly with the adviser? If so, why? Should we provide an explicit exclusion for all advisers that engage service providers to perform covered functions as part of a larger program or arrangement, such as the sponsor of a wrap fee program or other separately managed account program in which the sponsor is subject to the proposed rule with respect to the participation of the service providers in the program?

20. The proposed rule does not specify how an adviser would ''retain'' a service provider in compliance with the proposed rule. Should we require a written agreement or some other written documentation between the adviser and service provider to perform a covered function under the proposed rule? If so, what provisions should we require? For example, should certain elements of the proposed rule's due diligence requirements instead be required in a contract between the adviser and service provider? Should there be a written agreement requirement for certain covered functions and not others? For example, should the rule identify a sub-set of the proposed definition of covered function as critical covered functions and require a written agreement in those circumstances only? If the final rule were to, instead, define covered function by listing certain specific functions, such as described in request for comments 5, 6, 7, and 8 above, should we require a written contract between the adviser and these service providers? Are there any contexts in which a written agreement may be more feasible than others? Alternatively, should we not require a written agreement but instead require disclosure in Form ADV Part 1A of whether an adviser has a written agreement for each covered function or require disclosure only if the adviser does not have a written agreement for a particular covered function?

21. Is the scope of the proposed rule sufficiently clear in its application to various advisory arrangements such as, among others, separately managed accounts, wrap-fee programs, robo-advisory services, and model portfolio providers? Is it clear how it applies when technology is used as part of advisory services, such as artificial intelligence, foundation models, or software as a service? Why or why not?

22. With respect to an adviser's clients, should the rule apply to any service providers an adviser retains on behalf of all of the adviser's clients, as proposed, including clients that are registered investment companies or private funds? Why or why not? Should services provided to a fund, such as fund administration, transfer agent, principal underwriter or custody services, be deemed to be ''investment advisory services'' or otherwise covered under the proposed rule and related recordkeeping requirements? Should we provide an explicit exception for advisers when a registered investment company retains the listed service providers in rule 38a–1 under the Investment Company Act of 1940 (''Investment Company Act'') instead (*i.e.,* principal underwriter, fund administrator, and transfer agent)? What about with respect to private funds, which are not subject to rule 38a–1? Should we provide an explicit exception from the proposed rule if any such engagement is approved, in the case of a registered fund, by the board, including a majority of the independent directors, or in the case of a private fund, by a majority of the Limited Partner Advisory Committee or equivalent body?

23. Should we include subadvisers within the scope of the rule, as proposed? Why or why not? Should this differ based on whether the subadviser for a fund is engaged by the adviser or the fund itself?

24. The proposed rule excludes a supervised person of an investment adviser from the definition of provider. Do commenters agree that it would be duplicative to apply the rule in this context? Should the proposed rule also exclude an adviser's affiliated or related persons? Should such an exclusion depend on whether the affiliate or related person is separated from the

adviser by information barriers? Why or why not?

25. Would it be duplicative or otherwise unnecessary to apply the rule in the context of an adviser's affiliates, as proposed? If so, please explain.

26. Should the proposed rule provide an exception for firms that are dually registered broker-dealers? For example, should we provide an exception for firms that comply with existing broker-dealer provisions such as FINRA Rule 3110 (Supervision) to meet a dual registrant's obligation under these rules? Should there be an exception for outsourcing to SEC-registered advisers or other service providers that are themselves subject to regulation under the Federal securities laws? Should such an exception be limited to outsourcing to another adviser or manager (including banks and trust companies) when the other adviser or manager treats the client as its own client (as may be evidenced, for example, by the client's entry into documentation appointing the adviser or manager, the inclusion of the client as a client on the books and records of the adviser or manager, or the delivery of disclosure documents of the adviser or manager to the client)?

27. To what extent do advisers already take the steps that would be required by the proposed rule? Do commenters believe that the proposed rule is necessary? Why or why not? To the extent that commenters believe that the proposed rule is already covered by the general fiduciary duty enforceable under Section 206 of the Advisers Act, do commenters believe there is sufficient clarity in the industry as to the obligations for an adviser in the context of retaining service providers? And if so, how do those obligations differ from what is outlined in this proposed rule?

28. Are the proposed changes to the books and records rule appropriate? Are there alternative or additional recordkeeping requirements we should impose? For example, should we require that the record include specific information or be memorialized in a written memo or report? Should we require advisers to update the list of covered functions within prescribed time periods such as monthly, quarterly or annually?

29. Should we require advisers to make and keep true, accurate, and current a list of covered functions? Why or why not? Should we specify any particular method for making the list or record of factors to consider? Should we require a specific method of maintaining the list of covered functions such as in its policies and procedures?

30. Do commenters believe it would be overly burdensome to require a record of factors that led the adviser to list each covered function, as proposed? Why or why not? Should we instead only require the list of covered functions without requiring the record of factors for each covered function?

B. Due Diligence

The proposed rule would require advisers to conduct reasonable due diligence before engaging a service provider to perform a covered function.[49] We believe it is essential for an investment adviser to evaluate whether and how it will continue to meet its obligations to its clients, and the requirements of the Federal securities laws, including its obligations as a fiduciary, when it chooses to outsource.[50] The due diligence requirement would provide guidelines to help ensure that the nature and scope of the covered function, as well as the risks associated with the adviser's use of service providers are identified and appropriately mitigated and managed. This also could reduce the risk that the adviser's outsourced services are not performed or are performed negligently. Specifically, the proposed rule would require an adviser to reasonably identify and determine that it would be appropriate to outsource the covered function, that it would be appropriate to select the service provider, and once selected, that it is appropriate to continue to outsource the covered function, by complying with six specific elements:

(i) Identify the nature and scope of the covered function the service provider is to perform;

(ii) Identify and determine how it would mitigate and manage the potential risks to clients or to the investment adviser's ability to perform its advisory services, resulting from engaging a service provider to perform a covered function and engaging that service provider to perform the covered function;

(iii) Determine that the service provider has the competence, capacity, and resources necessary to perform the covered function in a timely and effective manner;

(iv) Determine whether the service provider has any subcontracting arrangements that would be material to the service provider's performance of the covered function, and identifying and determining how the investment adviser will mitigate and manage potential risks to clients or to the adviser's ability to perform its advisory services in light of any such subcontracting arrangement;

(v) Obtain reasonable assurance from the service provider that it is able to, and will, coordinate with the adviser for purposes of the adviser's compliance with the Federal securities laws; and

(vi) Obtain reasonable assurance from the service provider that it is able to, and will, provide a process for orderly termination of its performance of the covered function.

The proposed rule requires that the due diligence be conducted ''before engaging'' a service provider, which would be before the adviser and service provider agree to the engagement, or agree to add new covered functions or services to an existing engagement.[51] It would not be appropriate for the adviser to assess the risks of outsourcing a covered function to a particular service provider, for the first time, *after* it engaged the service provider.[52] Conducting initial due diligence after engagement would unnecessarily subject the adviser's clients to potentially unknown and unmitigated risks associated with outsourcing the covered function to the service provider. Those risks could result in harm to the client that could have been avoided had due diligence been conducted beforehand.

The proposed rule also requires that service provider due diligence be conducted ''reasonably.'' This would mean an adviser's due diligence must reasonably be tailored to the function or services that would be outsourced and to the identified service provider. An adviser's analysis of a specific service provider's competence, capacity, and resources generally would not require boundless analysis or the identification of every conceivable risk of outsourcing, but must be reasonable under the facts and circumstances. The proposed rule is intended to allow registrants to tailor their due diligence practices to fit the nature, scope, and risk profile of a

[49] *See* proposed rule 206(4)–11(a)(1).

[50] *See* In the Matter of AssetMark, Inc. (f/k/a Genworth Financial Wealth Management, Inc.), Investment Advisers Act Release No. 4508 (Aug. 25, 2016) (settled order) (AssetMark's due diligence was insufficient to confirm the accuracy of performance data from a third-party and therefore AssetMark failed to have a reasonable basis for the accuracy of the performance and performance-related claims made in its advertisements); *see also* In the Matter of Pennant Management, Inc., Investment Advisers Act Release No. 5061 (Nov. 6, 2018) (settled order) (Pennant negligently failed to perform adequate due diligence of a third party which ultimately contributed to substantial client losses).

[51] For written agreements, this would be the date it is executed by both parties, or if different days, the later of the dates each party executes it.

[52] *See infra* section II.G (*Transition and Compliance* and related discussion).

covered function and potential service provider.

For example, in determining whether to engage a third-party digital investment advisory platform, a registrant may not need to conduct a detailed analysis and review of the underlying computer code. However, the registrant generally should obtain a reasonable understanding of how the platform is intended to operate, determine that the platform operates as intended, and confirm the platform generates advice that is suitable for the registrant's clients. The registrant could consider also the risks of the digital platform that could result in material harm to a client and conclude that it can mitigate and manage those risks. In conducting this analysis, the adviser could review factors such as:

- Comparative digital platform methodologies, including their respective parameters, benefits, and risks;
- The digital platform's compliance and operational policies and procedures for the protection of client accounts and key systems, and its policies and procedures addressing the maintenance and oversight of the digital platform;
- The sufficiency of the digital platform's client questionnaire for enrolling clients in the advisory service;
- The digital platform's general process for developing, revising, and updating the advice or recommendations that it generates;
- The general process for and results of the service provider's testing and backtesting of the digital platform and the post-implementation monitoring of its performance; and
- The digital platform's prevention and detection of, and response to, cybersecurity threats.[53]

Ultimately, conducting due diligence is not a one-size-fits-all process. Whether an adviser tailors its due diligence such that it is reasonable under the proposed rule would depend on the facts and circumstances applicable to the services to be performed and the identified service provider.

1. Nature and Scope of Covered Function

The first element in the proposed due diligence requirements would require an adviser to identify the nature and scope of the covered function the service provider is to perform.[54] This might include documenting a description of the nature and scope of the covered function in a written agreement, memo to file, database, or other form the adviser deems appropriate.[55] As part of its identification, an investment adviser generally should understand what services will be provided and how the service provider will perform those services. We believe such identification is important to reduce the risks of performance shortfalls by the service provider due to the adviser's or its service provider's insufficient understanding of the nature and scope of the covered function. A clear understanding between the adviser and service provider of the nature and scope of the applicable covered function should help ensure that the service provider is performing the function that the adviser believes is being performed and reduce the risk of harm to clients and investors as a result of inadequate, negligent, or otherwise insufficient performance of the covered function.

What is included in ''nature and scope'' under the proposed rule would vary depending on the facts and circumstances, and the level of detail should reasonably reflect relevant factors such as the nature, size, and complexity of the covered functions involved. For example, if the service provider performing a covered function is an index provider, then the identification of the nature and scope of the covered function might relate to such things as index license terms, rebalancing frequency, and frequency of data delivery from the provider to the adviser. If an adviser outsources its trading desk functions, then the adviser might wish to identify descriptions of the trading desk services, as well as any ancillary activities related to those services, such as software or other technological support and maintenance, business continuity and disaster recovery, employee training, and customer service, including the extent to which the provider would perform the services itself or hire others to perform them.

As part of this analysis, an adviser also might wish to identify the frequency, content, and format of the service provider's covered function. The analysis also might vary depending on the types of risks identified during the adviser's due diligence process. If an adviser identifies certain risks related to outsourcing a particular task or related to using a particular service provider, then the adviser generally should take those risks into account when identifying the nature and scope of the covered function. For example, the adviser might wish to determine how the adviser's information, facilities, and systems (including access to and use of the adviser's or the adviser's clients' information) would be used and any protections that would be put in place for use of such items. If an adviser were to engage a service provider to perform portfolio management services for its clients, and the adviser would be sharing non-public trading information and/or its advisory clients' personally identifiable information, the adviser generally should negotiate and identify how such information would be managed in order to mitigate the risk that such information may be mishandled.[56]

2. Risk Analysis, Mitigation, and Management

The proposed rule would require an adviser to identify the potential risks to clients, or to the adviser's ability to perform its advisory services, resulting from outsourcing a covered function. In doing so, we believe an adviser generally should assess and consider prioritizing the risks created by outsourcing the function in light of the adviser's particular business processes.[57] As discussed above,

[53] Commission staff addressed similar issues in a guidance update. *See* Robo-Advisers, IM Guidance Update, No. 2017–02 (Feb. 2017) (discussing robo-adviser specific factors that an adviser may consider in adopting written policies and procedures).

[54] Proposed rule 206(4)–11(a)(1)(ii). As further discussed below, we are also proposing a new books and records provision, rule 204–2(a)(24) that would require advisers to make and retain a list or other record of covered functions that the adviser has outsourced to a service provider.

[55] We are also proposing amendments to Form ADV Part 1A under which an adviser would be required to disclose information about its service providers of covered functions. *See supra* section II.D.

[56] Rules related to maintaining the privacy of client information also would apply. *See, e.g.,* 17 CFR 248.11(a) (reuse and redisclosure of nonpublic personal information that nonaffiliated trading services provider receives from adviser limited to performing trading services for the adviser's clients). *See also* 17 CFR 248.201(e)(4) (applicable to advisers that are a financial institution or creditor with covered accounts); Reg. S–ID, Appendix A, at Section VI(c).

[57] We believe a risk prioritization approach is a commonly used and effective practice in the industry. Also, the Commission proposed a risk prioritization approach for cybersecurity risk assessment. We encourage commenters to review that proposal to determine whether it might affect their comments on this proposing release. *See* Cybersecurity Risk Management for Investment Advisers, Registered Investment Companies, and Business Development Companies, Investment Advisers Act Release No. 5956 (Feb. 9, 2022) [87 FR 13524 (Mar. 9, 2022)] (''Proposed Cybersecurity Release'') (stating that ''[a]s an element of an adviser's or fund's reasonable policies and procedures, the proposed cybersecurity risk management rules would require advisers and funds periodically to assess, categorize, prioritize, and draft written documentation of, the cybersecurity risks associated with their

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outsourcing an investment adviser's function without a minimum and consistent framework for identifying, mitigating, and managing risks, can undermine the adviser's provision of services and mislead or otherwise harm clients. A lack of such a framework could indicate that it is unreasonable for an adviser to outsource the function. Potential client harm caused by a service provider's failure to perform or negligent performance of the outsourced function could be significantly mitigated, or even avoided, if the adviser first identifies the risk, and then determines, before outsourcing a function, how to mitigate and manage the risk.

There are a variety of potential risks that an adviser should generally consider, such as the sensitivity of information and data that would be subject to the service or to which the service provider may have access, the complexity of the function being outsourced, the reliability and accuracy of the service or function delivered by the service provider, extensive use of particular service providers by the adviser or several advisers, available alternatives in the event a service provider fails or is unable to perform the service, the speed with which a function could be moved to a new service provider, existing and potential conflicts of interest of the service provider,[58] geographic location of the service provider, unwillingness to provide transparency, known supply-chain challenges, and the availability of market resources skilled in the service. Key to this process might include determining the likely potential impact—particularly to the adviser's clients, to investors in the adviser's fund clients, or to the adviser's ability to perform its advisory services—of the failure, or improper performance, of the function to be outsourced.

For example, outsourcing records administration, personal securities trading clearance and compliance, or client trading services may result in the service provider gaining access to the adviser's non-public trading information (*e.g.,* client account positions, active trade orders, restricted securities trading list), or personally identifiable information (''PII'') about an adviser's clients. In these circumstances, it would be important for the adviser to consider whether use of a service provider would increase the likelihood that the non-public trading information or PII could be mishandled, misused, subject to unauthorized access, or otherwise subject to a heightened risk.[59] This risk may be amplified when outsourcing to an offshore service provider that is unfamiliar with applicable U.S. laws and regulations, is potentially subject to laws that apply a different standard, and may cause delays in production of records. In the case of an offshore service provider, the adviser should consider whether the service provider's policies, procedures, and operations comply with applicable United States laws and regulations, and whether the service provider is able to demonstrate experience servicing clients that are subject to Federal securities laws. Further, the adviser should consider the potential impact to its advisory business and its clients if the non-public trading information or PII were subject to a breach via the service provider.

When an adviser outsources any covered function it introduces new relationships and the potential for new conflicts of interest, such as the service provider's incentives to meet its obligations to some clients ahead of others, to devote more resources to a different line of business than the one for which the provider was hired, or to favor affiliates.[60] The adviser should identify these risks and determine how it will mitigate and manage them. For example, outsourcing some client portfolio management functions to a model provider may introduce new conflicts of interest issues for the service provider that the adviser may want to consider. In such a circumstance, an adviser generally should consider potential issues such as whether the service provider also provides services to the service provider's affiliates and how the service provider prioritizes providing models among clients that pay different fees to the service provider. This is because the service provider could have a financial incentive to provide favorable prioritization or terms to its affiliates or clients paying the service provider a higher fee. If so, the adviser generally should consider how to mitigate this conflict of interest through approaches such as obtaining contractual representations and warranties about the service provider's procedures, reviewing the service provider's applicable written policies and procedures, or obtaining a contractual right to audit the service provider.

Another common example that illustrates the importance of an adviser's risk analysis occurs when an adviser seeks to outsource all or portions of its compliance function. There can be benefits to relying on a third party with potentially greater compliance experience and expertise, but an adviser also generally should consider the nature of its business and whether a potential provider can sufficiently understand, ingest, and address the unique compliance needs of the adviser's business. The adviser can seek to mitigate and manage this risk by generally considering certain steps such as seeking references from other clients of the service provider, conducting interviews of key service provider personnel, ensuring the compliance service provider will customize its services to meet the needs and unique aspects of the adviser's particular business, obtaining written assurances about the experience and skills of the service provider personnel that will be assigned to the adviser's account, and obtaining the right to audit the functions being performed by the service provider periodically.

The proposed rule also would require advisers to identify the risks of outsourcing to a particular service provider. We understand that many advisers currently take a variety of steps to understand the risks of their service providers and those of certain service providers. These steps may include reviewing a summary of a service provider's business continuity plan, due diligence questionnaires, an assurance report on controls by an independent party, certifications or other information regarding a provider's operational resiliency or implementation of compliance policies, procedures, and controls relating to its systems, results of any testing, and conducting periodic onsite visits. The nature, depth, and complexity of this analysis would be dependent, in part, on the adviser's assessment of risks associated with the function being outsourced. If an adviser determines that the risk of outsourcing a particular function is relatively high, then the adviser generally should consider adjusting its due diligence of the particular provider commensurate with that risk assessment. An adviser

information systems and the information residing therein.'').

[58] Advisers may have disclosure obligations related to conflicts of interest that arise from other provisions of the Federal securities laws. *See, e.g.,* Form ADV Part 2, General Instruction 3 (stating that advisers ''must seek to avoid conflicts of interests with [their] clients, and, at a minimum, make full disclosure of all material conflicts of interest . . . that could affect the advisory relationship.'').

[59] Advisers should also note that outsourcing that transfers PII to third parties could implicate legal restrictions on sharing by the adviser of such information.

[60] As fiduciaries, advisers must seek to avoid conflicts of interest with clients, and, at a minimum, make full disclosure of all material conflicts of interest between the adviser and clients that could affect the advisory relationship. *See* Form ADV Part 2 General Instructions. Advisers may disclose this information in their Part 2 of Form ADV or by some other means.

also generally should consider that a provider may pose unique or novel risks such as international operations, limited financial or operational history, lack of financial or operational transparency, lack of sufficient operating capital to support long-term operations, inability or unwillingness to provide client references, insufficient availability of qualified personnel, infrastructure susceptibility to extreme weather, lack of adequate data security, and prior service failures.

For example, if the outsourced function involves valuation of illiquid or private securities, the adviser generally should consider whether the particular service provider has the capability and experience to provide accurate and timely information. Inaccurate or untimely valuation information could affect the adviser's strategy, resulting in negative financial consequences for the adviser's clients. A lack of necessary sophistication or inability to perform timely are examples of service provider issues that generally should be identified and addressed before the service provider is engaged.

The proposed rule would also require an adviser to determine how it will mitigate and manage the identified risks. This could be accomplished through a variety of means, including actions taken by the adviser, or actions taken by the service provider at the adviser's request or direction. If an adviser determines that risks cannot be mitigated or managed adequately, the adviser generally should consider factors such as whether it is consistent with an adviser's fiduciary responsibility to its clients to move forward with outsourcing the function, whether outsourcing the function may increase the risk of fraud against the adviser's clients, or whether there is a viable alternative to outsourcing.

There are a multitude of ways that an adviser may mitigate or manage risks, subject to the applicable facts and circumstances surrounding the function. To mitigate the identified risks, an adviser generally may consider the potential impacts of the risks occurring, the frequency with which the risks may occur, and how to avoid or lessen those impacts. This could include considering whether the service provider allows sufficient transparency such that the adviser reasonably can monitor the outsourced functions to confirm they are performed correctly and developing and implementing written policies and procedures to oversee the service provider. For example, if an adviser incorporates a service provider's software to manage its portfolio risk, a flaw in the software could adversely affect client portfolios. It would therefore be important that the service provider sufficiently explains and demonstrates how the software operates so that the adviser can understand, identify, and determine whether it can mitigate any risks that the use of the software may pose. The adviser also generally should consider whether and how the service provider would provide notice of software failure, and how the service provider will respond in the event of a failure. Similarly, in the event the adviser is U.S.-based and outsourcing to a non-U.S.-based service provider, the adviser generally should consider whether and how it can effectively monitor the performance of the covered function, and whether there are any unique limitations or risks posed by the location where the services will be provided, such as geopolitical instability, heightened exposure to extreme weather, lack of U.S. legal jurisdiction and ability to enforce legal rights, infrastructure challenges such as instability in the power grid or internet services, or lack of access to an experienced workforce. If the adviser determines it cannot effectively monitor the performance of a covered function, it generally should consider whether outsourcing is consistent with the adviser's fiduciary responsibility to its clients, whether outsourcing may increase the risks for the adviser's clients, and whether there is a viable alternative to outsourcing.

An adviser may also mitigate and manage the risks of failing to perform a function by implementing contractual safeguards or pursuing alternative options. For example, if a service provider placing trades for the adviser's clients experienced a trading delay or stopped trading altogether, there may be material negative impacts on the adviser's clients. To mitigate the risk of this scenario, the adviser could enter into a contractual agreement with the service provider that identified, in advance of such an event, a substitute trading arrangement to be implemented within a timeframe that would cause as little disruption to clients as possible. An adviser also could establish a redundancy in the outsourced service or function. For example, an adviser could engage a primary pricing provider for illiquid securities, and also have an arrangement with a secondary pricing provider. The secondary provider could provide prices in the instance that the first pricing service fails, and otherwise be used, for example, to validate accuracy and identify potential anomalies in the data provided by the primary pricing provider. Such contractual provisions may be particularly important in preventing harm to the adviser's clients. Regardless of who a contract indicates should remedy such a situation or who is liable for a particular breach, a service provider's failure to perform does not excuse the adviser from its fiduciary duty and other legal obligations and liabilities.

3. Competence, Capacity, Resources

Once an adviser has identified the risks related to outsourcing the function and the risks of the service provider, the proposed rule would require the adviser to determine that the service provider has the competence, capacity, and resources necessary to perform the covered function in a timely and effective manner. Outsourcing an investment adviser's function to a service provider without making this determination can undermine the adviser's provision of services and mislead or otherwise harm clients. When an investment adviser holds itself out as providing advisory services or agrees with a client to provide such services, the adviser implies that it remains responsible for the performance of those services and will act in the best interest of the client in doing so. If an adviser retains a service provider without ensuring the service provider is able to perform the function in a timely and effective manner, the adviser would not be ensuring its obligations will be met and clients could be harmed if the service provider fails to perform or negligently performs the covered function. Therefore, in order to comply with its legal obligations when outsourcing a function, the adviser should confirm that the service provider is able to perform the applicable function timely and effectively to the same standards directly applicable to the adviser.

The determination of competence, capacity, resources, and performing the function timely and effectively should be based on the facts and circumstances of the functions being outsourced. For example, if outsourcing a function is high risk due to the complexity of the function, the adviser may want to assess competence by focusing on the experience and expertise of the service provider's personnel and the comprehensiveness of their processes and methodologies. If the function is labor intensive, the adviser may wish to consider factors such as whether the service provider has the necessary staffing capacity to provide the function and the service provider's historical staff retention rates. If the function requires specialized equipment or

technology, the adviser may wish to seek evidence that the service provider possesses those resources. If the function is novel or is unique to the adviser, the adviser may wish to consider whether it is even appropriate to outsource due to a lack of service providers with the necessary competence, capacity, or resources to perform the function. In all of these instances, the adviser may consider whether and how the service provider can perform the covered function such that it effectively addresses the adviser's and its client's needs.

In addition to considering the facts and circumstances of the function being outsourced, we believe an adviser's analysis of competence generally should include an understanding of how the service provider will perform the function. For this, the adviser generally should verify that the service provider is able to explain and demonstrate clearly how the function will be performed. This enables the adviser to confirm it is outsourcing to a competent service provider, mitigates the risk of potential harm to the adviser's clients of a failure to perform, and educates the adviser in order to better monitor the service provider once engaged. For example, if an adviser is outsourcing its robo-advisory product to a third-party digital investment platform the adviser generally should understand the client factors considered by the platform, the methodology used by the platform to generate any recommendations, the factors that may alter that methodology, any highly technical or complex aspects of the methodology such as incorporation of artificial intelligence, and the service provider's procedures for testing and oversight of the methodology.

4. Subcontracting Arrangements

The proposed rule would require that the adviser determine whether the service provider has any subcontracting arrangements that would be material to the performance of the covered function. In the event of such a subcontracting arrangement, the proposed rule would also require that the adviser identify and determine how it will mitigate and manage potential risks to clients or its ability to perform advisory services in light of any such subcontracting arrangement.[61]

In making these determinations, an adviser generally could rely on representations provided by the service provider or could develop policies and procedures with certain limitations or conditions when engaging a service provider that uses subcontractors. For example, an adviser may implement a policy that prevents the adviser from retaining a service provider that primarily relies on subcontractors to perform the covered function, or implement a procedure to audit the service provider's oversight of its subcontractors. An adviser also may enter into a written agreement with the service provider that requires the service provider to notify the adviser of any material incidents that take place at the subcontractor that may cause a failure to perform a covered function by the service provider. When determining how to mitigate and manage potential risks of outsourcing in light of any subcontracting arrangement, the adviser could consider relying on written representations the service provider makes about steps it is taking to mitigate and manage such risks.

Service providers may utilize subcontracting arrangements for any advisory services and functions, which creates a chain of service providers to an adviser. The absence of a direct relationship with a subcontractor may affect the adviser's ability to assess and manage risks that develop as a result of outsourcing. Outsourcing risks are heightened when an adviser uses service providers for ''covered functions'' that, by definition under the proposed rule, if not performed or performed negligently would be reasonably likely to cause a material negative impact on an adviser's clients or its ability to provide advisory services. Because the adviser ultimately has the responsibility for providing advisory services and complying with the Federal securities laws, we believe it is important that the adviser know about material subcontracting arrangements so that it can oversee the covered function properly.

Requiring the adviser to determine whether the service provider has any subcontracting arrangements might provide more visibility into the outsourcing chain by the adviser. However, we also recognize that a service provider may use a large number of subcontractors for a variety of functions or services at various points in time. As a way to balance the burden of having to determine how the adviser will mitigate and manage potential risks with respect to every subcontractor with the benefit of the adviser having some visibility into the use of subcontractors, we believe that the determination should be limited to subcontracting arrangements that would be material to the service provider's performance of the covered function. To determine whether a subcontracting arrangement is material, we believe it is appropriate generally to follow the standard used in the proposed definition of covered function. Thus, a subcontracting arrangement would be material if nonperformance or negligent performance would be reasonably likely to cause a significant negative impact on the service provider's ability to perform the covered function. A subcontracting arrangement that is subject to this standard would depend on the type of subcontractor being used and the nature and scope of the subcontracting arrangement. For example, if an adviser engaged a subadviser to manage certain of its clients' portfolios, and the subadviser outsourced some or all of its portfolio management to a subcontractor, we generally would consider this to be material because the subadviser would be outsourcing the function that the adviser had engaged the subadviser to perform. In such an instance, we believe the subcontractor's failure to perform or negligent performance of portfolio management would be reasonably likely to cause a significant negative impact on the subadviser's performance of the covered function, which would be reasonably likely to cause a material negative impact on the adviser's ability to provide its investment advisory services.

We believe that requiring this determination and risk assessment of any subcontracting arrangements that would be material to performance of a covered function is important because having a chain of providers increases the risk of lack of transparency and control by the adviser if there were an issue within the chain. We believe that to the extent a service provider uses any subcontractors that are material to the performance of its covered function, the adviser generally should conduct further monitoring and put in place risk management processes to mitigate potential harm to the adviser, and its advisory clients.

5. Compliance Coordination

The proposed due diligence provision would require an adviser to obtain reasonable assurance from a service provider that it is able to, and will, coordinate with the adviser for purposes of the adviser's compliance with the Federal securities laws, as applicable to the covered function. An adviser remains liable for its obligations, including under the Advisers Act, other Federal securities laws and any contract entered into with the client, even if the adviser outsources functions. The proposed requirement would alert the service provider to those responsibilities

[61] Proposed rule 206(4)–11(a)(1)(iv).

and obtaining reasonable assurances would help the adviser ensure that it can continue to meet its compliance obligations despite outsourcing those functions.

For example, an adviser may rely on a service provider for part of its portfolio management function. While not required under the proposed rule, that adviser may wish to consider obtaining written assurances or written representations from the service provider that it is aware of the adviser's obligations under the Advisers Act, and that it will assist the adviser, as applicable, in complying with its obligations as a fiduciary. For additional clarity, the adviser may wish to consider articulating specific responsibilities of the service provider in relation to assisting the adviser to comply with its legal obligations. As another example, an adviser may rely on an outsourced chief compliance officer or compliance consultant for updating and filing the adviser's Form ADV, including Form CRS. Such an adviser may want to obtain assurances or representations from the service provider that it has sufficient knowledge of the adviser's business such that the adviser's Form ADV will be accurate and contain all required disclosure. In discussions with our staff regarding Form ADV compliance, some advisers have claimed ignorance of a filing not having been made, or of missing, inadequate or inaccurate disclosure, due to the adviser's reliance on an outsourced chief compliance officer or compliance consultant. Similarly, in response to our staff's requests for documents, advisers often indicate that they lack access to information necessary to demonstrate compliance with a provision of the Advisers Act and its rules or other Federal securities laws because of outsourcing. In instances where our staff has requested records demonstrating compliance with the brochure delivery rule,[62] some advisers that use client relationship management providers have asserted that they have complied with the rule because brochure delivery is programmed into the providers' software, though they cannot produce records to evidence that delivery took place.

6. Orderly Termination

The proposed rule would require an investment adviser to obtain reasonable assurance from the Service Provider that it is able to, and will, provide a process for orderly termination of its performance of the covered function.[63] This provision is designed to mitigate risks of an interruption in advisory services or the adviser's compliance with the Federal securities laws in the event that the outsourced relationship is discontinued. An abrupt termination of a covered function without a process to continue services in another way, transfer records, and otherwise provide a smooth transition could have a material negative impact on an adviser's clients or an adviser's ability to provide investment advisory services to clients. For example, if an adviser relied on a software provider to provide an order management and trading application for the purposes of placing orders on behalf of the adviser's clients, and the software provider abruptly terminated its services without the adviser being able to replace the provider or move the services in-house, then the termination would be reasonably likely to cause a material negative impact on the adviser's ability to provide investment advisory services. This is because the adviser may not be able to place orders at or near normal volumes or as efficiently. Such harm could be mitigated by the proposed due diligence requirement to obtain reasonable assurance from a service provider that it is able to, and will, provide a process for orderly termination of its performance of the covered function.

Orderly termination of a service provider's performance of a covered function might include the adviser ensuring that no ongoing operational and technological dependency on the service provider remains after the termination of the relationship with the service provider. For example, an adviser might consider obtaining reasonable assurance, whether through a written agreement or some other means, from the service provider that it will provide a notice of intent to terminate in a specified amount of time or other similar process so that the service provider does not abruptly terminate its services to the detriment of the adviser and its clients.

Given the variety of advisers and providers and different levels of complexity with respect to outsourced functions, the proposed rule is designed to afford advisers and service providers the flexibility to establish what would constitute ''orderly'' termination in light of the risks involved. The adviser must be able to stay in compliance with its obligations under the Advisers Act and its rules during and after termination. Accordingly, the process that allows for ''orderly'' termination generally should reflect consideration of certain factors such as the type of covered function and applicable regulatory requirements. For example, if the covered function were recordkeeping services, then the adviser should account for how to continue to stay in compliance with the regulatory requirements with respect to recordkeeping after termination of the agreement. If the covered function were valuation services, then the adviser should consider how to transition different client accounts prior to complete termination and how to stay in compliance with any valuation requirements. In addition to ensuring proper transfer or retention of records, advisers generally should consider how they would maintain operational, regulatory, or other capabilities as a result of terminating the service provider engagement.

An ''orderly'' termination process also should be designed to handle confidential and other sensitive information securely. The adviser and service provider generally should consider ways to ensure that no confidential data or information remains with the service provider other than that required to meet the service provider's contractual obligations or the service provider's own legal obligations, if any. For example, a service provider that performs valuation services may have been granted access to certain adviser back-office or middle-office systems and internal reports, and the adviser and service provider might wish to agree to allow for verification that the provider's access is terminated either immediately upon notification of termination or after a reasonable amount of time once all accounts have been closed by the service provider. The adviser and service provider might also agree to the return or destruction of any copies of reports or confidential information after the terms of termination are satisfied, depending on the length of time it would take.

Relatedly, an ''orderly'' termination process also generally should contemplate reasonable time frames to allow for timely transfer or destruction of any data, as appropriate or necessary. Such provisions would facilitate the continuity and quality of the outsourced functions in the event of termination. For example, if an adviser wants to protect its ability to change its subadviser when appropriate without undue restrictions, limitations, or cost, then the adviser generally should consider termination and transfer arrangements with reasonable time frames to allow for timely transfer of confidential adviser and client information from the original service provider to the new service provider.

In addition to ensuring the adviser stays in compliance with its regulatory

[62] *See* rule 204–3.

[63] Proposed rule 206(4)–11(a)(2)(vi).

obligations during and post-termination of a relationship with a service provider, the adviser might consider provisions in a written agreement or some other form to protect itself against certain failures or breaches by the service provider such as termination rights, clear delineation of ownership of intellectual property, and the obligation of the service provider to assist and provide support for a successful and complete transition or termination.

7. Recordkeeping Provisions Related to Due Diligence

Finally, the proposal would amend the Advisers Act books and records rule to require advisers to make and retain specific records related to their due diligence assessment.[64] These records include a list or other record of covered functions the adviser outsourced to a service provider including the name of each service provider, the factors that led to listing it as a covered function on Form ADV, and documentation of the adviser's due diligence assessment. The due diligence records would include any policies or procedures or other documentation showing how the adviser would mitigate and manage the risks it identifies, both at a covered function and a service provider level. The proposed amendments would also revise the books and records rule to require a copy of any written agreement, including any amendments, appendices, exhibits, and attachments, entered into with a service provider regarding covered functions. The records would have to be maintained in an easily accessible place while the adviser outsources the covered function and for a period of five years thereafter.[65] This aspect of the proposal is designed to facilitate our staff's ability to assess an adviser's compliance with the proposed rule. We believe it would similarly enhance an adviser's compliance efforts as well.

We request comment on all aspects of the proposed due diligence requirement and corresponding proposed amendments to the Advisers Act books and records rule, including the following items:

31. Should we adopt the due diligence requirements as proposed? Are there other aspects of due diligence that should be required additionally or instead? Conversely, should we exclude any of the proposed due diligence requirements?

32. Should we require advisers to obtain third-party experts, audits, and/or other assistance to oversee a service provider when the adviser is outsourcing a function that is highly technical, or the oversight requires expertise or data the adviser lacks? For example, if an adviser is outsourcing to a service provider that provides valuation or pricing of complex or private securities, or a service provider that incorporates artificial intelligence into its services, should that adviser be required to confirm it has sufficient internal expertise to effectively oversee the service provider, and if not, obtain a third-party expert to provide such oversight?

33. Advisers are currently required under rule 206(4)–7 to have policies and procedures reasonably designed to prevent violations of the Advisers Act and rules under the Act, and this requirement would apply to the proposed rule. The proposed rule does not require additional explicit written policies and procedures related to service provider oversight. Should the rule require specific policies and procedures in addition to or instead of the requirements in the proposed rule? And if so, what specific provisions should be required? Should we also include changes to rule 38a–1 under the Investment Company Act?

34. Should we exempt certain service providers or covered functions from some or all of the due diligence requirements? If so, which service providers should we exempt, which due diligence requirements should we exempt, and why?

35. Should we exempt certain categories of advisers or service providers from the due diligence requirements, such as smaller (*e.g.,* a small business or small organization as defined in 17 CFR 275.0–7 or a small business as defined by the U.S. Small Business Administration) advisers or service providers or newly registered advisers? If so, which ones and why? Alternatively, should we provide scaled due diligence requirements, and if so, how? Would the proposed due diligence requirements raise any particular challenges for smaller or different types of advisers? If so, what could we do to help mitigate these challenges?

36. The proposed rule requires that the due diligence be conducted before the service provider is engaged. Are there reasons that due diligence cannot be completed prior to engaging a service provider? If so, please explain and provide examples. For example, should there be an exception for emergencies? How would we define emergency? Should an exception for emergencies be time-limited (*e.g.,* one month) or permitted for the duration of the emergency?

37. Are there other core factors that advisers should be required to consider in conducting due diligence? If so, what are those factors? For example, should advisers be required to confirm the financial stability of a service provider through the review of audited financials, or should certain service providers be required to provide certain third-party certifications or reports such as a Systems and Organizational Controls report[66] (''SOC 1'') or other internal control report? Should service providers be required to have third-party financial support, such as fidelity bonds, errors and omissions insurance, or other support? If so, what type and level of support should be required?

38. Is it clear what we mean by identifying the ''nature and scope'' of the services? If not, how can it be made clearer?

39. The proposed rule is intended to provide flexibility to investment advisers in the methods they use to identify outsourcing risks. Should we dictate a specific method by which risks are identified? For example, should we require that investment advisers prioritize the identified risks and create a record of that prioritization?

40. For purposes of identifying the risks of engaging a service provider in the due diligence process, should the rule include a materiality threshold?

41. Should the rule require advisers to adopt and implement service provider risk management strategies, as proposed? Should the Commission take a different approach to address these risks instead, such as requiring disclosure of the risks to clients, or limiting the services that can be outsourced?

42. Should the proposed rule require advisers to make determinations about the service providers' competence, capacity, and resources as proposed? Should the Commission take a different approach instead? For example, should we require advisers to make reasonable assessments instead? How much independent research would advisers be able to accomplish to comply with this requirement?

43. Should the proposed due diligence books and records amendments be expanded or limited in any way? Are there alternative, explicit, or additional recordkeeping requirements we should impose?

44. The proposed due diligence provision requires that the adviser determine whether the service provider

[64] *See* proposed rule 204–2(a)(24).

[65] *See* proposed rule 204–2(e)(4).

[66] *See* System and Organizational Controls: SOC Suite of Services, AICPA, *available at https://us.aicpa.org/interestareas/frc/assuranceadvisoryservices/sorhome.html.*

has any subcontracting arrangements that are *material* to the service provider's performance of the covered function (emphasis added). Should we provide more guidance on the term ''material''? Should we broaden the requirement to *any* subcontracting arrangements? Should we exempt or alter this requirement for service providers that are also investment advisers? Finally, should we omit the requirement that the adviser determine whether the service provider has any subcontracting arrangements?

45. The proposed due diligence provision requires an adviser to determine how it will mitigate and manage potential risks to clients or the adviser's ability to perform its services in light of subcontracting arrangements that would be material to a service provider's performance of a covered function. Should we exempt certain advisers from, alter, or delete this requirement, and if so why?

46. Is the provision requiring the adviser to obtain reasonable assurance from the service provider that it is able to, and will, coordinate with the adviser for purposes of compliance with the Federal securities laws, as applicable to the covered function, appropriate? Maintaining records required by the Federal securities laws is one component of an adviser's regulatory compliance. Is there any overlap between this provision requiring coordination for legal compliance more broadly and the proposed requirement discussed below for an adviser to obtain reasonable assurance from third-party recordkeepers to provide required records to the adviser and Commission? If so, should we address any potentially duplicative requirements?

47. Is the proposed requirement to obtain reasonable assurance that the service provider is able, and will, provide a process for orderly termination appropriate? Is it clear what we mean by ''orderly?'' Should we define what ''orderly'' means instead? If so, how should we define it?

48. Are there circumstances in which an adviser might determine that abrupt termination was reasonably necessary to protect clients? If so, should the provision requiring obtaining reasonable assurance for orderly termination of the performance of a covered function be revised to permit advisers to exercise their judgment in such cases? For advisers to registered investment companies, should abrupt termination by the adviser require notification to the investment company board?

49. Should the Commission adopt the related recordkeeping provisions as proposed or should they be changed? For example, should the time period of retention be changed to five years after the entry was made or three years after the relationship between the adviser and service provider has been terminated?

C. Monitoring

Once a service provider is engaged, the proposed rule would require the adviser to periodically monitor the service provider's performance of the covered function and reassess the retention of the service provider in accordance with the due diligence requirements of the proposed rule with a manner and frequency such that the adviser can reasonably determine that it is appropriate to continue to outsource the covered function and that it remains appropriate to outsource it to the service provider.[67] Monitoring is critical to an adviser's ability to discover and address problems in a timely manner, continue providing its advisory services to clients, and comply with the Federal securities laws.[68] For example, if an adviser is relying on a service provider's robo advice platform, the adviser generally should monitor to ensure that the platform continues to operate and adjust to client inputs as the adviser understands it should perform. The proposed monitoring obligation also helps to support an adviser's duty to monitor a client's account over the course of the relationship.[69] Therefore, it would be inappropriate for an adviser to take a ''set-it-and-forget-it'' mentality when outsourcing a function or service that the adviser has agreed to perform or would otherwise be performing itself in order to provide its advisory services or to satisfy compliance obligations.

When considering the manner and frequency of monitoring, an adviser should be mindful that it remains liable for its obligations, including under the Advisers Act, other Federal securities laws and any contract entered into with the client, even if the adviser outsources functions. If an adviser cannot sufficiently monitor a service provider, or is concerned that the service provider's actions or inactions may harm the adviser's clients or result in a regulatory violation, then the adviser may need to terminate the service provider relationship if possible. In such an instance, an adviser generally should be cognizant of any contractual limitations with a service provider that may impose additional risks on the adviser's clients or otherwise affect the adviser's analysis of whether to terminate the relationship.

The proposed monitoring requirement leverages processes similar to due diligence, which we have stated above is not a one-size-fits-all analysis. Thus, all monitoring generally should continue to take into account all of the required elements for due diligence, including the nature and scope of the service provider's services as well as the risks of engaging the particular service provider performing that function. The adviser generally should periodically evaluate the validity of its conclusions drawn during the initial due diligence process, and should adjust its monitoring to reflect changes in the functions or services the service provider is engaged to perform, industry or market changes that may affect the covered function, and also adjust to reflect the findings of any preceding monitoring. In order to continue outsourcing the service or function to the service provider, the adviser should be able to determine reasonably that the outsourcing remains appropriate.

The proposed rule would require an adviser to monitor its service providers with a manner and frequency such that the adviser reasonably determines that it is appropriate to continue (i) to outsource the covered function and (ii) to outsource to the service provider. The manner and frequency of an adviser's monitoring would depend on the facts and circumstances applicable to the covered function, such as the materiality and criticality of the outsourced function to the ongoing business of the adviser and its clients.[70] For example, certain functions may require periodic onsite visits where other services may be monitored remotely. Methods of monitoring could include, for example, automated scans or reviews of service provider data feeds, periodic meetings with the provider to review service metrics, or contractual obligations to test and approve new systems prior to implementation. The frequency of an

[67] *See* proposed rule 206(4)–11(a)(2).

[68] *See* In the Matter of Virtus Investment Advisers, Inc., Investment Advisers Act Release No. 4266, at 7 (Nov. 16, 2015) (settled order) (''Virtus had no written policies and procedures for evaluating and monitoring the accuracy of third-party-produced performance information or third-party marketing materials that Virtus directly or indirectly circulated or distributed to other persons.'').

[69] *See* Standard of Conduct Release, *supra* footnote 21, at 72 (stating that the duty of care includes, among other things, the duty to provide advice and monitoring over the course of the advisory relationship).

[70] The Commission similarly concluded that different frequencies of the required periodic re-assessment of valuation risks may be appropriate for different funds or risks. *See* Good Faith Determinations of Fair Value, Investment Company Act Release No. 34128 at 14 (Dec. 3, 2020) [86 FR 748 (Jan. 6, 2021)].

adviser's periodic monitoring also would be subject to factors such as the frequency with which the covered function is conducted, the complexity of the function, or the risk to clients of a failure to perform or of negligently performing the function.

In determining an appropriate frequency of monitoring, advisers should consider whether there has been any change in the risk profile of the covered function or the service provider. For example, if a service provider announced significant layoffs of personnel, then it may be necessary for the adviser to increase temporarily or permanently the frequency and alter the manner of its monitoring to determine whether the service provider continues to have the competence, capacity, and resources necessary to perform the covered function in a timely and effective manner. Alternatively, if new laws or regulations were implemented that affected a specific function, then it similarly may be necessary to alter temporarily or permanently the frequency and manner of monitoring to determine that the service provider continues to perform its services properly.

1. Recordkeeping Provisions Related to Monitoring

Finally, the proposal would amend the Advisers Act books and records rule to require advisers to make and keep records documenting the periodic monitoring of a service provider of a covered function.[71] Advisers generally should consider including information such as performance reports received from the service provider, the time, location, and summary of findings of any financial, operational, or third-party assessments of the service provider, identification of any new or increased service provider risks and a summary of how the adviser will mitigate or manage those risks, any amendments to written agreements with a service provider, the adviser's written policies and procedures applicable to monitoring, a record of any changes to the nature and scope of the covered function the service provider is to perform, and a record of any inadequate or failed performance by a service provider of a covered function and responses from the adviser. The records would have to be maintained in an easily accessible place while the adviser outsources the covered function and for a period of five years after the adviser ceases outsourcing the covered function.[72] Like other proposed amendments to the books and records rule, this aspect of the proposal is designed to facilitate our staff's ability to assess an adviser's compliance with the proposed rule. We believe it would similarly enhance an adviser's compliance efforts as well.

We request comment on all aspects of the proposed monitoring requirement, including the following items:

50. Should we adopt the monitoring requirements as proposed? Are there other aspects of monitoring that should be required under the rule? Conversely, should we exclude any of the proposed monitoring requirements from the rule?

51. Should we prescribe the frequency of monitoring instead of requiring an adviser to monitor its service providers with a manner and frequency such that the adviser reasonably determines that it is appropriate to continue to outsource the covered function and to outsource to the service provider, as proposed? Or should we prescribe a minimum frequency of monitoring? For example should we require that monitoring of service providers be conducted monthly? Quarterly? No less than annually? Why or why not?

52. As proposed, the rule requires that advisers make and maintain records documenting the periodic monitoring of a service provider, but it does not specify the specific records that must be maintained. Should the rule identify specific records to be maintained? If so, what records should be made and maintained and why? For example, should the rule require retention of due diligence questionnaires, third party audits, memos to file, or service provider reports?

53. Should we exempt certain categories of advisers or service providers from the proposed monitoring requirements, such as smaller or newer advisers or service providers? If so, which ones and why? Alternatively, should we provide for scaled monitoring requirements by any of these categories of advisers, and if so, how?

54. Should we prescribe the manner in which monitoring is conducted? For example, should we require that advisers conduct onsite visits of service providers on a periodic basis, or that advisers require periodic written certifications of compliance on a periodic basis, or engage third-party experts to conduct formal reviews? Why or why not? Are there any other monitoring actions that we should require?

55. Should the proposed monitoring books and records amendments be expanded or limited in any way? If so, how?

D. Form ADV

Data collected from Form ADV is of critical importance to our regulatory program and our ability to protect clients and investors.[73] We use information reported to us on Form ADV Part 1A for a number of purposes, one of which is to allocate our examination resources efficiently based on the risks we discern or the identification of common business activities from information provided by advisers. The data disclosed in Form ADV Part 1A is structured such that it is readily used to create risk profiles of investment advisers and permits our examiners to prepare better for, and more efficiently conduct, their examinations. Moreover, the information in Form ADV Part 1A allows us to understand better the investment advisory industry as well as evaluate and form regulatory policies and improve the efficiency and effectiveness of the Commission's oversight of markets for investor protection.

To enhance our ability to oversee investment advisers and provide additional public information about the use of service providers as defined in proposed rule 206(4)–11, we are proposing to amend Form ADV Part 1A to require registered advisers to identify their service providers that perform covered functions, provide the location of the office principally responsible for the covered functions, provide the date they were first engaged to provide covered functions, and state whether they are related persons of the adviser. For each of these service providers, we would also require specific information that would clarify the services or functions they provide.[74] This information would provide us with a better understanding of the material services and functions that advisers

[71] *See* proposed rule 204–2(a)(24)(iv).

[72] *See* proposed rule 204–2(e)(4).

[73] Advisers use Form ADV to apply for registration with us (Part 1A) or with state securities authorities (Part 1B), and must keep it current by filing periodic amendments as long as they are registered. *See* Advisers Act rules 203–1 and 204–1. Form ADV has three parts. Part 1(A and B) of Form ADV provides regulators with information to process registrations and to manage their regulatory and examination programs. Part 2 is a uniform form used by investment advisers registered with both the Commission and the state securities authorities. *See* Instruction 2 of General Instructions to Form ADV. Part 3: Form CRS describes the requirements for a relationship summary. *See* General Instructions to Form ADV. This release discusses proposed changes to Form ADV Part 1A. To the extent that state securities authorities consider making similar changes that affect advisers registered with the states, we would forward comments to the North American Securities Administrators Association for consideration by the state securities authorities.

[74] *See* proposed Form ADV, Part 1A, Item 7.C., and Section 7.C. of Schedule D.

outsource to service providers, would help us better understand potential broader market effects of outsourcing to service providers, and would permit us to enhance our assessment of advisers' reliance on service providers for purposes of targeting our examinations. The information also would help us identify advisers' use of particular service providers that may pose a risk to clients and investors, such as in situations where we learn that a service provider experiences a significant and ongoing disruption to its operations. Finally, the information would provide public information about advisers' use of third party service providers.

This new reporting item would appear in Item 7 of Form ADV and consistent with the scope of proposed rule 206(4)–11, would only require reporting by investment advisers registered or required to be registered with the Commission.[75] Currently, Item 7 requires advisers to disclose information about financial industry affiliations and activities, and to state whether they advise any private funds, and if so, provide certain information related to those private funds.[76] New Item 7.C. would require SEC-registered advisers to check a box to indicate whether they outsourced any covered functions to a service provider. The required reporting will be limited to covered functions that are outsourced to service providers, as defined in proposed rule 206(4)–11(b).[77] The determination of what is a covered function would vary depending on the facts and circumstances and, as a result, some advisers may report a service on Form ADV as a covered function while other firms may not. For those services determined to be covered functions and outsourced to one or more service providers, advisers would report more detailed information about each such service provider in new Section 7.C. of Schedule D. This would include the legal and primary business names of the service provider, the legal entity identifier (if applicable), and the address of the service provider. Having this identifying information for each listed service provider would give us a more complete picture of the extent to which the adviser's operations depend on one or more service providers, and help us consider the potential effects in the event of an industry wide failure by a particular service provider.

Section 7.C. also would require noting whether the identified service provider is a related person[78] of the adviser, and noting the date the service provider was first engaged. Both of these data points would be helpful to us in conducting our risk assessments for developing and targeting examinations. Knowing whether a service provider is a related person would assist us and clients or investors in understanding the conflicts of interest that may be present, and would also assist in understanding better the potential impacts of a service provider's non-performance or negligent performance. Finally, Section 7.C. would require an adviser to report those covered functions or services the service provider is actively engaged in providing from predetermined categories of covered functions or services set forth in the item. The non-exhaustive list of categories is intended to encompass those services or functions that may be commonly outsourced and could fall within the definition of a covered function. If the service or function performed by the service provider was not represented in a predetermined category, the adviser would be permitted to select ''other'' with a free form field to identify the unlisted category. The covered function categories that we are proposing to include in Item 7.C of Schedule D are: Adviser/Subadviser; Client Services; Cybersecurity; Investment Guideline/Restriction Compliance; Investment Risk; Portfolio Management (excluding Adviser/Subadviser); Portfolio Accounting; Pricing ; Reconciliation; Regulatory Compliance; Trading Desk; Trade Communication and Allocation; Valuation; and Other. For example, we believe regulatory compliance would generally include outsourced chief compliance officer and other compliance consultant functions.

This proposed disclosure would improve our ability to assess service provider conflicts for those service providers that perform a covered function as defined by the proposed rule, and could serve as an input to the risk metrics by which our staff identifies potential risk and allocates examination resources. The staff conducts similar analyses today, but have limited inputs, which constrains their effectiveness. For instance, it would be relevant to us to identify easily advisers using a service provider that we are separately investigating for involvement in alleged misconduct. The ability to identify readily other advisers using such a service provider would allow us to assess quickly and take appropriate actions. The proposed disclosure would also improve our ability to evaluate the adequacy and completeness of advisers' conflicts of interest disclosures by identifying additional potential sources of conflict.

The information would be publicly available as is other information on Form ADV, and we believe it may benefit the public in supplementing the information available about the adviser and may provide investors with additional context in which to consider an investment adviser's provision of advisory services. The public would be able to identify quickly and consider any implications of an adviser's use of one or more service providers or the outsourcing of any service or function. For example, if a client learns of a significant disruption at a major service provider, that client could easily and quickly determine whether its adviser uses that service provider for a service or function the client considers material and whether to take remedial action.

We request comment on the proposed Form ADV requirements:

56. Are the proposed requirements to disclose service providers that perform a covered function as defined in rule 206(4)–11 appropriate? Should we instead require all registered advisers that outsource any services to provide the specified information and then mark each service to indicate whether it is a covered function within rule 206(4)–11 or not? Or should we include a broader Form ADV reporting requirement, such as requiring all advisers (*e.g.,* exempt reporting advisers and advisers registering with state securities authorities) to provide the specified information regarding any outsourced service or function or only those that are subject to rule 206(4)–11 or any substantially similar regulation?

[75] *See* proposed rule 206(4)–11(a). We are also proposing conforming amendments to Form ADV Part 1A, General Instructions and Glossary of Terms. Because Form ADV Part 1A is submitted in a structured, XML-based data language specific to that Form, the information in proposed new Item 7.C would be structured (*i.e.,* machine-readable) as well. Advisers submitting an other-than-annual amendment to Form ADV Part 1 would not be required to update their responses to Item 7.C, even if the responses to those items have become inaccurate, which is consistent with the updating requirements for the rest of Item 7. *See* Instruction 4 to General Instructions to Form ADV.

[76] These new Form ADV reporting requirements are being proposed in conjunction with proposed Rule 206(4)–11. Proposed rule 206(4)–11 would not apply to exempt reporting advisers, and therefore proposed Item 7.C. would not apply to exempt reporting advisers. We believe that requiring only investment advisers registered or required to be registered to complete the items we propose appropriately enhances our ability to oversee investment advisers that are subject to the proposed rule and enhances client and investor disclosure as it relates to the proposed rule.

[77] *See also* proposed rule 204–2(a)(24)(i) (requiring a record of covered functions that the adviser has outsourced to a service provider).

[78] *See* Glossary of Terms to Form ADV. A related person includes ''[a]ny *advisory affiliate* and any *person* that is under common *control* with your firm.''

57. Do commenters agree with the proposed list of covered functions categories under Section 7.C of Schedule D? Do the proposed categories adequately capture the range of covered functions? Are the categories understandable? If not, which categories require additional explanation? Should we add or remove any categories? If so, please identify the category and explain why the change is appropriate. For example, should we include additional categories relating to investment data/analytics, information technology (*e.g.,* IT infrastructure or application software and support), or middle and back office functions (*e.g.,* client reporting and/or billing, performance measurement, collateral management, post-trade processing, etc.)? Alternatively, should the categories be consolidated (*e.g.,* pricing and valuation), retitled or otherwise revised? For example, do commenters agree that regulatory compliance would generally include such services as outsourced chief compliance officer and other compliance consultant functions? If not, how should the category be revised to encompass these types of outsourced functions?

58. Should we require additional or different reporting with respect to service providers that perform functions related to books and records required under rule 204–2? If so, how should reporting requirements be changed for these service providers and/or what additional information should be reported?

59. Do advisers have concerns with the public disclosure of service providers that perform covered functions? If so, what are those concerns? For example, are there categories of service providers that should not be disclosed publicly due to competitive, trade secret, compliance, or other risks? Should we require such disclosure to be reported non-publicly to the Commission in a format other than the Form ADV? If so, how?

60. Should the proposed ADV disclosure include the ability to incorporate by reference to other parts of the form? For example, should we allow advisers to cross reference private fund service providers that are currently required to be disclosed in Section 7.B. of Schedule D?

61. Are the proposed definitions of ''covered function'' and ''service provider'' in the Glossary of Terms to Form ADV appropriate? Do commenters agree that these defined terms should cross-reference proposed rule 206(4)–11(b)? Alternatively, should we provide the full text of each term, as defined in proposed rule 206(4)–11(b), in the Glossary of Terms to Form ADV without cross-reference to the proposed rule?

62. Would any additional or other information be material to an adviser's clients or prospective clients regarding outsourcing that is not included in the proposal and is not currently disclosed to investors through Form ADV or elsewhere (*e.g.,* whether the service provider arrangement is subject to a written agreement or information about passed-through fees)? Should we add any other service provider information to the Form ADV disclosure? If so, what information and why? For example, should Form ADV, Part 2 require information in the adviser's brochure about the use of service providers and related conflicts and other risks? Or is information about outsourced services already adequately being disclosed in connection with disclosures related to conflicts of interest or other risks? For example, should we require disclosure of potential conflicts of interest of the service provider? Should we require that, in addition or in place of the service provider's principal office, advisers report the principal office where the service provider's services are performed? Alternatively, should we delete any of the service provider information proposed to be disclosed? If so, what information and why?

63. Do advisers have concerns it will be difficult to compile, maintain and disclose this information on service providers? Could this place an undue burden on smaller advisers? If so, which information may be difficult to compile, maintain and disclose? Please explain.

64. Should private fund advisers be required under rule 206(4)–11 to provide information about their service providers to private fund investors through additional or different disclosure requirements in Form ADV? If so, what information should be required?

65. Should we require advisers to add narrative disclosures about their service providers in their Form ADV Part 2 brochures or wrap fee program brochures? If so, what information should be included?

E. Third-Party Recordkeeping

Many investment advisers seek to outsource various recordkeeping functions. Some of these functions may involve record creation, others may focus solely on record storage and retention, and many will include creation as well as storage and retention functions. Investment advisers may contract with data- and record-management companies, offsite storage companies, or information technology companies (*e.g.,* cloud service providers) to store or retain records. An adviser may also rely on a third party to perform a function that creates records, such as a firm that calculates performance or rates of return for one or more portfolios that the adviser may use to manage the investments in the portfolios, include in statements to clients or marketing materials provided to prospective clients, or show on its website. While the performance calculation provider's primary function is to calculate performance, this provider relies on records and data that substantiate the performance calculations and, in turn, those calculations create new records that need to be stored and retained. As another example, if a service provider were providing accounting, investment operations, or middle office services for the adviser, many of the records generated by the service provider would likely correspond to records that the existing Federal securities laws require registered investment advisers to make and keep.[79] An adviser therefore may not directly possess all of the documentation and records that are required to be created or maintained by an investment adviser under the existing Federal securities law requirements.

The continuing accessibility and integrity of adviser records are critical to the fulfillment of our oversight responsibilities, where such records may represent a primary means in which to demonstrate an investment adviser's compliance with various Federal securities laws. If advisers are not required to protect their records from inadvertent or intentional alteration or destruction and provide examiners with meaningful access to all required records, then the records become unreliable, and the examination process may be impaired. Recordkeeping requirements ensure that the Commission staff will have access to appropriate and helpful information in order to carry out its examination program. The ability to conduct timely and comprehensive examinations plays a significant role in proactively promoting compliance with the Federal securities laws and aids in preventing problems before they occur as well as promoting improvements in relevant areas.

Accessing records also can be critical for an investment adviser to provide advisory services and fulfill its fiduciary

[79] *See, e.g.,* rule 204–2(a), which requires registered advisers to maintain, among other things, journals, ledgers, check books, memorandums of each order given for the purchase or sale of a security, and bills or statements relating to the business of the adviser.

duty to clients. For example, accessing account information from prior periods can help an investment adviser substantiate portfolio performance that has been presented to prospective clients.[80] Issues arising with an investment adviser's books and records can disrupt the adviser's ability to provide its services and may result in material harm to its clients. For example, if an adviser engages a cloud services provider to maintain critical client information, such as their account and personal information, and the cloud services provider inadvertently experiences a loss of client records, this would be reasonably likely to cause a material negative impact on the adviser's ability to provide its services and on its advisory clients. The adviser would either have no records or inaccurate records to verify, for example, the client's account information. The adviser might not have all the records it needs to execute certain investments or make other decisions on behalf of its client. In addition, if the adviser does not have accurate and timely information on client holdings and transactions, this could result in misinformed purchase or sales decisions as well as trade errors. The adviser may also lack the trading information to be able to report to its clients or track its trading activity in the portfolio, and, in turn, that could deprive clients and the adviser an opportunity to respond to market changes or timely remedy potential issues with the broker-dealer or custodian involving the trades. An investment adviser's compliance monitoring and internal audit functions also require timely access to records in order to function efficiently, such as when monitoring portfolio diversification and other client investment guidelines. As another example, accessing communication records regarding trade order execution may assist with monitoring whether an investment adviser is adhering to its own written policies and procedures concerning best execution.

When an adviser outsources recordkeeping functions without sufficient oversight, the risk that an issue with an adviser's books and records may arise can increase. Regardless of whether records are made or kept by a third party or by the investment adviser directly, the investment adviser remains responsible to comply with the Advisers Act recordkeeping requirements and other Federal securities laws. Rule 204–2, the Advisers Act recordkeeping rule, details the types of records required to be made and kept ''true, accurate and current'' as well as the manner, location, and duration of records to be maintained by investment advisers registered or required to be registered with the Commission. It does not, however, prescribe requirements for when an adviser outsources one or more of the required recordkeeping functions to a third party.

Accordingly, the proposed amendments to the Advisers Act recordkeeping rule include a new provision requiring every investment adviser that relies on a third party to make and/or keep any books and records required by the recordkeeping rule (''recordkeeping function'') to comply with a comprehensive oversight framework, consisting of due diligence, monitoring, and recordkeeping elements.[81] Specifically, an investment adviser would be required to perform due diligence and monitoring as prescribed by proposed rule 206(4)–11(a)(1) and (a)(2) with respect to the recordkeeping function and make and keep such records as prescribed in proposed rule 204–2(a)(24) as though the recordkeeping function were a ''covered function'' and the third party were a ''service provider,'' each as defined in proposed rule 206(4)–11(b). In addition, an investment adviser relying on a third party for such recordkeeping functions would also be required to obtain reasonable assurances that the third party will meet four specific standards related to the recordkeeping rule's requirements.

The proposed amendments would provide a comprehensive oversight framework for third-party recordkeepers to protect against loss, alteration, or destruction of an adviser's records, and to help ensure that those records are accessible to the investment adviser as well as Commission staff. The proposed amendments would require advisers to conduct reasonable due diligence before engaging a third party to perform a recordkeeping function required by the recordkeeping rule.[82] Specifically, an investment adviser would be required to reasonably identify and determine through due diligence that it would be appropriate to outsource the recordkeeping, and that it would be appropriate to select a particular third-party recordkeeper, by complying with each of the six due diligence elements specified in proposed rule 206(4)–11(a)(1). These elements address: the nature and scope of the services; potential risks resulting from the third-party recordkeeper performing the recordkeeping function, including how to mitigate and manage such risks; the recordkeeper's competence, capacity, and resources necessary to perform the function; the recordkeeper's subcontracting arrangements related to the function; coordination with the recordkeeper for Federal securities law compliance; and the orderly termination of the provision of the function by the recordkeeper.

Consistent with these requirements, an adviser's due diligence of a third-party recordkeeper generally should be tailored reasonably to the nature, scope, and risk profile of the recordkeeping function or service that would be provided as well as to the identified third party. For example, the adviser generally should consider whether the particular third-party recordkeeper has the capability and experience to both make and maintain the required records in a format that is consistent with an adviser's books and records requirements. Therefore, the required due diligence of an adviser seeking to engage a third-party cloud provider to make and keep records on behalf of the adviser should take into account the third party's competence, capacity, and resources generally, but the adviser may not need to understand the intricacies of the cloud service's operations. The adviser generally should have a reasonable understanding of the cloud service and the risks of the service, and be able to conclude that it can mitigate and manage those risks. In conducting this due diligence, the adviser could review factors such as:

- Comparative cloud-based recordkeeping services, including their respective parameters, benefits, and risks,
- The cloud service provider's capability and experience with making and/or keeping records required under the recordkeeping rule,
- The cloud service's compliance and operational policies and procedures for the protection of data, and its policies and procedures addressing the maintenance and oversight of the data,
- The cloud service's prevention and detection of, and response to, cybersecurity threats, and
- The experience or lack thereof of other similarly situated advisers that

[80] Advisers generally should consider the specific retention periods for each type of record, such as records to substantiate a performance track record pursuant to rule 204–2(a)(16), and require all records to be available for the necessary retention periods. Advisers or their third parties relying on custodian statements, for example, to document data used in performance calculations may wish to consider retaining copies of such statements in the event the adviser no longer has access to the custodian's systems for a specific client's account.

[81] *See supra* sections II.B and II.C; proposed rule 204–2(l)(1); proposed rule 206(4)–11(a).

[82] *See* proposed rule 204–2(l)(1).

have previously engaged the cloud service and any risks identified in those experiences or lack thereof.

Once a third party is engaged to provide recordkeeping functions required by the recordkeeping rule, proposed rule 204–2(l) would require the adviser to monitor the third party's performance of the recordkeeping function periodically and reassess the retention of the third party in accordance with the monitoring requirements prescribed by proposed rule 206(4)–11(a)(2). Monitoring third-party recordkeepers is critical to an adviser's ability to discover and address issues relating to the adviser's records in a timely fashion before such records may be inadvertently altered, lost or destroyed or otherwise rendered inaccessible. As discussed in section II.C above, the manner and frequency of an adviser's monitoring would depend on the facts and circumstances applicable to the recordkeeping function. For example, sufficient monitoring of an off-site physical record storage company may reasonably differ from that of an electronic media storage company due to the inherent differences in the nature and scope of their respective functions.

Further, an investment adviser would be required to comply with the attendant recordkeeping requirements prescribed in proposed rule 204–2(a)(24) with respect to such functions. Thus, in addition to performing the required due diligence and monitoring for a third party recordkeeping, an adviser would also be required to make and keep records documenting its due diligence and periodic monitoring of that third party as though the recordkeeping function were a ''covered function'' and the third party were a ''service provider'', each as defined in proposed rule 206(4)–11(b).[83] Requiring an adviser to make and keep records of its oversight of third-party recordkeepers is intended to enhance an adviser's compliance efforts and facilitate the Commission's inspection and enforcement capabilities.

In addition to due diligence and monitoring obligations, an investment adviser that relies on a third party to perform any recordkeeping function under rule 204–2 would be required to obtain reasonable assurances that the third party will meet four standards specific to recordkeeping.[84] First, the adviser must have reasonable assurance that the third party will adopt and implement internal processes and/or systems for making and/or keeping records on behalf of the investment adviser that meet all of the requirements of the recordkeeping rule. Second, the adviser must have reasonable assurance that, when making and/or keeping records on behalf of the adviser, the third party will, in practice, actually make and/or keep records in a manner that will meet all of the requirements of the recordkeeping rule as applicable to the investment adviser. Third, for electronic records, the adviser must have reasonable assurance that the third party will allow the investment adviser and Commission staff to access the records easily through computers or systems during the required retention period of the recordkeeping rule. Whether computers or systems satisfy this provision of the rule would be determined based on the facts and circumstances, and could include, for example, computers and proprietary systems owned and operated by an adviser as well as computers and systems rented, licensed or otherwise made available to an adviser (*e.g.,* web portals, cloud computing, storage area networks, and electronic recordkeeping systems) which may be used to access such electronic records. Fourth, the adviser must have reasonable assurance that arrangements will be made to ensure the continued availability of records that will meet all of the requirements of the recordkeeping rule as applicable to the investment adviser in the event that the third party ceases operations or the relationship with the investment adviser is terminated.[85]

These standards, coupled with the prescribed due diligence and monitoring requirements, are intended to assist with making and keeping true, accurate, and current records of the adviser, protect those records from loss, alteration, or destruction, and ensure that those records are accessible to the investment adviser and the Commission staff, while maintaining appropriate freedom for investment advisers to contract with service providers to assist with recordkeeping functions. We expect that the arrangements between investment advisers and service providers for recordkeeping services may vary significantly among firms due to differences in the structure, operation, or scope of services amongst investment advisers and service providers.

Whether an investment adviser's arrangement with a third-party service provider satisfies the requirements under proposed rule 204–2(l)(2) would depend on the particular facts and circumstances of the arrangement including, among other things, the type of record, where the records are located, the medium and method of storage, and how promptly records or copies of records can be provided. When a third party is retained to assist with recordkeeping, the making and keeping of records still must satisfy the applicable requirements prescribed by rule 204–2. Thus, the adviser must obtain reasonable assurance that the third party will adopt and implement internal processes and/or systems for both making and keeping records on behalf of the investment adviser that meet the applicable requirements of rule 204–2.[86] For example, rule 204–2(g) permits an investment adviser to maintain records electronically as long as certain requirements are met, including that the adviser shall, upon request, promptly provide the Commission legible, true, and complete copies of records in the medium and format in which they are stored, printouts of such records, and a means to access, view, and print the records. Therefore, under proposed rule 204–2(l)(2), where a service provider will keep email archives (*e.g.,* in cloud storage or an external storage database) on behalf of an investment adviser, the adviser should have reasonable assurance that the service provider will, among other things, adopt and implement internal processes and/or systems for making and/or keeping the records in such a manner to enable a prompt response to Commission requests for such records in the format required.[87] We are aware of instances where advisers engage a third party to learn only later that the third party cannot produce required records in a reviewable format. These are issues that should be identified and addressed before a third-party recordkeeper is engaged.

The recordkeeping rule also addresses the location and length of time that required records under the rule must be maintained. Rule 204–2 generally requires that, among other things, such records be maintained and preserved in an easily accessible place and, for a period of time, in an appropriate office of the investment adviser.[88] Consistent with these requirements, if an adviser outsources the storage of records under the recordkeeping rule, the adviser should seek to ensure that those records

[83] *See* proposed rule 204–2(a)(24)(ii).

[84] *See* proposed rule 204–2(l)(2).

[85] The Commission staff has previously addressed third-party recordkeeping subject to certain conditions in staff letters. *See, e.g.,* First Call NAL, *supra* footnote 25; OMGEO NAL, *supra* footnote 25.

[86] *See* proposed rule 204–2(l)(2)(i).

[87] *See* proposed rule 204–2(l); 17 CRF 275.204–2(g)(2)(ii).

[88] *See* 17 CFR 275.204–2(e).

will be easily accessible for the duration of the required retention period. For example, if an investment adviser retains an off-site physical storage company to assist with maintaining physical records of records such as trade confirmations, those records should be maintained in an appropriate office of the adviser for the applicable period first, and then when the records are moved to the off-site location, they must be maintained in an easily accessible place.[89] For electronic records, the proposed amendments would require an investment adviser to have the ability to access electronic records easily through computers/systems because such required records may be stored on servers or other storage devices that are owned or operated by a third party (*e.g.,* a cloud service provider).[90] However, pursuant to rule 204–2, the records still must be available in the adviser's office for a period of time.[91] The computers and/or systems that provide access to the required records could include computers and proprietary systems owned and operated by an adviser as well as computers and systems rented, licensed or otherwise made available to an adviser (*e.g.,* web portals, cloud computing, storage area networks, and electronic recordkeeping systems). This element of the proposed amendments is intended to safeguard an investment adviser's access to its required records while providing firms with the ability to use electronic platforms to make and keep their records. If an adviser has essentially immediate access to a record through a computer or system located at an appropriate office of the adviser, then that record could be considered to be maintained at an appropriate office of the adviser.[92] For example, if an investment adviser relies on a service provider to store trade confirmations in the service provider's electronic database, one way the adviser could seek to ensure that the records will be easily accessible would be to require access to the records at any time through computers and/or systems for the record's required retention period under rule 204–2.[93] In addition, in such an arrangement, the adviser should also seek to ensure such records are maintained in such a manner to permit them to be promptly provided to the Commission upon request.

When engaging a third party to provide recordkeeping services under rule 204–2, the investment adviser should account for how to continue to stay in compliance with the rule's requirements after termination of the arrangement either by the adviser or the third party.[94] Rule 204–2(f) addresses circumstances where an investment adviser may discontinue its business and requires, among other things, that the adviser arrange for and be responsible for the preservation of required records under the rule. Similarly, a service provider may also discontinue its business or arrangement with an investment adviser. To seek to protect records required by the recordkeeping rule against loss and destruction when outsourced recordkeeping arrangements change or terminate, we are proposing to require an investment adviser to obtain reasonable assurance that a third party will make arrangements to ensure the continued availability of the required records under the recordkeeping rule as applicable to the adviser should the third party cease operations or its relationship with the investment adviser be terminated.[95] For example, if an adviser were retaining records with a cloud storage service provider, the adviser may consider requiring that the cloud service provider agree to retain and grant the adviser access to such records for the legally required amount of time. Alternatively, the adviser may want to require that the service provider agree to assist in the transfer of such records to the adviser or another agreed-upon third party at the termination of the contractual relationship. This would allow the adviser to continue to retain such records in compliance with its legal obligations and provide them to the Commission staff upon request.[96]

While many investment advisers may already have service provider agreements or other arrangements that contain these proposed standards as part of their policies and procedures or best practices to mitigate or manage risks the investment advisers identified when performing due diligence and monitoring, we believe that all investment advisers should obtain reasonable assurances that service providers will meet these four standards in an outsourced recordkeeping arrangement. We understand that the manner in which an investment adviser obtains reasonable assurances that the service provider will adhere to these standards may vary depending on the arrangement. One way an investment adviser could consider accomplishing this is by having a written agreement that expressly includes the four standards. Alternatively, an investment manager may seek to ensure these requirements are satisfied through one or more letters of understanding, statements of work, or other means. In some cases, the adviser might elect to receive and retain duplicate records from the service provider that the adviser stores and retains directly.

Finally, we are not proposing new Form ADV reporting requirements specific to third-party recordkeepers because current Item 1.L of Form ADV Part 1A already requires disclosure regarding the location of an adviser's books and records required under Section 204 of the Advisers Act when such books and records are maintained somewhere other than the principal office and place of business of the Adviser.[97] An adviser is required to provide, among other things, the name of the entity and location where the books and records are maintained as well as a description of the books and records maintained at such location.[98] An adviser should include third-party recordkeepers that maintain such books and records for the investment adviser in their responses to this item, which may include, among other things, arrangements such as electronic data- and record-management, offsite storage, and information technology (*e.g.,* cloud services) providers. Therefore, current reporting requirements already provide the Commission with information regarding advisers' use of third-party recordkeepers.

We request comment on the proposed third-party recordkeeping requirements:

66. Do commenters agree that the proposed requirements for investment advisers that rely on third parties for recordkeeping functions under rule 204–2 are appropriate? Do the proposed amendments provide appropriate flexibility for investment advisers to engage third-party service providers in various capabilities? Are the proposed standards appropriately flexible in light of changing technology and digital infrastructure trends? If not, how should they be changed?

67. Should we broaden the proposed requirements to encompass all outsourced recordkeeping functions related to an adviser's obligations under the Federal securities laws, which would include rule 204–2? For example, should rule 204–2(l) apply to any records that are made and/or kept by a

[89] *See* rule 204–2(e).

[90] *See* proposed rule 204–2(l)(2)(iii).

[91] *See* rule 204–2(e).

[92] *See, e.g.,* First Call NAL, *supra* footnote 25.

[93] *See* proposed rule 204–2(l)(2)(iii); *see also, e.g.,* OMGEO NAL, *supra* footnote 25.

[94] *See* 17 CFR 275.204–2(f); proposed rule 204–2(l)(2)(iv)).

[95] *See* proposed rule 204–2(l)(2)(iv).

[96] *See* proposed rule 204–2(l)(2)(iv).

[97] *See* 15 U.S.C. 80b–4; Form ADV Item 1.L & Schedule D, Section 1.L.

[98] *See* Form ADV Schedule D, Section 1.L.

third party on behalf of an investment adviser in accordance with fulfilling the adviser's obligations under the Federal securities laws?

68. Should analogous requirements be added to rules under the Investment Company Act of 1940 (*e.g.,* rules 31a–1 and 31a–2) for registered investment companies? If so, should the requirements be different for registered investment companies than for advisers when outsourcing recordkeeping functions? Why or why not?

69. Do commenters agree that it is appropriate to require similar due diligence and monitoring requirements as prescribed in proposed rule 206(4)–11 for outsourced recordkeeping functions? Why or why not?

70. Should we adopt the due diligence requirements for third-party recordkeepers as proposed? Are there other aspects of due diligence that should be required additionally or instead? Conversely, should we exclude any of the proposed due diligence requirements?

71. Should we adopt the monitoring requirements for third-party recordkeepers as proposed? Are there other aspects of monitoring that should be required additionally or instead? Conversely, should we exclude any of the proposed monitoring requirements?

72. Do commenters agree that the proposed recordkeeping requirements related to an adviser's due diligence and monitoring of service providers of covered functions, as defined in proposed rule 206(4)–11(b), should also be required for third-party recordkeepers? Why or why not?

73. Are the types of service provider arrangements that would be encompassed under proposed rule 204–2(l) sufficiently clear? Is this scope sufficiently defined? Should the scope be clarified in any other way?

74. Are there certain types of third-party recordkeeping arrangements that should be included or excluded (*e.g.,* cloud service providers or service providers which are subject to existing government or self-regulatory organization oversight, such as broker-dealers or banks)? If so, explain why. Are there types of third-party recordkeeping arrangements that should be subject to different or alternative oversight requirements? If so, explain why and, if applicable, suggest alternative requirements to the proposed rule text.

75. Do investment advisers currently have service provider agreements that meet the recordkeeping standards in proposed rule 204–2(l)? If not, what types of service provider arrangements do not these standards? Do investment advisers currently obtain reasonable assurances that service providers will meet the recordkeeping standards in proposed rule 204–2(l) through their policies and procedures and/or due diligence practices? If so, do commenters believe the proposed rule is necessary?

76. Should proposed rule 204–2(l) require a written agreement between an investment adviser and a third party where the investment adviser relies on the third party for recordkeeping functions under rule 204–2? Should proposed rule 204–2(l)(2) require that the four standards under the proposal be expressly covered by a written agreement or, alternatively, a written undertaking? Should the standards be clarified in any manner? Should additional standards be included as part of the proposal?

77. Are the four standards enumerated in proposed rule 204–2(l)(2) sufficiently understandable? If not, which standards require additional clarity and detail? Do commenters believe certain terms should be defined within rule 204–2? If so, what terms?

78. Do commenters agree that it is appropriate to require advisers to obtain reasonable assurances that service providers will adopt and implement internal processes and/or systems for making and/or keeping records on behalf of the investment adviser that meet all of the applicable requirements of rule 204–2? Why or why not?

79. Do commenters agree that it is appropriate to require advisers to obtain reasonable assurances that service providers will make and/or keep records on behalf of the investment adviser that meet all of the applicable requirements of rule 204–2? Why or why not?

80. Do commenters agree that it is appropriate to require advisers to obtain reasonable assurances that service providers will allow the investment adviser and staff of the Commission to access the adviser's electronic records easily through computers or systems? Why or why not? If not, what level of access should be required for records required by rule 204–2 when such records are maintained by a third party? Should certain types of electronic records be excluded from this requirement or otherwise subject to different or alternative requirements? If so, please explain.

81. Do commenters agree that it is appropriate for investment advisers to make arrangements with service providers to ensure the continued availability of records in the event that the third party ceases operations or the relationship with the investment adviser is terminated? Why or why not? Should we prescribe more specific requirements for the retention of records under the recordkeeping rule when a third party recordkeeping arrangement with an investment adviser is terminated?

82. We are not proposing to require additional Form ADV reporting for third-party recordkeepers. Are all third-party recordkeepers already reported in Section 1.L. of Schedule D, and if not, should we explicitly require that they be reported on Form ADV? Should we require advisers to report all third-party recordkeepers in Section 7.C of Schedule D or cross reference to their disclosure in Section 1.L. of Schedule D? Should we allow advisers to report more than one principal office for a service provider in Section 1.L. of Schedule D?

F. Existing Staff No-Action Letters and Staff Statements

Consistent with the proposed amendments, staff in the Division of Investment Management is reviewing certain of our staff's no-action letters addressing the application of the recordkeeping rules to determine whether any such letters should be withdrawn in connection with any adoption of this proposal. If the rule is adopted, some of these letters would be moot, superseded, or otherwise inconsistent with the amended rules and, therefore, would be withdrawn. We list below the letters that are being reviewed for withdrawal as of the dates the proposed amendments, if adopted, would be effective after a transition period. If interested parties believe that additional staff letters or other staff statements should be potentially withdrawn, they should identify the letter or statement, state why it is relevant to the proposed amendments, and how it should be treated and the reason therefor. To the extent that a letter listed below relates both to a topic identified in the list below and another topic, the portion unrelated to the topic listed is not being reviewed in connection with the adoption of this proposal.

LETTERS TO BE REVIEWED CONCERNING RULE 204–2

Letter and date	Topic subject to withdrawal
First Call Corporation (pub. avail. Sept. 6, 1995)	Investment adviser electronic record-keeping.
Omgeo LLC (pub. avail. Aug. 14, 2009)	Investment adviser electronic record-keeping.

G. Transition and Compliance

We are proposing to require advisers registered or required to be registered with the Commission to comply with the proposed rule, if adopted, starting ten months from the rule's effective date (the ''compliance date''). This would provide a transition period during which a registered investment adviser can prepare to develop and adopt appropriate procedures to comply with the proposed rule, if adopted. Pursuant to our proposal, the proposed rule, if adopted, would apply to any engagement of new service providers made on or after the compliance date of the proposed rules and amendments. The ongoing monitoring requirements, if adopted, also would apply to existing engagements beginning on the compliance date. The adviser would be required to monitor periodically the service provider's performance of the existing covered function and reassess the retention of the service provider in accordance with the due diligence requirements. If adopted, the rule would require such monitoring and reassessment to occur with a manner and frequency such that the investment adviser reasonably determines that it is appropriate to continue to outsource the covered function and that it remains appropriate to outsource it to the service provider.

We request comment on the following:

83. Do commenters agree that a ten-month transition period following the effective date of any final rule is appropriate? If not, how long of a transition period would be appropriate? For example, would 90 days be an appropriate amount of time? Would longer be necessary, *e.g.,* eighteen months, and if so, why? Should we have different compliance dates for larger or smaller entities? For example, should we require compliance for larger advisers within ten months and require eighteen months for smaller advisers? Why or why not?

84. Under our current proposal, all current applicable adviser engagements with service providers would fall within the purview of the proposed rule and would be subject to the due diligence and monitoring requirements as outlined within the proposal as of the compliance date. We understand that this requirement may result in advisers having to revisit existing arrangements with service providers to review for compliance and perhaps even requiring advisers to amend current contracts to satisfy the requirements of the proposed rule. We request comment on whether the rule should include a provision that excludes an adviser's existing engagement with a service provider that occurred prior to any compliance date of the proposed rule. Alternatively, should the proposed rule exempt advisers with existing service provider engagements from complying with certain proposed actions within the proposal? What requirement(s) should receive this treatment and why is it necessary? Are there certain types of service provider relationships that should be covered by such a provision in order to prevent the imposition of an unfair or unreasonable burden on the adviser or to prevent the imposition of excessive costs? If so, please explain the unfair burden or excessive costs that could result.

85. Would it be preferable to provide a different transition period for advisers that have existing relationships with service providers to come into compliance with any final rule than the transition period for new relationships? Do advisers need a different time period to review current service provider engagements and determine what further actions may be needed to bring the adviser into compliance with any final rule?

86. Should we provide an exception for service provider engagements that are short-term in nature (*e.g.,* less than three months)? Should we provide advisers with a safe harbor during periods where an adviser has determined to transition a covered function from one service provider to another? For example, should we provide a ten-day safe harbor to allow for advisers to transition a covered function from a service provider if the adviser makes a determination that it no longer remains appropriate to outsource the covered function to that service provider?

III. Economic Analysis

A. Introduction

We are mindful of the costs imposed by, and the benefits obtained from, our rules. Section 202(c) of the Advisers Act provides that when the Commission is engaging in rulemaking under the Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider whether the action will promote efficiency, competition, and capital formation, in addition to the protection of investors. The following analysis considers, in detail, the likely significant economic effects that may result from the proposed rule and proposed amendments to rules and forms, including the benefits and costs to clients and investors and other market participants as well as the broader implications of the proposed rule and amendments for efficiency, competition, and capital formation.

Where possible, the Commission quantifies the likely economic effects of its proposed amendments and rules. However, the Commission is unable to quantify certain economic effects because it lacks the information necessary to provide estimates or ranges of costs. Further, in some cases, quantification would require numerous assumptions to forecast how investment advisers, service providers, and other affected parties would respond to the proposed rule and amendments, and how those responses would in turn affect the broader markets in which they operate. In addition, many factors determining the economic effects of the proposed rule and amendments would be investment adviser-specific or service provider-specific. Investment advisers vary in size and sophistication, as well as in the products and services they offer. As a result, the extent to which investment advisers outsource covered functions as well as the kinds of covered functions they outsource differ, making it inherently difficult to quantify economic effects on advisers. Similarly, service providers vary in size and sophistication, as well as in the services they offer or could potentially offer, making it inherently difficult to quantify economic effects on service providers. Even if it were possible to calculate a range of potential quantitative estimates, that range would be so wide as to not be informative about the magnitude of the benefits or costs associated with the proposed rule. Many parts of the discussion below are, therefore, qualitative in nature. As described more fully below, the Commission is providing a qualitative assessment and, where practicable, a quantified estimate of the economic effects.

B. Baseline

The economic baseline against which we evaluate and measure the economic effects of the proposed rules and amendments, including its potential effects on efficiency, competition, and capital formation, is the state of the world in the absence of the proposed rules.

1. Affected Parties

Registered Investment Advisers. The proposed rule would generally apply to a registered investment adviser (''RIA'') that outsources a covered function to a service provider.[99] As of June 2022 there were 15,169 investment advisers registered with the Commission. RIAs reported $128.2 trillion in regulatory assets under management (''RAUM'') with $116.87 trillion in discretionary RAUM attributable to 47 million accounts and $11.36 trillion in non-discretionary RAUM attributable to 14 million accounts. The average RAUM among RIAs was $8.45 billion and the median was $396.8 million.

TABLE 1—REGISTERED INVESTMENT ADVISERS STATISTICS BY MAJORITY CLIENT TYPE

Majority client type	Number of registered investment advisers	Average RAUM (millions)	Median RAUM (millions)
High net worth individuals	6,389	$2,059.1	$300.2
Pooled investment vehicles	4,174	8,897.0	1,025.1
Non-high net worth individuals	2,191	3,130.6	127.6
Investment Companies	767	65,849.5	1,250.2
Pension and profit sharing plans	474	11,269.7	897.5
Corporations	238	4,224.2	490.9
State/municipal entities	198	16,534.5	1,840.3
Other investment advisers	190	7,072.5	631.5
Other client type	173	2,701.5	646.8
Insurance companies	123	55,691.3	4,474.4
Charities	109	5,470.1	631.1
Banking or thrift institutions	67	9,634.3	2,717.1
Business development companies	47	3,353.5	998.5
Foreign institutions	29	30,971.1	2,538.8
Total	15,169	8,453.9	396.8

Source: Form ADV, Part 1A, Item 5D. The majority client type represents the client type to which the RIA attributes the majority of their RAUM. All data reflect updated records as of July 2022.

Average and median RAUM vary by the type of client to which the RIA attributes the majority of its RAUM.[100] For example, for RIAs with a majority of investment company clients, the average and median RAUMs were $65.849 billion and $1,250.2 million, respectively. For RIAs with a majority of non-high net worth individual clients, the average and median RAUMs are much smaller—$3.130 billion and $127.6 million, respectively.

Service Providers. Service providers would also be affected by the proposed rule. Covered functions are potentially performed by: (1) an adviser's supervised person, (2) a related-party service provider, or (3) a third-party service provider. Under the proposed rule a service provider would be a person or entity that performs one or more covered functions and is not an adviser's supervised person as defined in the Act, where covered functions are those that are (1) necessary for the adviser to provide investment advisory services in compliance with the Federal securities laws and (2) if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.[101] The determination of what is a covered function would depend on the facts and circumstances and encompass functions or services that are necessary for an adviser to provide its investment advisory services in compliance with the Federal securities laws.[102] Certain functions may be covered functions for one adviser but not for another adviser, depending on strategy and business model, and so certain persons or entities that perform functions on behalf of

[99] *See* proposed rule 206(4)–11(a).

[100] Form ADV, Part 1A, Item 5.D.

[101] *See supra* section II.A.2.

[102] *Id.*

advisers may be a service provider in the scope of the rule with respect to one adviser but not for another adviser. In this section, we discuss a variety of persons or entities that perform functions on behalf of advisers under the term ''service provider,'' though these persons or entities may only be service providers in the scope of the rule for certain advisers.

Few current disclosures require advisers to identify if a service provider is a related-party or third-party service provider. One item on Form ADV identifies the use of administrators and whether the administrator is a related party or a third party, but only for clients that are private funds.[103] Of the 5,378 advisers to private funds reported on Form ADV, 4,213 (78%) report at least one third-party administrator and 140 (3%) report at least one related-party administrator. [104]

Certain items in Form ADV data provide information on RIAs' outsourcing of services, but do not distinguish between third-party and related-party service providers. In particular, Form ADV data include information on RIAs' use of certain service providers of potentially covered functions: (1) chief compliance officers,[105] and (2) record-keepers.[106] Table 2 provides information on the use of these service providers by advisers.

TABLE 2—ADVISER USE OF ADDITIONAL SERVICE PROVIDERS

	Chief compliance officer	Record keeping
Count	789	7,178
Percent	5	47

Source: Form ADV, Part 1A, Items 1.J.(2) and 1.L & Schedule D, Section 1.L. All data reflect updated records as of July 2022.

Although we believe that if an RIA has a related party that provides a particular function, the adviser may make use of that related-party service provider, Form ADV currently does not require RIAs to specifically provide that information. We can, however, identify whether an RIA has a related party that is a service provider on Form ADV, which is illustrated in Table 3.[107] For example, approximately a third of RIAs report a related party that is another investment adviser such as a financial planner, and many RIAs report a related party that is a broker-dealer, municipal securities dealer, government securities broker or dealer, or insurance company or agency. However, the actual proportion of RIAs with related party service providers may be lower, to the extent that these related parties are not functioning as service providers to an adviser's clients.

TABLE 3—PERCENTAGE OF RIAS REPORTING EACH TYPE OF RELATED PARTY

Related-party type	% of RIAs reporting type of related-party
Sponsor, general partner, managing member (or equivalent), excluding pooled investment vehicles	36
Other investment adviser (including financial planners)	29
Broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)	16
Commodity pool operator or commodity trading advisor (whether registered or exempt from registration)	16
Insurance company or agency	16
Accountant or accounting firm	7
Banking or thrift institution	5
Trust company	5
Sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles	5
Pension consultant	4
Lawyer or law firm	3
Real estate broker or dealer	3
Registered municipal advisor	2
Registered security-based swap dealer	1
Futures commission merchant	1
Major security-based swap participant	0

Source: Form ADV, Part 1A, Item 7.A. All data reflect updated records as of July 2022.

Clients. Clients of RIAs may also be affected by the proposed rule, to the extent they either benefit from increased oversight and/or face additional costs that are passed on to them from advisers, including those that service providers pass on to advisers. Form ADV requires RIAs to indicate the approximate number of advisory clients and the amount of total RAUM attributable to various client types.[108] Table 4 provides information on the

[103] Form ADV, Part 1A, Schedule D, Section 7.B.(1), Item 26. Items 25 and 28 identify custodians and marketers. As discussed above, custodians and marketers are not within the scope of the rule and so our analysis is limited to administrators. *See supra* section II.A.

[104] See Form ADV, Part 1A, Item 7B(1). The data reflects updated records as of July 2022. An adviser must file a separate Section 7.B of Schedule D for each private fund that it manages. Because these items are only provided by private fund advisers, this analysis is not representative of the broader investment adviser industry. There may also be other categories of service providers not captured by Form ADV.

[105] Form ADV, Part 1A, Item 1.J.(2).

[106] Form ADV, Part 1A, Item 1.L & Schedule D, Section 1.L. Items 1.I and 5.B.(6) identify entities that provide website or social media services and individuals who solicit clients on an adviser's behalf. Because these entities are unlikely to be within the scope of the rule, they are excluded from this analysis. *See supra* section II.A.

[107] Form ADV, Part 1A, Item 7.A. requires advisers to provide information about their related persons, including foreign affiliates. Advisers' related persons are all advisory affiliates and any persons that are under common control with the adviser. In particular, Item 7.A. requires an adviser to disclose if the adviser has a related person that is: (1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered), (2) other investment adviser (including financial planners), (3) registered municipal advisor, (4) registered security-based swap dealer, (5) major security-based swap participant, (6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration), (7) futures commission merchant, (8) banking or thrift institution, (9) trust company, (10) accountant or accounting firm, (11) lawyer or law firm, (12) insurance company or agency, (13) pension consultant, (14) real estate broker or dealer, (15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles, and (16) sponsor, general partner, managing member (or equivalent), excluding pooled investment vehicles.

[108] If a client fits into more than one category, Form ADV requires an adviser to select one category that most accurately represents the client (to avoid double-counting clients and assets).

number of client accounts, total RAUM, and the number of RIAs attributable to each client type. For instance, non-high net worth individuals account for over 43 million clients, or approximately 83.14% of all advisory clients, while investment companies make up about 25 thousand clients, less than one percent of all advisory clients. Investment companies account for $43,838 billion in RAUM, or approximately 35.5% percent of reported RAUM. Business development companies, on the other hand, account for around $211 billion in RAUM, under 1% of total RAUM.

TABLE 4—RIA MARKET SIZE BY CLIENT TYPE

Client type	Clients (millions)	Total RAUM (billions)	RIAs
Non-high net worth individuals	43.824	7,093	8,286
High net worth individuals	6.917	11,832	8,989
Other investment advisers	0.908	1,427	814
Pension and profit-sharing plans	0.431	8,106	5,271
Other client types	0.377	1,156	1,374
Corporations	0.340	3,267	4,934
Charities	0.121	1,613	5,134
Pooled investment vehicles	0.095	34,584	5,763
State/municipal entities	0.027	4,285	1,299
Investment companies	0.025	43,838	1,603
Insurance companies	0.013	7,630	1,028
Banking or thrift institutions	0.011	966	432
Foreign institutions	0.002	2,209	363
Business development companies	0.000	211	98

Source: Form ADV, Part 1A, Item 5D. All data reflects updated records as of July 2022.

2. Adviser Use of Service Providers

Reasons for use of Service Providers. Advisers use service providers for a variety of reasons. First, advisers may rely on service providers for a covered function because the adviser faces difficulties performing the function themselves as a matter of operations. Advisers may also choose to use a service provider for a function that could be performed internally, because advisers believe they may give the adviser or its clients access to certain specializations or areas of expertise, or otherwise offer efficiencies that are unavailable to or unachievable by an adviser alone.[109] For instance, in some circumstances, service providers may be able to provide the same or similar levels of service as an adviser in a manner that is more cost-effective to clients. Outsourcing can also provide staffing flexibility by reducing the burdens on advisers' existing personnel. These burdens generally entail hiring and onboarding costs in addition to salaries and benefits, and the flexibility may be particularly useful for services that are periodic or otherwise infrequent and may not require permanent staffing by the adviser. Advisers with few personnel in particular may find benefits in allowing service providers to handle tasks that would otherwise be time-consuming or costly given the lack of economies of scale. Engaging a service provider also may prove efficient because it allows an adviser to allocate specific duties to a single service provider, rather than relying on multiple internal personnel to complete a function. Clients also can benefit from outsourcing, including through lower fees (if the adviser passes along any cost savings) and better quality of service.[110]

There are a wide variety of functions that an adviser might outsource. For example, advisers might outsource functions that operationally support an adviser's business functions (*e.g.,* investment research and data analytics, trading and risk management, compliance). Advisers might also hire service providers to perform or assist with functions that support middle- and back-office functions essential to asset management (*e.g.,* collateral management, settlement services, pricing or valuation services, and performance measurement).[111] Lastly, advisers might hire service providers to support the investment advisers' core advisory services and processes (*e.g.,* provision of bespoke indexes, sub-advisory services, and platforms for robo-advisory services).

Risks Associated with use of Service Providers. While the use of service providers might offer investment advisers significant advantages, the use of service providers may also present elevated risks of potential material harm to clients, and on the adviser's ability to perform its advisory services, resulting from outsourcing a covered function. Elevated risks can manifest in several ways: (1) increased operational risks from individual service providers to individual advisers, (2) increased risks associated with expanded or additional conflicts of interest resulting from principal-agent and moral hazard problems, (3) increased operational risk resulting from an adviser relying on a single service provider to provide multiple functions, (4) increased broader or systemic operational risk from a service being provided by a small number of service providers, (5) increased risks from reduced regulatory transparency, (6) increased risk of harm when clients and investors are misled as to the adequacy of the adviser's due diligence in engaging service providers and oversight of outsourced functions, and (7) increased risk of harm from rare but catastrophic operational failures that may be difficult for advisers and clients to predict, and thus price into their negotiated agreement. We discuss each of these in turn.

Use of a service provider could reduce an adviser's direct control over, or visibility into, a function. Reduced control over or visibility into a function could increase existing operational risks or introduce new operational risks. For example, without proper oversight of trade allocation, an adviser could be left unable to submit orders or allocate trades, or could have a service provider allocating shares in a manner that favors certain clients over others or failing to consider whether allocating additional shares would violate a client' investment guidelines.[112] As another

[109] *See supra* section I.A.

[110] *See supra* footnote 5.

[111] *See supra* section I.A.

[112] *See supra* section II.A.2.

example, where a service provider manages data for an adviser, an operational failure could result in advisers making investment decisions based on incorrect data about their client's assets.[113] For example, if an adviser has incorrect data on a client's holdings of a particular security, the adviser may mistakenly not sell as much of their client's holdings in the event of a market downturn as they would otherwise. This may also include advisers outsourcing critical functions to service providers in geographical areas with unique heightened risks, such as risks from weather events, power outages, geopolitical events and public health concerns in their location.[114]

An investment adviser's loss of control over, or visibility into, an outsourced function could also create potential or actual conflicts of interest between investment advisers and service providers. This is because the relationship between client and an adviser is generally one where the principal (the client) relies on an agent (the adviser) to work on the principal's behalf.[115] To the extent that principals and their agents do not have aligned preferences and goals, agents (advisers) may take actions that increase their well-being at the expense of principals (clients).

These conflicts of interest are particularly relevant for oversight of outsourced functions because of the client's limited visibility and limited ability to observe and independently monitor the adviser's oversight of the service provider. This scenario is defined as a moral hazard problem: When an agent's actions cannot be observed or directly contracted for by the principal, it is difficult to induce agents to supply the proper amounts of productive inputs or appropriately share risk with the principal.[116] While an oversight failure can result in costs to an adviser vis-à-vis reputational costs, fiduciary liabilities, or other costs, an adviser's oversight activities are at least partially unobservable to the client. This results in a moral hazard problem that exacerbates the risk of the adviser taking actions that increase their well-being at the expense of their clients, such as pursuing cost savings on decisions to outsource, due diligence, monitoring, and recordkeeping, where the cost savings accrue to the adviser but increase operational risks for clients and investors.[117]

Further potential or actual conflicts of interest can emerge between advisers, service providers, and the adviser's clients, because either the adviser or the service provider can act as an agent to the adviser's clients, benefitting at the client's expense. These conflicts of interest may therefore be exacerbated by the client's limited visibility into the service provider's practices. For example, without oversight, the service provider may pursue cost savings on its operations that increase risk to the adviser's clients, because the service provider benefits from cost savings but operational risks are costly to the adviser's client. As another example, as discussed above, there may be conflict of interest risks when a service provider recommends or otherwise highlights investments to advisory clients that the service provider also owns or manages for others.[118]

An adviser's use of service providers to provide multiple functions could also increase operational risk.[119] If an adviser is dependent on a service provider for a large number of services, any disruption or interruption to those services could affect an adviser's services to its clients. If the service provider becomes unable to perform those functions, clients of the investment adviser may be harmed to the extent the investment adviser is unable to find a suitable replacement for the service provider or provide the services itself. The more services provided by a given service provider, the greater the potential effect on investment advisory clients, through any of the previously discussed risks or channels of harm.

In certain circumstances, the use of service providers could create broader or systemic risks as well. In particular, to the extent that the failure of a single service provider would cause operational failures at multiple advisers, that service provider may represent a source of systemic risk. For example, because service providers have become more specialized in recent years,[120] for certain functions there may be only a few entities offering relevant (often information technology-dependent) services, and so multiple regulated entities could use a common service provider.[121] In other cases, multiple service providers may merge to become a single market leader.[122] These or related circumstances could, in turn, concentrate operational risk.[123] If a large number of investment advisers were to use a common service provider, operational risks could be correspondingly concentrated. Increased concentration of operational risk could, in turn, lead to an increased risk of broader market effects during times of market instability, compounding any of the previously discussed risks and channels of harm.[124] For example, in one instance a corrupted software update to accounting systems at a

[113] *See supra* section II.A.1.

[114] *See supra* section I.A.

[115] *See* Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure,* 3 J. Fin. Econ. 305 (1976).

[116] *See, e.g.,* Bengt Holmstrom, *Moral Hazard and Observability,* 10 Bell J. of Econ. 1 (1979). (''It has long been recognized that a problem of moral hazard may arise when individuals engage in risk sharing under conditions such that their privately taken actions affect the probability distribution of the outcome . . . . The source of this moral hazard or incentive problem is an asymmetry of information among individuals that results because individual actions cannot be observed and hence contracted upon.''); Bengt Holmstrom, *Moral Hazard in Teams,* 13 Bell J. of Econ. 2 (1982). (''Moral hazard refers to the problem of inducing agents to supply proper amounts of productive inputs when their actions cannot be observed and contracted for directly.''). In other contexts, moral hazard refers to a party taking on excessive risk when knowing another party will be responsible for negative outcomes. This alternative definition may be viewed as a special case of the broader economic definition associated with the difficulty of contracting for privately taken actions. *See, e.g.,* Adam Carpenter, *Moral Hazard Definition,* U.S. News (Aug. 11, 2022), *available at https://money.usnews.com/investing/term/moral-hazard.*

[117] Conversely, an adviser's reputation motives—the fear of market-imposed loss of future profits—should generally work against the tendency to underinvest in oversight of service providers. However, for smaller advisers—who do not enjoy economies of scale or scope, and generally have less valuable brands—the cost of implementing robust service provider oversight would be relatively high, while their reputation motives would be more limited, because there is less reputational capital to lose. Thus, smaller advisers can be expected to be especially prone to moral hazard problems and resulting underinvestment in service provider oversight.

[118] *See supra* section I.A.

[119] *See supra* section I.A. However, it is not always the case that an adviser that only outsources a single function is less at risk than an adviser that outsources multiple, if the single outsourced function is more critical to the adviser's provision of advisory services.

[120] IOSCO Report, *supra* footnote 13.

[121] FSB Discussion Paper, at 2, *supra* footnote 14

[122] *See supra* section I.A.

[123] IOSCO Report, *supra* footnote13. The IOSCO Report cites examples of risks that could lead to systemic risk if multiple entities use a common service provider including: (1) if the service provider suddenly and unexpectedly becomes unable to perform services that are material or critical to the business of a significant number of regulated entities, each entity will be similarly disabled, (2) a latent flaw in the design of a product or service that multiple regulated entities rely upon may affect all these users, (3) a vulnerability in application software that multiple regulated entities rely upon may permit an intruder to disable or corrupt the systems or data of some or all users, and (4) if multiple regulated entities depend upon the same provider of business continuity services (*e.g.,* a common disaster recovery site), a disruption that affects a large number of those entities may reduce the capacity of the business continuity service.

[124] Investment advisers and their clients may not currently be aware of, or currently have enough information or otherwise be able to assess, concentration risks where multiple investment advisers use a common service provider.

widely-used fund accounting provider caused industry-wide concern over the accuracy of fund values for several days, in which an estimated 66 advisers and 1,200 funds were unable to obtain system-generated NAVs for several days.[125] This could also include cases where advisers discount the risks of a service provider failing because they view the service provider as ''too big to fail,'' and assume that regulators will deploy public funds to rescue the service provider in the event of its failure.[126]

When a function is performed internally, advisers have access to information necessary to demonstrate compliance with the Advisers Act or rules. Such information is helpful for the Commission's use in its regulatory programs, including examinations, investigations, and client and investor protection efforts. Transparency in outsourced functions, likewise, is helpful for assessing regulatory compliance and remediating problems as they occur. For example, if several advisers follow an investing strategy based on a particular third-party investment model, an error by the model provider may cause widespread errors in the client accounts invested relying on the model, and with greater transparency the Commission could quickly analyze the potential breadth of the impact and take appropriate actions.[127] Further, advisers that outsource a certain function sometimes indicate that because they outsource the function, they lack access to the information necessary to demonstrate compliance with a provision of the Advisers Act or rules.[128] In addition, investment advisers have limited disclosure or books and records obligations with respect to their use of service providers.[129] In other cases, a service provider may deliver some services from locations outside of the United States, which introduces potential oversight and regulatory gaps or oversight challenges.[130] The resulting reduced transparency into the use of service providers, then, creates the potential that the Commission does not have information that could enhance its ability to evaluate and form regulatory policies and to assess markets for client and investor protection.[131]

Clients or investors may also face heightened risk of harm from each of these risks to the extent that they are misled about the adequacy of the adviser's due diligence in engaging service providers and the adviser's oversight of outsourced functions. If clients or investors understood clearly the extent of an adviser's oversight and management of risks associated with outsourcing a covered function, the price of advisory services could account for expected operational risks to the extent that clients have bargaining power. But when an adviser holds itself out to clients and potential clients or investors as an investment adviser that can provide certain advisory functions or services, the adviser implies that it remains responsible for the performance of those services and it will act in the best interest of the client in doing so. An adviser remains liable for its obligations, including those under the Advisers Act, the other Federal securities laws, and any contract entered into with the client, even if the adviser outsources the function.[132]

Finally, clients or investors may face increased risk of harm from rare but catastrophic operational failures that may be difficult for advisers and clients or investors to predict, and thus price into their negotiated agreements. These types of events, because they are rare and difficult to predict, may go unaccounted for in the pricing of instruments, investments, or contracts.[133] Similar to the previous discussion, rare but catastrophic operational risks may result from the compounding of different categories of operational risks. For example, such risks may result from an adviser who has outsourced multiple critical functions to service providers in a single geographic region, all of whom the adviser may assume are typically reliable and thus not proactively monitored by the adviser, but who may all simultaneously face disruption in the face of extreme weather, a geopolitical event or public health crisis. To the extent that advisers have outsourced critical functions to third-party service providers who are often reliable but are not subject to the adviser's oversight, these service providers represent potential risks that investors and advisers may not be able to price into their contracts.

Patterns in Adviser Use of Service Providers. One motivation for an adviser to outsource a function is that outsourcing might offer efficiencies that are unavailable to or unachievable by the adviser.[134] Potential gains in efficiency may not be the same for all advisers. For example, gains may be related to factors such as adviser size (as measured by RAUM), or the types of clients advisers serve.

As discussed above, Form ADV identifies the use of certain service providers and whether these service providers are related parties or third parties, but only for private funds.[135] For administrators, a higher proportion (80%) of the largest 10% of advisers rely on third-party service providers than is the case for the smallest 10% advisers (75%).[136] Additionally, the use of related-party administrators is rare, ranging from 1%–6% across adviser size deciles, in comparison to the use of third-party administrators, which ranges from 74%–80%.[137]

Additionally, as discussed above, certain additional items on Form ADV provide information on all RIAs' outsourcing of services, but also do not distinguish between third-party and related-party service providers.[138] Table 5 below provides information on the extent to which the use of these service providers varies across advisers as a function of RAUM.[139] As is the case with advisers' use of administrators above, Table 5 shows that larger advisers are more likely than smaller

[125] *See supra* footnotes 16, 17, and accompanying text.

[126] The Financial Conduct Authority observed UK asset managers in 2012 and expressed concern that some firms appear to rely on the fact that an outsourced service provider is a large financial institution, which regulators might look to rescue using public funds, in order to justify minimal oversight, among other potential gaps in service provider oversight practices. *See* FSA, To the CEOs of Asset Managers (Dec. 2012), *available at https://webarchive.nationalarchives.gov.uk/ukgwa/20140305053157mp_/http://www.fsa.gov.uk/static/pubs/ceo/review_outsourcing_asset_management.pdf.*

[127] *See supra* section I.A.

[128] *See supra* section I.A for more detailed discussion.

[129] *See supra* section III.B.1; *see also infra* section III.B.3.

[130] *See supra* section I.A.

[131] *See supra* section I.A. For example, the Commission staff have observed some advisers unable to provide timely responses to examination and enforcement requests because of outsourcing.

[132] *See supra* section I.A; *see also infra* section III.B.3.

[133] *See, e.g.,* Howard Kunreuther & Mark Pauly, *Insuring Against Catastrophes in* The Known, the Unknown, and the Unknowable in Financial Risk Management (Francis X. Diebold, Neil A. Doherty and Richard J. Herring eds., 2010), at 210–238.

[134] *See supra* section I.A.

[135] *See supra* section III.B.1.

[136] Adviser size is measured by RAUM.

[137] Source: Form ADV, Schedule D, Section 7B(1), Item 26. All data reflect updated records as of July 2022. Also as discussed above, because these items are only reported by private fund advisers, this analysis is not representative of the broader investment adviser industry. There may also be other categories of service providers not captured by Form ADV. *See supra* footnote 104.

[138] *See supra* section III.B.1.

[139] As discussed above, Form ADV provides information on certain types of related-party service providers, but does not include whether an adviser outsources to the related-party service provider. Because Form ADV does not include information indicating whether an adviser outsources to a related-party service provider, we focus the information provided in Table 6 on advisers' use of third-party service providers.

advisers to report using these categories of service providers.

TABLE 5—ADVISER USE OF ADDITIONAL SERVICE PROVIDERS

Size decile	Chief compliance officer (%)	Record keeping (%)
Smallest	8	33
2	4	28
3	5	29
4	6	33
5	5	37
6	6	40
7	6	51
8	6	61
9	5	73
Largest	2	88

Source: Form ADV, Part 1A, Item 1J(2) and 1L. The table shows the within-size-decile percentage off all RIAs. Item 1J(2) may undercount the Chief Compliance Officer figure since it excludes those employed by a registered investment company. Item 1L may overcount the Record Keeping estimate since it does not exclude branch offices. All data reflects updated records as of July 2022.

Table 6 below provides further information on the extent to which adviser use of service providers varies across advisers as a function of the type of client to which the registered investment adviser attributes a majority of their RAUM.

TABLE 6—ADVISER USE OF ADDITIONAL SERVICE PROVIDERS BY MAJORITY CLIENT TYPE

Client type	Chief compliance officer (%)	Record keeping (%)
High net worth individuals	4	30
Pension and profit-sharing plans	5	44
Banking or thrift institutions	7	42
Charities	4	54
Other investment advisers	9	45
Investment companies	13	68
State/municipal entities	5	62
Pooled investment vehicles	5	76
Non-high net worth individuals	6	32
Foreign institutions	0	76
Business development companies	19	79
Insurance companies	8	67
Corporations	6	48
Other client types	15	55

Source: Form ADV, Part 1A, Item 1J(2) and 1L. Item 1J(2) may undercount the Chief Compliance Officer figure since it excludes those employed by a registered investment company. Item 1L may overcount the Record Keeping estimate since it does not exclude branch offices. All data reflects updated records as of July 2022.

3. Applicable Law Impacting Use of Service Providers

Advisers who use service providers, whether a related-person or third-party service provider, may currently conduct activities related to each of the proposed obligations, such that varying degrees of due diligence, risk mitigation and management, monitoring, recordkeeping, and other oversight-related activities may already occur in the marketplace. Certain advisers may currently conduct some or all of the proposed activities to satisfy a variety of legal requirements.[140]

First, an adviser who has outsourced a function to a service provider remains liable for its obligations, including under the Advisers Act or other Federal securities laws.[141] Advisers' fiduciary duty comprises a duty of loyalty and a duty of care, the latter of which includes providing investment advice in the best interest of the client, based on the client's objectives.[142] For example, where an investment adviser has the responsibility to select broker-dealers to execute client transactions, the adviser is obligated to seek to obtain ''best execution'' of client transactions given the circumstances pertaining to the transactions.[143]

Where an investment adviser fails to satisfy its obligations, including fulfilling its fiduciary duty to clients or complying with the Advisers Act and other Federal securities laws, its conduct may result in potential liability under the antifraud provisions of the Federal securities laws. Investment advisers are subject to Section 206 of the Advisers Act, which prohibits engaging ''in any act, practice, or course of business which is fraudulent, deceptive, or manipulative.'' [144] Section 206(4) specifically empowers the Commission to adopt rules defining fraudulent acts and practices and to prescribe means reasonably designed to prevent their occurrence. In addition to the antifraud provision of the Advisers Act, investment advisers are also subject to other antifraud provisions under the Federal securities laws and misconduct

[140] In addition to regulatory requirements, advisers may already currently conduct some or all of the proposed activities solely as a matter of good business practice.

[141] *See supra* section I.A.

[142] *Id.*

[143] *See* Standard of Conduct Release, *supra* footnote 21, at section I.A. (''When seeking best execution, an adviser should consider 'the full range and quality of a broker's services in placing brokerage including, among other things, the value of research provided as well as execution capability, commission rate, financial responsibility, and responsiveness' to the adviser.'') (quoting Interpretive Release Concerning the Scope of Section 28(e) of the Securities Exchange Act of 1934 and Related Matters, Exchange Act Release No. 23170 (Apr. 28, 1986)); Commission Guidance Regarding Client Commission Practices under Section 28(e) of the Securities Exchange Act of 1934, Exchange Act Release No. 54165 (July 18, 2006), *available at https://www.sec.gov/rules/interp/2006/34-54165.pdf.*

[144] 15 U.S.C. 80b–6(4).

by an adviser may result in liability under such other provisions, including Section 17 of the Securities Act of 1933 and Section 10(b) of the Securities Exchange Act of 1934 and rule 10b–5 thereunder.[145]

Second, investment advisers registered with the Commission are required to adopt and implement written policies and procedures reasonably designed to prevent violation of the Federal securities laws. The Commission has said that Rule 206(4)–7 requires advisers to consider their fiduciary and regulatory obligations under the Advisers Act and to formalize policies and procedures to address them.[146] The rule does not enumerate specific elements that advisers must include in their policies and procedures and each adviser should adopt policies and procedures that take into consideration the nature of that firm's operations.[147] Registered investment companies are subject to similar compliance procedures and practices pursuant to rule 38a–1 under the Investment Company Act of 1940 and to the extent certain advisers have clients that are registered investment companies, the adviser and certain specified service providers may be subject to relevant provisions of the rule.[148]

As discussed, many investment advisers outsource various functions supporting the adviser's services and processes. Investment advisers who presently outsource covered functions may already conduct any or all of the proposed required due diligence and monitoring obligations with respect to outsourced covered functions. Further, such advisers may already incorporate these practices into their written policies and procedures. However, while there is an existing framework under which advisers may oversee certain service providers, there is no existing provision under the Advisers Act expressly requiring due diligence and monitoring for those service providers.[149]

For example, advisers may already conduct some due diligence and monitoring with respect to service providers relating to the handling of sensitive client information in complying with their obligations under applicable laws. Section 204A of the Advisers Act requires advisers to maintain and enforce written policies and procedures with the aim of preventing the firm or any person associated with the firm from misusing material non-public information, with rule 204A–1 thereunder requiring, among other things, that an adviser's code of ethics set forth requirements that certain advisory personnel report personal securities trading and that the adviser's supervised persons must comply with Federal securities laws.[150] Thus, some investment advisers may currently conduct due diligence and monitoring in enforcing their code of ethics, which encompasses certain aspects of the adviser's relationship with service providers.

Third, investment advisers use Form ADV to register with the SEC, register with one or more state securities regulators, and amend those registrations.[151] Form ADV elicits detailed information concerning the adviser and its owners, business practices, employees, and disciplinary history. While Form ADV requires reporting on certain parties, such as the adviser's industry affiliations and certain clients, it does not currently require reporting on all service providers that perform what would be covered functions under the proposal.

Fourth, the Federal securities laws require investment advisers, registered investment companies, and others to make and keep books and records. The recordkeeping requirements are a key part of the Commission's regulatory program for advisers and funds, as they allow us to monitor adviser and fund operations, and to evaluate their compliance with the Federal securities laws. Existing Rule 204–2, which would be amended by the proposal, currently provides certain requirements for books and records to be maintained by investment advisers while various rules under the Investment Company Act of 1940, as amended, provide similar requirements for specified records to be maintained by registered investment companies.[152] To the extent certain advisers have clients that are registered investment companies, those advisers may be subject to relevant recordkeeping obligations under the 1940 Act. For example, if the board of directors of a registered investment company has designated performance of fair value determinations to the adviser under rule 2a–5 of the 1940 Act, the adviser is obligated to maintain the records required by the related recordkeeping provision.[153] Rule 204–2 details the types of required records as well as the manner, location and duration of records to be maintained by registered investment advisers. For example, rule 204–2(g) permits investment advisers to use electronic storage media for records required to be maintained under Rule 204–2. However, the rule does not prescribe specific requirements for when an adviser outsources one or more of the required recordkeeping functions to a third party. Commission staff has addressed third-party recordkeeping in two staff letters, which include certain similar components to the proposed amendments to rule 204–2.[154] Although it is not required by rule, advisers who presently outsource covered functions may already make and keep relevant books and records with respect to their oversight of service providers.[155]

Fifth, Regulation S–P: Privacy of Consumer Financial Information (''Regulation S–P'' or ''Reg S–P'') provides requirements to adopt written policies and procedures reasonably designed to: (i) insure the security and confidentiality of customer records and information; (ii) protect against any

[145] *See* 15 U.S.C. 77q; 15 U.S.C. 78l; and 17 CFR 240.10b–5.

[146] *See* Compliance Programs of Investment Companies and Investment Advisers, Investment Advisers Act Release No. 2204 (Dec. 17, 2003), at section II.A.1 (adopting rule 206(4)–7), *available at https://www.sec.gov/rules/final/ia-2204.htm.*

[147] *See id.*

[148] Rule 38a–1 requires policies and procedures to provide for oversight of certain service providers to the registered investment company, including its investment advisers, principal underwriters, administrators, and transfer agents. The rule also requires the registered investment company's board of directors, including a majority of its independent directors, to approve its investment adviser's policies and procedures based on a finding that the policies and procedures are reasonably designed to prevent violation of the Federal securities laws by the registered investment company and the adviser. In addition, the registered investment company is required to review its policies and procedures, as well as those of its investment adviser, annually. *See* 17 CFR 270.38a–1.

[149] Certain entities may be subject to particularized requirements under other regulatory regimes. For example, firms that are dually registered broker-dealers are subject to FINRA Rule 3110 which requires members to, among other provisions, establish and maintain a system to supervise the activities of each associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations. This supervisory system must, among other requirements, designate an appropriately registered principal with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker-dealer is required. *See, e.g.,* Rule 3110 Supervision, *available at https://www.finra.org/rules-guidance/rulebooks/finra-rules/3110.*

[150] *See* 15 U.S.C. 80b–4a and 17 CFR 275.204A–1. However, rule 204A–1 is intended to apply only to ''access persons'' of an investment adviser and does not apply to unrelated third parties.

[151] Form ADV also serves as a reporting form for exempt reporting advisers.

[152] *See infra* section V.E.; *see, e.g.,* 17 CFR 270.31a–1, 17 CFR 270.31a–2, 17 CFR 270.31a–3, 17 CFR 270.31a–4.

[153] *See* 17 CFR 270.2a–5; 17 CFR 270.31a–4.

[154] *See* OMGEO NAL, *supra* footnote 25, at n.3 (citing First Call and National Regulatory Services, SEC Staff No-Action Letter (Dec. 2, 1992)); First Call NAL, *supra* footnote 25.

[155] *See infra* section V.A.2.

anticipated threats or hazards to the security or integrity of customer records and information; and (iii) protect against unauthorized access to or use of customer records or information that could result in substantial harm or inconvenience to any customer.[156] All registered investment advisers who are financial institutions or creditors with covered accounts are also subject to Regulation S–ID: Identity Theft Red Flags (''Regulation S–ID'' or ''Reg. S–ID''), under which they are required to develop and implement a written identity theft program that includes policies and procedures to identify relevant types of identity theft red flags, detect the occurrence of those red flags, and to respond appropriately to the detected red flags.[157]

Sixth, some advisers may be subject to additional regulatory regimes that implicate customer information safeguards. For example, advisers to private funds may be subject to the Federal Trade Commission's Standards for Safeguarding Customer Information (''FTC Safeguards Rule'') that contains a number of modifications to the existing rule with respect to data security requirements to protect customer financial information.[158] Additionally, advisers that are affiliated with banks may be indirectly subject to safeguarding standards that include a requirement for a data breach response plan or program.[159] Advisers who anticipate needing to comply with these privacy regulations may already conduct any or all of the proposed required obligations with respect to service providers who are responsible for customer information.

Lastly, registered investment advisers are subject to a variety of disclosure requirements that they must make to their investors, including certain disclosures vis-à-vis the registration forms of the funds they advise. For instance, open end funds register using Form N–1A, and closed end funds register using Form N–2.[160] A fund's registration form includes information related to its basic operating structure, including its advisers and some of its service providers. However, there are no particularized requirements for these fund registration documents to discuss fund outsourcing, due diligence, or monitoring practices.

C. Broad Economic Considerations

As discussed above, investment adviser clients and investors rely on the delegated asset management industry, which includes investment advisers registered or required to be registered with the Commission, for a wide variety of wealth management and financial planning functions to their advisers, including tax, retirement, estate, education, and insurance services.[161] These services are critical for investors to plan for the future and diversify their investment risks. Investment advisers are responsible, under existing regulatory regimes,[162] for a wide variety of functions in order to provide these advisory services. Over time, investment advisers have in turn outsourced certain functions that are necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws as a response to competitive pressures, growing demand for advisory services, and increasingly complex client demands.[163]

Without a minimum and consistent framework for identifying, mitigating, and managing risks to clients, outsourcing can lead to client harm through the channels described above, such as clients being misled, their adviser making investment decisions based on incorrect data, having sensitive information misappropriated, potential or actual conflicts of interest, or failures to provide records for regulatory oversight.[164] While many advisers may be aware of the risks and account for them appropriately when deciding whether and how to engage or continue to use service providers, our staff has observed that not all advisers provide a sufficient level of oversight with respect to their service providers, despite the existing fiduciary duty and other legal obligations applicable to advisers.[165] This is because, while advisers and funds face relevant competitive market forces and therefore have private reputational incentives to maintain some level of oversight of service providers,[166] market failures can lead their chosen levels of oversight to be sub-optimally low, both from the perspective of what each individual adviser's clients and investors would prefer, and from the perspective of optimal levels of oversight for broader or systemic operational risks.

These market failures provide the economic rationale for the proposed rule because they indicate that, without Commission action, clients and advisers have limited abilities and incentives to implement effective reforms, such as those in the proposed rules, for several reasons. First, there are a number of practical issues investment advisers and their clients and investors may face in coming to agreement on, measuring, and accounting for risks due to outsourcing. Second, the client's inability to observe an adviser's effort in oversight of service providers gives rise to principal-agent and moral hazard problems that can contribute to an adviser exerting too little effort on oversight of its service providers. These problems are exacerbated by instances in which the adviser has limited visibility into a service provider's operations. Lastly, in addition to the effects from moral hazard and principal-agent problems, advisers' individual incentives to exert effort into oversight are likely to be lower than optimal where operational failures at service providers can carry broader or systemic risks. This is because individual advisers do not have incentives to consider the benefits that their oversight may provide to the investment advisory industry as a whole, including (and in particular) competing advisers. These difficulties are consistent with the outcomes discussed above, in which the Commission has observed operational failures by service providers affecting advisers' abilities to deliver services to their clients, despite existing fiduciary duty and other regulations,[167] and we next discuss each of these difficulties in turn.

With respect to the practical issues that currently may limit the ability or incentive of clients and advisers to adequately address the risks of outsourcing: First, because of the substantial variety and complexity of functions offered by service providers (such as client servicing, investment risk management, pricing, and reconciliation, among others), advisers and their clients may face difficulty in

[156] *See* 17 CFR 248.30.

[157] 17 CFR 248.201(d)(2); 17 CFR pt. 248, subpt. C, app. A. *See also infra* section V.E.

[158] 16 CFR pt. 314; *see also* 86 FR 70308 (Dec. 9, 2021) (Jan. 10, 2022, effective date; Dec. 9, 2022, applicability date for certain provisions).

[159] *See* 70 FR at 15752, *available at https://www.federalregister.gov/d/05-5980.* Specifically, The Banking Agencies' Incident Response Guidance provides, among other things, that when an institution becomes aware of an incident of unauthorized access to sensitive customer information, the institution should conduct a reasonable investigation to determine promptly the likelihood that the information has been or will be misused. If the institution determines that misuse of the information has occurred or is reasonably possible, it should notify affected customers as soon as possible.

[160] *See* Form N–1A, *available at https://www.sec.gov/about/forms/formn-1a.pdf; see* Form N–2, *available at https://www.sec.gov/files/formn-2.pdf.*

[161] *See supra* section I.A.

[162] *See supra* section I.A, III.B.3.

[163] *See supra* section I.A, III.B.2.

[164] *See supra* section III.B.2.

[165] *See supra* section I.A, III.B.3.

[166] *See supra* section III.B.2.

[167] *See supra* section I.A.

coming to agreement on and developing a common, consistent set of expected practices. These difficulties may be particularly pronounced in the case of covered functions that are of significance to investment performance but are new or experimental functions for which the adviser has limited expertise or experience.[168] Second, even if clients and advisers agree on the adviser's obligations, clients may face risks from rare but catastrophic operational events that are inherently difficult to predict, and thus difficult to account for when negotiating the terms of advisory services.[169] While some degree of operational risk is inevitable, we believe that the proposed rule may help lower these risks through its due diligence and monitoring requirements.

Additionally, principal-agent problems, moral hazard problems, and related conflicts of interest in the relationships between clients, advisers, and service providers may limit incentives for private reform and the ability of these market participants to implement reform. The investment adviser relationship is subject to agency problems, including those resulting from conflicts, to the extent clients (the principals) and investment advisers (the agents) have different preferences and goals. Investment advisers may take actions that increase their well-being at the expense of clients, thereby imposing agency costs on their clients.[170] Moreover, because an adviser's oversight of a service provider cannot be observed (and thus cannot be contracted for by the clients or investors), there is a moral hazard problem that may make it difficult for clients and investors to induce advisers to supply the proper amounts of oversight.[171] Advisers may therefore be able to avoid implementing reforms of service provider oversight practices. It may also be likely for service providers to avoid reforms, because minimal oversight on the part of the adviser may open opportunities for service providers to pursue cost savings that increase operational risks, or opportunities for other conflicts of interest that could benefit the service provider or adviser at the client's expense.[172] These principal-agent problems, moral hazard problems, and conflicts of interest may therefore be particularly strong in the context of conducting due diligence and monitoring of service providers, because clients have even less visibility into service provider functions than they do adviser functions.[173]

Lastly, because operational failures at service providers can carry broader or systemic risks, advisers' individual incentives to exert effort into oversight are likely to be lower than optimal from a societal standpoint. For instance, when a function is provided to many advisers by a small number of service providers,[174] each adviser may not take into account the broader, systemic operational risk associated with that service provider's failure when determining the level of oversight that they individually, or privately, find optimal.[175] For example, an investment adviser may not take into account the benefits that its own oversight of a service provider creates for its competitors. Moreover, to the extent that broader or systemic operational failures reduce client confidence in markets, there may be even greater differences in each adviser's privately optimal level of oversight and the optimal level of oversight from a societal standpoint. This is because an operational failure at a service provider for one adviser may reduce client confidence in other advisers, and advisers may not account for the additional impact of their service provider's operational failures on client trust in the investment advisory industry as a whole, including (and in particular) competing advisers.

The proposed rules would therefore impose a set of minimum and consistent obligations on investment advisers registered or required to be registered with the Commission in the course of their outsourcing processes. These obligations are designed to address the risks and market failures described above in the context of outsourcing core advisory functions. These reforms are designed to promote a more comprehensive framework to address—and thereby reduce—risks to advisers and their clients that result from an adviser's use of service providers. These reforms also are designed to give the Commission and advisers' clients better information for oversight of advisers' use of service providers.

The scope of the proposed rule would be limited to investment advisers registered or required to be registered who have retained a service provider to perform a covered function. The proposed rule would restrict its scope to a covered function to provide sufficient oversight in those specific circumstances where the function or service is one that is necessary for the adviser to provide advisory services in compliance with the Federal securities laws, and that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services. A service provider would be a person or entity that performs one or more covered functions and is not a supervised person as defined in the Act. Excluding supervised persons from the definition of a service provider allows advisers to avoid the costs of complying with the proposed rule in those circumstances where the service provider is subject to the supervision and control of the adviser and the requirements of the rule would be duplicative.

Clients and investors would benefit from this minimum and consistent regulatory framework for identifying, mitigating, and managing risks associated with outsourced functions. They would benefit through reduced risks of operational failures including broad or systemic operational failures, reduced risk of fraud associated with outsourced functions, reduced risks from potential or actual conflicts of interest, improved confidence for clients and investors that advisers will be able to carry out their regulatory obligations,

[168] For example, for an adviser who lacks experience in algorithmic-based trading but has retained an algorithmic trading firm and outsourced certain trading activity to that firm, clients and investors may benefit substantially from new requirements for risk analysis and due diligence on the part of the adviser. While the adviser would not need to fully understand the technical intricacies of the algorithmic trading service, it generally would need to have a reasonable understanding of the service and its associated risks, and be able to conclude that it can mitigate and manage those risks. *See supra* section II.B for more discussion.

[169] *See supra* section III.B.2. While clients and advisers could price these risks into their contracts for advisory services through premiums for insurance coverage for operational failures, this would require clients and advisers to agree on the scope of coverage required.

[170] *See* Standard of Conduct Release, at 31–32, *supra* footnote 21. An adviser's fiduciary duty can mitigate these agency problems and reduce agency costs by deterring investment advisers from taking actions that expose them to legal liability.

[171] *See supra* section III.B.2, *see also, e.g.,* Bengt Holmstrom, *Moral Hazard and Observability,* 10 Bell J. of Econ. 1 (1979). (''It has long been recognized that a problem of moral hazard may arise when individuals engage in risk sharing under conditions such that their privately taken actions affect the probability distribution of the outcome . . . . The source of this moral hazard or incentive problem is an asymmetry of information among individuals that results because individual actions cannot be observed and hence contracted upon.''); Bengt Holmstrom, *Moral Hazard in Teams,* 13 Bell J. of Econ. 2 (1982). (''Moral hazard refers to the problem of inducing agents to supply proper amounts of productive inputs when their actions cannot be observed and contracted for directly.'').

[172] *See supra* section I.A.

[173] *See supra* section III.B.2.

[174] *See supra* section III.B.2.

[175] *See* Andreu Mas-Colell, et. al., Microeconomic Theory (Oxford University Press)(1995), at Chapter 11, for a general discussion of externalities. Through the lens of the theory of externalities and public goods, we believe that due diligence is equivalent to a public good supplied at a suboptimal quantity, which may be improved by the current proposed rule.

and greater regulatory transparency and resulting effectiveness of the Commission's client and investor protection efforts.[176] Clients and investors may additionally benefit from a reduction in operational risk as a result of service providers electing to update or reform their operations in response to adviser oversight. These benefits may vary across advisers and across covered functions. For example, benefits may be minimal for advisers who outsource very few covered functions. By contrast, and as mentioned above, benefits may be substantial for advisers who outsource functions that are of significance to investment performance but are new or experimental functions for which the adviser has limited expertise or experience, such as algorithmic-based trading or use of predictive data analytics.

The costs of the proposed rules would include the costs of meeting the minimum regulatory requirements of the rules, including the costs to advisers of updating, as appropriate, their compliance programs in response to the due diligence, monitoring, and record keeping requirements. For SEC-registered investment advisers, the costs would also include the costs of updating their Form ADV filings to include the new required reporting. To the extent advisers currently outsource covered functions, the cost of outsourcing covered functions is typically borne by advisers—some or all of which, may be passed on to clients. Under the proposed rule, compliance costs would be borne by advisers that currently outsource covered functions or that may outsource covered functions in the future. For example, and as an initial matter, advisers would incur costs associated with determining if outsourced functions are subject to the requirements of the proposed rule. Those advisers, in turn, may attempt to pass costs on to their clients. The ability of advisers to pass compliance costs to their clients may depend on the willingness of clients to incur those additional costs. Further, service providers of covered functions would incur costs outside of their normal course of business as a result of adviser requests for information to comply with their due diligence and monitoring requirements of the proposed rule. These costs would likely lead to some service providers charging additional fees to advisers, some or all of which may be passed on to advisers' clients.

We believe the costs of the proposed rules would be limited by several factors. First, some advisers may already meet certain portions of the obligations that would be required under the proposed rules in the course of complying with existing legal obligations,[177] and their costs would only include the costs associated with obligations they do not already meet. Second, certain advisers may determine that the costs of completing a function themselves with equal efficiency and quality as their service provider are less than the costs of the service provider plus the regulatory oversight costs. For these advisers, the costs of the proposal would be no greater than the costs associated with transitioning to completing the function themselves, as this choice would place the covered function in the purview of a supervised person of the adviser, and therefore outside of the scope of the proposed rule. However, this mitigating factor may be less relevant for smaller advisers, who may be less able to perform their outsourced functions themselves with equal efficiency and quality as their service provider.

Our discussion in section III.D below describes in more detail how each of the benefits and costs would result from each of the elements of the proposed rules.

D. Benefits and Costs

1. Due Diligence

The proposed rule would require advisers to conduct reasonable due diligence before engaging a provider.[178] Through this due diligence, advisers would be required to: (i) identify the nature and scope of the covered function the service provider is to perform; (ii) identify and determine how it would mitigate and manage the potential risks to clients or to the investment adviser's ability to perform its advisory services, resulting from engaging a service provider to perform a covered function and engaging that service provider to perform the covered function; (iii) determine that the service provider has the competence, capacity, and resources necessary to perform the covered function in a timely and effective manner; (iv) determine whether the service provider has any subcontracting arrangements that would be material to the service provider's performance of the covered function, and identifying and determining how the investment adviser will mitigate and manage potential risks to clients or to the investment adviser's ability to perform its advisory services in light of any such subcontracting arrangement; (v) obtain reasonable assurance from the service provider that it is able to, and will, coordinate with the adviser for purposes of the adviser's compliance with the Federal securities laws; and (vi) obtain reasonable assurance from the service provider that it is able to, and will, provide a process for orderly termination of its performance of the covered function.[179]

a. Benefits

A minimum and consistent due diligence framework would benefit clients and investors through reduced risks of operational failures including broad or systemic operational failures, reduced risk of fraud associated with outsourced functions, and greater regulatory transparency and resulting effectiveness of the Commission's client and investor protection efforts.[180] Clients and investors may additionally benefit from a reduction in operational risk as a result of service providers electing to update or reform their operations in response to adviser oversight. These benefits may vary across advisers and across covered functions. For example, benefits may be minimal for advisers who outsource very few covered functions. By contrast, and as mentioned above, benefits may be substantial for advisers who outsource functions that are of significance to investment performance but are new or experimental functions for which the adviser has limited expertise or experience. Certain prongs of the proposed due diligence requirement of the rule would provide further individualized contributions to these benefits, to the extent that advisers do not already complete each of the proposed requirements in response to the competitive market forces they face, their reputational considerations, or their fiduciary duties.[181]

First, because advisers must determine the nature and scope of any covered function that a service provider is to perform,[182] advisers would be required to have a basic understanding of what the service provider will do and how they will do it. This preliminary step would enhance the effectiveness of any other component of an adviser's due diligence process, including the

[176] *See supra* section I.A, III.B.2; *see also infra* section III.D.4. For example, the Commission staff have observed some advisers unable to provide timely responses to examination and enforcement requests because of outsourcing.

[177] *See supra* section III.B.3.

[178] *See* proposed rule 206(4)–11(a)(1).

[179] *See supra* section II.B. The benefits and costs of the required recordkeeping provisions associated with due diligence are discussed in section III.D.3.

[180] *See supra* section III.C.

[181] *See supra* sections III.B.2, III.C.

[182] *See supra* section II.B.1.

proposed required framework, by ensuring that the adviser has taken basic steps to prepare to actively engage with the service provider to address issues as they arise. These benefits may be particularly pronounced in the case of new or experimental functions for which the adviser has limited expertise or experience. Additionally, analyzing the nature and scope of a covered function could allow for early implementation of safeguards in response to identified vulnerabilities, which could benefit clients by reducing the risk of harm arising from preventable performance shortfalls by service providers. For example, if an adviser seeks to outsource portfolio management activity, it may discover through its nature and scope analysis that its clients' personally identifiable information may be exposed, or that the service provider would be subject to a conflict of interest with another adviser. The adviser could then either take steps to mitigate and manage these risks or choose to retain directly supervised persons to manage its advisers' portfolios.

Second, the proposed rule would require an adviser with an outsourced covered function to identify and determine how it would mitigate and manage the potential risks of outsourcing. This would include an analysis of the general risks of outsourcing a covered function, as well as the particular risks of the specific service provider selected by the adviser.[183] Potential client harm caused by a service provider's failure to perform (or a service provider performing negligently) the outsourced function could be significantly mitigated, or even avoided, if the adviser conducts appropriate risk analysis, mitigation, and management prior to outsourcing a function.

Third, by requiring advisers to determine service providers have the competence, capacity, and resources necessary to provide the services they offer in a timely and effective manner, the proposed rule could benefit advisers' clients through early identification of a variety of risks associated with the service provider's business. Clients and investors would benefit, because outsourcing an investment adviser's function to a service provider without the necessary competence, capacity, and resources to perform that function can undermine the adviser's provision of services and mislead or otherwise harm clients.

We believe that the lack of any of these elements in a service provider can hinder the ability of an adviser to outsource to that service provider and also remain consistent with the adviser's fiduciary duty to its clients. For instance, an adviser may discover a service provider of a labor-intensive service has insufficient staff, or that a service provider lacks sufficient specialized systems or equipment to carry out a particular technical function. These conditions may be contrary to the client's understanding of their agreement with the adviser, because the adviser is responsible for these operations even though the service is outsourced. In these cases, both the adviser and its clients would benefit from the opportunity to identify a more appropriate provider of the covered function in question, though these benefits may be mitigated to the extent that identifying such a provider is costly.[184]

Fourth, operational risks may be heightened in instances where a service provider uses many subcontractors or when a service provider switches subcontractors for arrangements that are material to the performance of the covered function. The proposed rule is designed to mitigate this heightened risk by including subcontracting arrangements in the scope of an adviser's required due diligence and requiring the adviser to mitigate and manage potential risks in light of the subcontracting arrangements, provided the subcontracting arrangement is material to the service provider's performance of the covered function. This additional layer of required due diligence can provide more oversight and visibility into the full set of functions managed by service providers. For example, this component of the proposed due diligence would provide greater oversight and visibility into an arrangement in which a service provider that provides trading platform services engages a subcontractor to write software code, test the software, or retrieve data for use on the trading platform.[185] In turn, clients and investors may benefit from the opportunity to evaluate the risks presented by a service provider that might otherwise be hidden in the service provider's set of subcontractors.

Fifth, by requiring advisers to obtain reasonable assurance from their service providers of coordination for purposes of the advisers' compliance with the Federal securities laws, the proposed rule would likely improve confidence for clients and improve communications between advisers and service providers. When advisers set clear processes and ground rules with their service providers in order to remain compliant with the Federal securities laws, clients may have additional confidence that their advisers will be able to carry out their regulatory obligations. Additionally, obtaining such reasonable advance assurance from service providers may lead to more efficient and effective lines of communication between advisers and their service providers. This improved communication between advisers and service providers may be especially helpful to advisers to mitigate client harm in times of market stress and where a service provider is not be directly subject to the Federal securities laws and therefore is unaware of the potential impact of their services on the adviser's compliance with those obligations.

Sixth, the orderly termination requirement may have the benefit of mitigating the risk to clients that advisory services are abruptly disrupted due to an agreement between the client's adviser and a service provider being terminated. It also may decrease the risk that an adviser will find itself unable to comply with the Federal securities laws in the event of such a disruption. By compelling advisers to prepare for an orderly termination, the rule may prevent heightened costs of staying compliant with the Federal securities laws or maintaining good business practices in a disorderly termination. Further, by potentially increasing the protection of confidential or sensitive information during or after termination, such as the return or destruction of documents or revocation of service provider access or privileges, the rule may give clients and investors more confidence in procuring advisory services from registered investment advisers. Finally, to the extent that the rule requires reasonable assurance of termination rights and processes, the rule may reduce costly legal disputes between these parties. For example, these risks may be heightened in the case where an adviser terminates a service provider covering valuation services, where the process of transitioning client accounts may result in those accounts falling out of compliance with valuation requirements. By compelling advisers to prepare for an orderly termination, the

[183] *See supra* section II.B.2.

[184] These circumstances may particularly arise in the context of affiliated service providers where a parent entity determines that an adviser must purchase services or otherwise consume services from the parent or from another affiliate. The adviser that is outsourcing, if permitted to do its own analysis, might have opted to use a different provider or not to outsource at all.

[185] *See supra* section II.B.4.

rule would help to protect clients from inaccurate valuations of their assets, it would help to protect clients from misappropriation of confidential or sensitive information regarding their portfolio holdings, and it would help to ensure proper transfer and retention of records, among other protections.[186]

The magnitude of the benefits would depend on the extent of advisers' current due diligence functions that they complete in response to the competitive market forces they face, their reputational considerations, or their fiduciary duties.[187] Advisers that currently engage service providers may already have the proposed processes or similar processes in place.[188] To the extent advisers currently have processes in place that would be in compliance with the proposed rule, the client and investor protection benefit of the proposed due diligence processes would be diminished.[189]

b. Costs

Similar to the benefits, the magnitude of the costs would depend on the extent of advisers' current due diligence on their covered functions.[190] However, most advisers would likely face certain minimum costs, as even an adviser who conducts little outsourcing or who already conducts substantial due diligence in accordance with their fiduciary duty would likely still undertake a careful review in order to confirm that they are in compliance with the rule.[191]

Service providers would also face increased costs as a result of these due diligence requirements, which may be partially or fully passed on to advisers. These would include costs to service providers who respond to requests from advisers for information or otherwise participate in the adviser's due diligence, costs to service providers to update or reform their operations, as well as costs to negotiate or re-negotiate service arrangements. These requirements would involve senior business, legal and compliance personnel, external costs for counsel, and potential costs for hiring of additional personnel to help with these burdens. Any portion of the resulting costs that is not borne by service providers would ultimately be passed on to advisers,[192] and may in turn be passed on to clients and investors.

These costs are likely to be high initially, and decline over time as advisers develop their due diligence systems.[193] However, ongoing costs of the proposed due diligence requirements would not decline to zero over time. Advisers would face ongoing annual due diligence costs, separate from their monitoring costs, when they change service providers, renegotiate contractual relationship with service providers, change which of their functions they outsource, or implement other such changes that require new due diligence. Advisers would also face certain costs anytime they consider implementing such changes to their business, even if they do not proceed with the change, because part of their necessary evaluation of the business decision would include evaluating the due diligence they would need to undertake.

In addition, some advisers may choose to update their systems and internal processes and procedures for due diligence in order to better respond to this requirement. These updates may require the time and attention of business and operational personnel, which may detract from their regular functioning. Additionally, business and operational personnel may incur costs that arise from negotiating contractual safeguards with service providers in order to comply with due diligence requirements. The costs of those improvements would be an indirect cost of the rule, to the extent they would not occur otherwise, and they are likely to be higher initially than they would be on an ongoing basis. Finally, as noted in section III.C above, the collective costs of this proposal are unlikely to exceed the cost to the adviser of providing the covered function in-house, as this choice would place the covered function in the purview of a supervised person of the adviser, and therefore outside of the scope of the proposed rule.[194] However, to the extent that an adviser responds to the proposed due diligence rules by providing a covered function in-house and does so less efficiently or at a lower quality than a service provider would, this loss of efficiency or quality would represent an additional burden of the proposed rule. Similarly, there may be cases where advisers currently have multiple service providers, but the due diligence costs would cause an adviser to reduce its reliance to only a single provider, even if it would result in less reliable or lower quality service to the adviser's clients, because of the costs to properly diligence a provider. Any portion of these costs that is not borne by advisers would ultimately be passed on to clients and investors.

Similar to the benefits, there would be individualized costs associated with certain prongs of the proposed due diligence requirements.

First, because determining whether a function is a covered function at all requires an analysis of the facts and circumstances of the function,[195] advisers generally may have to undertake legal and other expenses to evaluate which of their functions are covered functions and thus in the scope of the rule. This analysis may be particularly costly for certain functions for which it may require thorough investigation to evaluate whether the function is necessary for the adviser to provide investment advisory services, or for which it may require thorough investigation to evaluate whether there would be a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services if the function was not performed, or if performed negligently. Advisers may also face additional costs to the extent they conservatively evaluate their outsourced functions, and ultimately conduct the proposed required due diligence activities on functions that may not be covered

[186] *See supra* section II.B.6.

[187] *See supra* sections III.B.2, III.C.

[188] *See supra* section III.B.3.

[189] With respect to the proposed compliance coordination requirements in particular, advisers that engage service providers today may already be taking steps to mitigate the risk that these arrangements do not impede an adviser's ability to remain compliant with the Federal securities laws. The benefits of the proposed compliance coordination requirement would therefore be lessened the more advisers currently satisfy the proposed requirement.

[190] *See supra* section III.B.3, III.C.

[191] For example, an adviser who already conducts substantial due diligence would still need to review their due diligence processes to confirm that their processes constitute appropriate risk analysis, mitigation, and management. *See supra* section II.B.2.

[192] The division of the service provider's direct costs between the service provider and the adviser would depend primarily on the relative bargaining power of the two parties. In certain cases, the service provider may accommodate adviser requests without charging additional fees or raising prices. This may particularly be the case for smaller service providers, who may have less bargaining power relative to their adviser customers. In other cases, the service provider may charge the full amount of their increased costs as a fee to the adviser. This may particularly be the case for smaller advisers, who may have less bargaining power relative to their service providers.

[193] The costs estimated in this section are associated with actually conducting the proposed due diligence requirements, and are thus in addition to the PRA costs discussed below, which are limited to the collection of information costs of the proposed recordkeeping requirements associated with the proposed due diligence requirements. *See infra* section IV.

[194] *See supra* section III.C. However, this mitigating factor may be less relevant for smaller advisers, who may be less able to perform their outsourced functions themselves with equal efficiency and quality as their service provider.

[195] *See supra* section II.A.1.

functions.[196] As such, any costs of the proposed rule to service providers may additionally be faced by certain service providers who would be outside the scope of the rule, to the extent that advisers retaining their services conservatively determine they should exercise additional due diligence on them.

Second, for the purposes of the due diligence on nature and scope of covered functions, time and personnel costs may be necessary to obtain a sufficient understanding of the covered function to be outsourced. Fundamentally, an adviser may outsource a covered function if it is more efficient than devoting internal resources, or if the service provider can provide higher quality operations.[197] To a lesser degree, the required nature and scope analysis may be costly, particularly when more complex or technical functions must be understood. This cost may present a necessary change in personnel duties whenever covered functions are considered for outsourcing, or as additional hiring of third-party experts to evaluate the processes of potential service providers if the adviser lacks the requisite experience to make an informed evaluation with available personnel. Similarly, service providers may incur costs associated with responding to requests for information from advisers, whether in the form of internal staff time, or costs of third parties providing independent assessments, and service providers may pass some or all these costs on to advisers, who may in turn pass on these costs to their clients and investors.

Third, to the extent advisers' current processes for service provider risk analysis, mitigation, and management differ from the proposal, there would be direct costs necessary to comply with the specific proposed requirements. Also, to the extent that they are not already doing so in a manner that would meet the proposed rule's standards, advisers would incur costs to mitigate and manage any additional conflicts of interest created by outsourcing covered functions. The above costs would include demands on personnel time to verify that the depth and complexity of the analysis is consistent with the adviser's assessment of risks associated with the function being outsourced. There are a variety of paths that advisers could take to complete these requirements and meet these demands, and the costs would depend on the adviser's chosen route. For example, an adviser also could establish a redundancy in the outsourced service or function, such as by arranging a secondary pricing provider to provide pricing services in the event a primary pricing service provider fails, and could be used to validate accuracy and identify potential anomalies in the data provided by the primary pricing provider.[198] Such redundancy would increase costs to clients and investors, or could deter some advisers from engaging such third parties (even when it might be beneficial to offer clients and investors access to those services).

Fourth, to the extent advisers' processes for lessening the risks associated with service providers' competence, capacity, and resources differ from the proposal, there would be direct costs necessary to comply with the proposed requirements. The cost of complying with this new requirement would be limited to the additional costs necessary to bring current practice into compliance with the proposed rule. Because this analysis should be based on the facts and circumstances of the functions being outsourced, costs will likely vary across functions that are being outsourced, but there will also be specific costs required to analyze the facts and circumstances of each function being outsourced. For example, if outsourcing a function is determined to be high risk due to the complexity of the function, the adviser may want to focus on the experience and expertise of the service provider's personnel. If the function is labor intensive, the adviser may consider whether the service provider has the necessary staffing to provide the function. The costs associated with these two circumstances are likely to be different. These requirements may also result in additional costs to service providers, to the extent they revise their practices in order to satisfy an adviser's requests to ensure that the service provider has the competence, capacity, and resources necessary to perform the covered function in a timely and effective manner.

Fifth, for large service providers, there may be many subcontractors that materially contribute to the service provider's covered function. In such cases, it may be more burdensome for advisers to assess the potential risks each of these subcontracting arrangements may pose to the service provider's provision of the covered function. Similar to the costs associated with evaluating the nature and scope of covered functions, there may be extra costs to advisers in the case where it is ambiguous which subcontractors are material to the service provider's ability to perform the covered function. Further, advisers may face difficulty in getting providers or subcontractors to cooperate with risk assessment efforts. Lastly, depending on the amount of non-advisory business a service provider has, there may be a risk that a service provider would discontinue business with advisers rather than cooperate with the adviser's risk-assessment efforts to conduct due diligence on sub-contractors.

As a closely related matter, and in addition, cooperating with advisers' assessment of subcontracting arrangements may impose additional time and effort costs on service providers. In particular, service providers may face costs associated with determining which of their own subcontractors' services are material, meaning that nonperformance or negligent performance would be reasonably likely to cause a significant negative impact on the service provider's ability to perform the covered function.[199] These would include similar costs that advisers would face in determining which outsourced operations are covered functions, including extra costs to service providers where it is ambiguous which subcontractors' services would be material to their ability to perform the covered function.

Sixth, in the case of the compliance coordination requirement, direct involvement by business or operational personnel may be required to ensure that reasonable assurance of coordination for purposes of the adviser's compliance with the Federal securities laws has been obtained from service providers. Similarly, service providers may face costs in providing this reasonable assurance to advisers, requiring time of senior business, legal, and compliance personnel, as well as external costs for counsel. We expect such costs to be potentially high initially, but decrease over time as advisers adopt more streamlined systems to obtain this reasonable compliance. However, there may be instances in which advisers encounter reluctance from service providers to commit to cooperating. For instance, large service providers with many non-adviser customers, such as general cloud computing service providers, may be unwilling to accommodate as-needed unscheduled due diligence or

[196] The Commission requests comment on whether the proposed rule should explicitly list certain service providers or covered functions that the rule would apply to. *See supra* section II.A.

[197] *See supra* section III.B.2.

[198] *See supra* section III.B.2.

[199] *See supra* section II.B.4.

monitoring requests by individual customers. In such cases, these service providers may either not do business with advisers or assess additional fees (which may be passed on to clients) to help advisers comply with the Federal securities laws. Finally, it is possible that some service providers, who are not themselves regulated by the Commission, may provide certain assurances to the adviser of compliance with the Federal securities laws and then simply fail to deliver on those assurances, resulting in an adviser needing to implement an unexpected and sudden termination of the service provider or transfer of operations to a different service provider, which we expect would be costly to the adviser and its clients.[200]

Lastly, if service providers perceive the requirement to provide reasonable assurance that they can terminate their services in an orderly fashion to be too burdensome, or if they believe such assurance would not be reasonable, they may choose not to enter into agreements with registered advisers. In this case, advisers may be left with a limited selection of service providers, which may increase the costs or lower the overall quality of services. To the extent that additional costs outside of their normal course of business are required to provide such reasonable assurance to advisers, service providers would likely charge additional fees, some or all of which may be passed on to adviser's clients. Finally, the costs imposed by the orderly termination requirement may provide an incentive for certain advisers to avoid discontinuing business relationships with inefficient or low-quality service providers.[201] However, this outcome may be unlikely, as the continued monitoring requirements described above would require advisers to reasonably determine that it remains appropriate to outsource to the service provider.[202]

We estimate the direct costs to advisers associated with the proposed due diligence requirements, including legal expenses for an adviser to identify its covered functions and service providers, legal expenses for review of contracts to determine the nature and scope of the services provided for those covered functions, time and personnel costs to obtain a sufficient understanding of the covered function to be outsourced, securing of various reasonable assurances from service providers (which could be provided through written agreements, correspondence, or other written documentation, or through oral negotiations), and additional legal costs to review subcontracting arrangements, among others.

Because the nature and magnitude of these expenses are likely to vary across advisers and across covered functions, in particular because many advisers likely already satisfy many of the proposed requirements for due diligence processes as a result of competitive market forces and resulting reputational effects on individual advisers and in accordance with their fiduciary duty or other applicable law,[203] we anticipate a range of possible costs of the rule. At minimum, we estimate that the proposed due diligence requirements would be completed by compliance managers ($339/hour), a chief compliance officer ($580/hour), attorneys ($455/hour), assistant general counsel ($510/hour), junior business analysts ($191/hour), senior business analysts ($300/hour), paralegals ($199/hour), senior operations managers ($400/hour), operations specialists ($150/hour), compliance clerks ($77/hour), and general clerks ($68/hour).[204] Certain advisers may need to hire additional personnel to meet these requirements.

Advisers would face initial, one-time direct costs associated with coming into compliance with the proposed due diligence requirements, as well as ongoing annual direct costs associated with the due diligence requirements. As discussed throughout this section, the initial, one-time direct costs associated with coming into compliance with the proposed due diligence requirements are likely to be higher than the ongoing annual costs. For example, to the extent that advisers analyze the facts and circumstances analysis of each outsourced function, advisers may face substantial initial costs in determining their full set of covered functions.[205]

To estimate monetized costs to advisers, we multiply the hourly rates above by estimated hours per professional. We estimate that on average, advisers would require at a minimum 40 hours of time from each of the personnel identified above as an initial burden in coming into compliance with the proposed rule, assuming an average of 8 hours per covered function and five covered functions per adviser.[206] As noted above, we believe it is likely that these minimum costs would be required even for an adviser who conducts little outsourcing or who already conducts substantial due diligence in accordance with their fiduciary duty, because such an adviser would likely still undertake a careful review in order to confirm that they are in compliance with the rule.[207] For example, we believe the substantial majority of, if not all, advisers would elect to prepare some form of written agreement with their service providers as part of their means of complying with the proposed due diligence requirements.

These minimum-cost assumptions indicate a one-time initial burden of 440 total labor hours and $132,320 per adviser, or a total one-time initial burden of 6,492,640 labor hours and $1.953 billion across all advisers.

As noted above, certain due diligence costs would be ongoing, separate from monitoring costs. These include costs associated with the adviser changing service providers, renegotiating contractual relationship with service providers, changing which of their

[200] However, these costs would potentially be mitigated by the proposed rule's requirement that advisers obtain reasonable assurance from the Service Provider is able to, and will, provide a process for orderly termination of its performance of the covered function. *See supra* section II.B.6.

[201] Advisers may particularly avoid discontinuing business relationships with inefficient or low-quality service providers to the extent that the proposed rule would reduce the population of viable service providers, either by preventing service provider entry, causing certain service providers to exit because of their increased costs, or causing service provider fees to increase. *See infra* section III.E.2.

[202] *See supra* section II.B.6.

[203] *See supra* section III.B.3.

[204] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See infra* section IV.

[205] *See supra* section II.A.

[206] For certain of these categories of professionals, these hours may be imposed on two professionals of each, who would face one-time costs of 20 hours each. Other categories may require four professionals who would face one-time costs of ten hours each. For some, such as the Chief Compliance Officer, these hours would come/originate from one staff member. While there are no publicly available granular data on adviser outsourcing of operations that would be covered functions, this assumption is consistent with frequent outsourcing of custodial, administrative, prime brokerage, auditing, and recordkeeping services among RIAs. *See supra* section III.B.1; *see also infra* section IV. Service providers may also face direct costs, such as personnel costs for providing reasonable assurances to advisers, but for the purposes of estimating minimum costs to advisers, we assume that service provider costs are not passed on to advisers. Individual estimates correspond to the aggregated average cost per adviser, where the average is taken across all advisers. Some advisers, particularly the smallest advisers or those who do no outsourcing, are likely to face costs that are below this lower bound for the average cost across all advisers.

[207] Also as noted above, an adviser who conducts substantial due diligence would still need to review its due diligence processes to confirm its processes constitute appropriate risk analysis, mitigation, and management. *See supra* section II.B.2.

functions they outsource, implementing other such changes that require new due diligence, or evaluating a need to implement any of these changes. We estimate that the ongoing annual burden of the due diligence requirement would be one-third the initial burden,[208] resulting in minimum-cost ongoing annual burden of 146.67 labor hours and $44,106.67 per adviser and 2,164,213 labor hours and $650,837,973 across all advisers.

However, many due diligence costs would be likely to be higher for certain advisers. Larger advisers, with more outsourcing of covered functions, may have greater costs. An adviser needing to revise its existing practices, needing to hire new personnel, choosing to switch service providers in response to the rule, and multiple other factors may cause costs to increase as well. The factors that may increase due diligence costs are difficult to quantify. For example, an adviser may implement a policy that prevents the adviser from retaining a service provider that primarily relies on subcontractors to perform the covered function, or implement a procedure to audit the service provider's oversight of its subcontractors. These internal adviser policy limitations or audits may represent additional costs, such as increased prices for using service providers. Similarly, any audit procedure would entail audit fees or costs for new personnel. As another example, as noted above, certain advisers may elect to retain a secondary pricing provider to provide pricing services in the event a primary pricing service provider fails, and could be used to validate accuracy and identify potential anomalies in the data provided by the primary pricing provider, even though no such secondary pricing provider would be required by the proposed rules.[209]

While the potential sources of increased costs are difficult to quantify, we anticipate that very few advisers would face a burden that exceeds three times the above-described minimum burden. To the extent that the average adviser faces this upper bound of three times the minimum burden, this would indicate that a potential upper bound for due diligence costs would be initial costs of 1,320 hours and $396,960 per adviser and 19,477,920 hours and $5.858 billion across all advisers, and ongoing annual costs of 440 hours and $132,320 per adviser and 6,492,640 hours and $1.953 billion across all advisers.[210] We request comment on all aspects of this quantification, including the minimum estimated burden represented here and any range of costs that could hold for different advisers.[211]

Additional direct costs would be generated by the impact of the proposed rules on service providers, distinct from those costs directly faced by advisers as a result of the proposed due diligence requirements. Some of these costs would result from responding to adviser requests for information, as noted in this section. These costs may include the time of service provider personnel required in communicating directly with the adviser, understanding the nature of the requests, and compiling the information to be provided. Larger service providers serving many advisers may benefit from economies of scale in responding to these informational requests, as similar information may be requested by multiple advisers. Additionally, there would be costs to service providers who elect to update or reform their operations due to increased adviser due diligence resulting from this rule.[212] Similar to costs for information requests, larger service providers may be able to update or reform their operations with greater economies of scale than smaller service providers.

We are unable to quantify these direct costs that would be incurred by service providers as a result of this rule, as the cost range would be too wide to be informative. In particular, the direct costs that would be incurred by service providers are subject to substantially greater uncertainty than the direct costs that would be incurred by advisers. This uncertainty is due to a number of factors, including variation in complexity of covered functions outsourced to service providers, the degree of market concentration across service provider markets (and hence the number of advisers a service provider may need to work with to comply with the rule), and variation in current service provider practices. The costs to any single service provider of meeting the burden for any single covered function for any single adviser may therefore have substantial variance. For example, if few service providers perform a particular covered function, those service providers may perform the same covered function for many advisers and hence benefit from economies of scale. By contrast, for service providers in less concentrated industries, the rule would potentially impose higher costs per service provider. The costs to service providers would also depend on the degree to which service providers are able to increase their prices and pass those costs on to advisers. We request comment on any data that could enable us to calculate the effect of the proposed rule on service providers.[213]

2. Monitoring

The proposed rule would require the adviser, once a service provider has been engaged, to periodically monitor the service provider's performance of the covered function and reassess the retention of the service provider in accordance with the due diligence requirements of the proposed rule with such a frequency that the adviser can reasonably determine that it is appropriate to continue to outsource the covered function and that it remains appropriate to outsource the covered function to the service provider.[214] The manner and frequency of an adviser's monitoring would depend on the facts and circumstances applicable to the covered function, such as the materiality and criticality of the outsourced function to the ongoing business of the adviser and its clients. We discuss the benefits and costs of the proposed monitoring requirement of the rule below.

a. Benefits

Advisers' clients rely on adviser monitoring of service providers for prevention and timely detection of potential harms resulting from operational risk and conflicts of interest, including ensuring their clients are continuing to receive advisory services. The enhanced client and investor protections resulting from the proposed periodic monitoring requirement would benefit clients to the extent that requiring such periodic monitoring mitigates operational risks and risks posed by conflicts of interest, or reduces the effect of negative outcomes, should they occur. For example, periodic monitoring of service providers' performance would allow advisers to evaluate service providers' performance over time, comparing current to past performance and more easily identifying any changes or trends in that performance, and taking remedial action where appropriate. As with the other

[208] *See infra* section IV.

[209] *See supra* section II.B.2.

[210] Individual estimates correspond to the aggregated average cost per adviser, where the average is taken across all advisers. Some advisers, particularly the largest advisers, are likely to face costs that substantially exceed this upper bound for the average cost across all advisers.

[211] *See infra* section III.G.

[212] *See supra* section III.D.1.a.

[213] *See infra* section III.G.

[214] *See supra* section II.C. The benefits and costs of the required recordkeeping provisions associated with monitoring are discussed in section III.D.3.

components of the proposed rules, the proposed monitoring rule would thereby benefit clients and investors through reduced risks of operational failures including broad or systemic operational failures, reduced risk of fraud associated with outsourced functions, reduced risks from potential or actual conflicts of interest, and greater regulatory transparency and resulting effectiveness of the Commission's client and investor protection efforts. Clients and investors may additionally benefit from a reduction in operational risk as a result of service providers electing to update or reform their operations in response to adviser oversight. These benefits may vary across advisers and across covered functions. For example, benefits may be minimal for advisers who outsource very few covered functions. By contrast, and as mentioned above, benefits may be substantial for advisers who outsource functions that are of significance to investment performance but are new or experimental functions for which the adviser has limited expertise or experience.

The magnitude of the benefit would depend on the extent to which advisers currently periodically monitor the service provider's performance and reassess their due diligence in response to the competitive market forces they face, their reputational considerations, or their fiduciary duties.[215] While advisers are not required to have specific processes in place today, as fiduciaries, and as a matter of business practice, advisers that engage service providers today should be monitoring those providers.[216] To the extent advisers currently have such, or similar, processes in place, and to the extent those processes include all of the elements required by the rule, the client and investor protection benefit of the requirement would be lessened. However, this factor would not mitigate the broader benefits of clients and investors being able to consistently rely on the existence of a minimum and consistent framework for identifying, mitigating, and managing risks associated with outsourced functions.

b. Costs

Advisers' current processes for monitoring service providers may differ from those specified by the proposed rule. The cost of complying with this new requirement would be limited to the additional costs necessary to comply with the more specific requirements of the proposed rule.[217] These costs would include demands on personnel time to verify that an adviser's monitoring of service providers is in compliance with the proposed rule. As with due diligence requirements, periodic monitoring would also impose distinct costs on service providers associated with service provider time and cooperation with adviser requests for information, costs to update or reform their operations in response to adviser oversight, and costs to negotiate or re-negotiate service arrangements. Any portion of the resulting costs that is not borne by service providers would ultimately be passed on to advisers.[218] Likewise, any portion of adviser costs that is not borne by advisers would ultimately be passed on to clients and investors.

Similar to the benefits, the costs associated with implementing this requirement are likely to vary depending on advisers' and service providers' current practices, as advisers may already engage in monitoring in response to relevant competitive market forces and resulting reputational effects on individual advisers. In addition, some advisers may choose to update their systems and internal processes and procedures for tracking their monitoring of service providers in order to better respond to this requirement, and some service providers may choose to update their systems and internal processes and procedures for responding to advisers' monitoring requests. These updates may require the time and attention of business and operational personnel, which may detract from their regular functioning. However, they are also likely to vary their monitoring based on the particular service provided. For instance, for information technology services, the implementation of automated scans or reviews of service provider data feeds, could require more significant costs upfront to the adviser with minimal maintenance costs. Additionally, business and operational personnel may incur costs that arise from negotiating contractual safeguards with service providers in order to comply with this due diligence requirement. The costs of those improvements would be an indirect cost of the rule, to the extent they would not occur otherwise, and they may be higher initially than they would be on an ongoing basis.

Other costs such as those associated with periodic meetings and ongoing monitoring are more likely to persist, instead of consisting of upfront costs that decline over time. For instance, some functions may require periodic onsite visits, and advisers may specify contractual obligations to approve new systems prior to implementation.[219] Similar to due diligence requirements, to the extent that an adviser responds to the proposed monitoring rules by providing a covered function in-house and does so less efficiently or at a lower quality than a service provider would, this loss of efficiency or quality would represent an additional cost of the proposed rule.[220] Similarly, there may be cases where advisers currently have multiple service providers, but the monitoring costs would cause an adviser to reduce its reliance to only a single provider, even if it would result in less reliable or lower quality service to the adviser's clients, because of the costs to properly monitor a provider. Advisers may also face additional costs to the extent they spend money and staff time on evaluating as well as enhancing their due diligence and monitoring for a broader range of their outsourced functions than they ultimately determine to be covered functions.[221]

Because the direct costs associated with the proposed monitoring requirements primarily constitute periodically monitoring the service provider's performance of the covered function and reassessing the due diligence requirements of the proposed rule, we anticipate that the costs of the monitoring requirements would be closely related to the costs of the due diligence requirements. In particular, we anticipate that the proposed monitoring requirements would require the same staff as the due diligence requirements: compliance managers ($339/hour), a chief compliance officer ($580/hour), attorneys ($455/hour), assistant general counsel ($510/hour), junior business analysts ($191/hour), senior business analysts ($300/hour), paralegals ($199/hour), senior operations managers ($400/hour),

[215] *See supra* sections III.B.2, III.C.

[216] *See supra* section III.B.3.

[217] The costs estimated in this section are associated with actually conducting the proposed monitoring requirements, and are thus in addition to the PRA costs discussed below, which are limited to the collection of information costs of the proposed recordkeeping requirements associated with the proposed monitoring requirements. *See infra* section IV.

[218] The division of the service provider's direct costs between the service provider and the adviser would depend primarily on the relative bargaining power of the two parties. *See supra* section III.D.1.b.

[219] *See supra* section II.C.

[220] As noted above, smaller advisers may be less able than larger advisers to provide a covered function in-house as efficiently and with equal quality as a service provider. *See supra* section III.C.

[221] The Commission requests comment on whether the proposed rule should explicitly list certain service providers or covered functions that the rule applied to. *See supra* section II.A.

operations specialists ($150/hour), compliance clerks ($77/hour), and general clerks ($68/hour).[222] As for the number of hours required for these personnel, we estimate that a typical adviser would face one third of its due diligence costs as additional monitoring costs. This indicates a lower bound for initial costs of 146.67 hours and $44,106.67 per adviser and 2,164,213 hours and $650,837,973 across all advisers, and a lower bound for ongoing annual costs of 48.89 hours and $14,702.22 per adviser and 721,404 hours and $216,945,991 across all advisers. This also indicates an upper bound for initial costs of 440 hours and $132,320 per adviser and 6,492,640 hours and $1.953 billion across all advisers, and an upper bound for ongoing annual costs of 146.67 hours and $44,106.67 per adviser and 2,164,213 hours and $650,837,973 across all advisers. We request comment on all aspects of this quantification, including the minimum estimated burden represented here and any range of costs that could hold for different advisers.[223]

As with the proposed due diligence requirements, we are unable to quantify the costs that would be incurred by service providers as a result of this rule, as the cost range would be too wide to be informative.[224]

3. Recordkeeping

We are proposing to revise the Advisers Act books and records rule in connection with the scope, due diligence, and monitoring provisions of the proposed rule, as well as provide four more general new requirements for outsourced recordkeeping.[225]

a. Benefits

The proposed recordkeeping requirements would benefit clients and investors by enabling an examiner to verify more easily that an adviser is in compliance with the proposed rule and to facilitate the more timely detection and remediation of non-compliance.[226] More generally, the recordkeeping requirements would enhance the transparency of outsourced services and enhance the Commission's oversight capabilities. Enhancing the Commission's oversight capabilities could benefit clients and investors through reduced risks of operational failures including broad or systemic operational failures, reduced risk of fraud associated with outsourced functions, reduced risks from potential or actual conflicts of interest, and greater regulatory transparency and resulting effectiveness of the Commission's client and investor protection efforts. For example, the required recordkeeping would assist with outreach, examination, or investigation into cases where a service provider who is providing trade execution is not adhering to policies and procedures concerning best execution.[227]

The proposed requirements for outsourced recordkeeping would further benefit clients and investors by mitigating the risk of loss, alteration or destruction of all records maintained by a third-party service provider, as well as ensuring access to these records for investment advisers and their clients and investors. While many investment advisers may already have service provider agreements or other arrangements that contain these standards as part of their policies and procedures or best practices to mitigate or manage risks the investment advisers identified when performing due diligence, we believe that clients and investors would benefit from a minimum and consistent framework for third-party recordkeeping that applies to all service providers to mitigate the risk of loss, alteration or destruction of records.

b. Costs

The proposed recordkeeping requirements would impose costs on advisers related to creating and maintaining the required records. The quantifiable costs include those that can be attributed to senior business analysts, attorneys, and compliance professionals who would review and familiarize themselves with requirements as specified in the proposed rules. In particular, advisers would be required to make and retain a list of covered functions and contributing factors, document their due diligence efforts, retain any written agreements with service providers, and document periodic monitoring of retained service providers. Pursuant to the Paperwork Reduction Act analysis, we anticipate across all 14,756 RIAs an initial cumulative burden of 206,584 hours with an initial cumulative cost of $60,477,466 associated with this recordkeeping requirement.[228] We anticipate on an ongoing annual basis across all 14,756 RIAs a cumulative burden of 2,985,903 internal annual hours with a cumulative annual cost of $237,527,702.[229] These quantified estimates are solely for the time, effort, and financial resources expended to generate, maintain, retain, or disclose or provide information to or for the adviser or Commission. These estimates are in addition to the direct costs, discussed above, that would be imposed by the proposed requirements for actually conducting additional due diligence and monitoring.[230]

Additionally, the proposed rules include third-party recordkeeping requirements, which would impose further costs on advisers. An adviser that outsources either the storage, retention, or creation of records to a third party would need to obtain reasonable assurances that the third party would be able to meet the standards discussed above.[231] These required standards would impose direct costs on advisers to the extent that they choose to outsource some or all recordkeeping to third-party providers. In particular, advisers may require time and effort of operational personnel to negotiate arrangements with third-party recordkeeping service providers to seek to ensure the standards enacted by this rule are met. Additionally, third-party providers of recordkeeping services would face costs associated with bringing their systems into compliance to the extent that they differ from the proposed third-party recordkeeping requirements.

Because the direct costs associated with the proposed third-party recordkeeping requirements primarily constitute activities with similar

[222] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See infra* section IV. Certain advisers may need to hire additional personnel to meet these requirements.

[223] *See infra* section III.G.

[224] *See supra* section III.D.1.b.

[225] *See supra* sections II.A.3, II.B.7, I.A.1, and II.E.

[226] Rule 206(4)–7 would already require advisers to adopt and implement written policies and procedures reasonably designed to prevent and detect violations of the proposed due diligence and monitoring requirements if adopted. However, rule 206(4)–7 does not enumerate specific elements that advisers would need to include in their written policies and procedures, as the proposed recordkeeping requirements would. *See supra* section I.A, III.B.3; *see also infra* section V.D. The Commission staff have observed some advisers currently unable to provide timely responses to examination and enforcement requests because of outsourcing. *See supra* section I.A.

[227] *See supra* section II.E.

[228] This burden corresponds to 88,536 hours with an initial cumulative cost of $25,918,914 for collection of information costs associated with making and retaining a list of outsourced covered functions and factors, plus 118,048 hours with an initial cumulative cost of $34,558,552 for collection of information costs associated with making and retaining records documenting the monitoring assessment. *See infra* section IV.B.

[229] *See infra* section IV.B.

[230] *See supra* section III.D.1.b, III.D.2.b.

[231] *See supra* section II.E.

principles as the proposed due diligence requirements, we anticipate that the costs of the third party recordkeeping requirements would be closely related to the costs of the due diligence requirements.[232] In particular, we anticipate that the proposed monitoring requirements would require the same staff as the due diligence requirements: compliance managers ($339/hour), a chief compliance officer ($580/hour), attorneys ($455/hour), assistant general counsel ($510/hour), junior business analysts ($191/hour), senior business analysts ($300/hour), paralegals ($199/hour), senior operations managers ($400/hour), operations specialists ($150/hour), compliance clerks ($77/hour), and general clerks ($68/hour).[233] As for the number of hours required for these personnel, we estimate that a typical adviser would face one fifth of its due diligence costs as additional third-party recordkeeping costs, as the estimated due diligence costs rely on an estimate of an adviser outsourcing five covered functions, and the burden of the third party recordkeeping requirements are approximately consistent with the due diligence burden on any other individual covered function.[234] This indicates a lower bound for initial costs of 88 hours and $26,464 per adviser and 1,298,528 hours and $390,502,784 across all advisers, and a lower bound for ongoing annual costs of 29 hours and $8,821 per adviser and 432,843 hours and $130,167,595 across all advisers. This also indicates an upper bound for initial costs of 264 hours and $79,392 per adviser and 3,895,584 hours and $1.172 billion across all advisers, and an upper bound for ongoing annual costs of 88 hours and $26,464 per adviser and 1,298,528 hours and $390,502,784 across all advisers. We request comment on all aspects of this quantification, including the minimum estimated burden represented here and any range of costs that could hold for different advisers.[235]

As with the proposed due diligence requirements, we are unable to quantify the costs that would be incurred by service providers as a result of this proposed rule, as the cost range would be too wide to be informative.[236] Any portion of the proposed required recordkeeping costs that is not borne by advisers would ultimately be passed on to clients and investors.

4. Form ADV

We are proposing to amend Form ADV to require advisers to identify their service providers that perform covered functions as defined in proposed rule 206(4)–11, provide their location, the date they were first engaged to provide covered functions, and state whether they are related persons of the adviser. For each of these service providers, we would also require specific information that would clarify the services or functions they provide.[237] Because Form ADV Part 1A is submitted in a structured, XML-based data language specific to that Form, the proposed information in proposed new Item 7.C would be structured (*i.e.,* machine-readable). We discuss the benefits and costs of the proposed Form ADV requirements of the rule below.

a. Benefits

The proposed Form ADV requirements would provide direct and indirect benefits to clients. Form ADV disclosure would benefit clients of advisers directly by making it less costly to gather information necessary for investors and other clients to conduct more comprehensive due diligence when deciding to hire or retain advisers, to the extent that their choice of adviser is impacted by outsourcing of covered functions to service providers as defined in proposed rule 206(4)–11. Investors in fund clients (such as private funds) would similarly benefit, to the extent they obtain Form ADV information.

Form ADV Part 1A is submitted using a structured data language (specifically, an XML-based data language specific to Form ADV), so the information in the new Item 7.C of Part 1A would be structured (*i.e.,* machine readable). Also, clients of advisers would be able to identify quickly and consider any implications of an adviser's use of a service provider or the outsourcing of any service or function. For example, clients that use multiple advisers for purposes of total return risk diversification could identify whether that diversification was lessened by all or many of their advisers relying on a single service provider, to the extent that their returns would be harmed by multiple advisers facing operational failures.[238] We also expect the use of this information may help clients of advisers protect themselves against losses resulting from a service provider failure or service provider fraud. For example, if a client experienced a system failure relating to a service provider, and the adviser has identified that provider as a service provider defined in rule 206(4)–11 and reported that provider in Form ADV, the client could determine more easily and quickly whether its adviser uses that service provider for a covered function and take remedial action such as contacting the adviser to understand how the adviser is managing the issue or choosing to move to a new adviser.

The proposed Form ADV requirements would also provide a benefit by facilitating the Commission in its oversight role. The disclosures would allow the Commission to understand better the investment advisory industry as well as enhance the ability of the Commission to evaluate and form regulatory policies and improve the efficiency and effectiveness of the Commission's oversight of markets for client and investor protection. For example, for service providers that advisers identify as service providers defined in rule 206(4)–11 on Form ADV, the information in the required Form ADV disclosures would provide the Commission with a better understanding of the material services and functions that advisers outsource to service providers, and would enhance our assessment of advisers' reliance on service providers for purposes of targeting our examinations. Also, the information would help the Commission identify advisers' use of particular service providers that advisers have identified that may pose a risk to clients and investors. Additionally, the disclosures would improve our ability to assess service provider conflicts and potential risks when identifying firms for examination. Finally, the ability to identify readily other advisers using such a service provider would allow the Commission to assess quickly and react to the

[232] There may be differences in the costs of recordkeeping as compared to due diligence, which would cause costs of recordkeeping to be higher than those estimated here. For example, the costs of implementing the proposed requirements as separate from the costs of obtaining reasonable assurances from recordkeeping requirements could require additional processes and personnel than those discussed here, and would result in greater costs.

[233] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. *See infra* section IV. Certain advisers may need to hire additional personnel to meet these requirements.

[234] *See infra* section IV.B.

[235] *See infra* section III.G.

[236] *See supra* section III.D.1.b.

[237] *See* proposed Form ADV, Part 1A, Item 7.C., and Section 7.C. of Schedule D.

[238] As discussed in section III.C, when multiple regulated entities use a common service provider, operational risk could become concentrated. The proposed Form ADV requirements would make it less costly for clients to gather information necessary to mitigate concentrated operational risk.

potential harm to advisory clients.[239] The proposed rules would thereby benefit clients and investors through the Commission's increased visibility into operational failures, greater regulatory transparency, and resulting effectiveness of the Commission's client and investor protection efforts.

b. Costs

The Form ADV requirements would require the disclosure of certain information that is not currently required in the Form. Costs would likely vary across advisers, depending on the nature of an adviser's business and its business model. For example, advisers that do not outsource functions or that outsource fewer functions would have fewer reporting requirements than advisers that outsource a large number of functions, to the extent that these functions would qualify as covered functions under the proposed rule. We believe, however, that much of the information we propose requiring would be readily available because we understand that it is information used by advisers in conducting their business.[240] Lastly, the requirement that information in Item 7.C of Part 1A of Form ADV be provided in a custom XML-based data language is unlikely, by itself, to impose costs on advisers because the XML-based data language is not new and applies to existing Form ADV Part 1A disclosures.

The additional burden on advisers due to proposed modifications to Form ADV would take the form of initial internal costs, annual internal costs, and external costs. We estimate that the proposed modifications would impose 1.5 additional hours of initial internal costs and 0.7 additional hours of annual internal costs per adviser. The total internal burden is anticipated to be $9,706,497 across all RIAs.[241] Additionally, initial external costs are anticipated for a subset of RIAs. We anticipate this additional external cost would be $7,794,857 across all RIAs.[242] In total, the proposed modifications are expected to impose an additional burden of $17,517,585 across all RIAs. We anticipate that these information collection costs are likely to be the same initially as they are on an ongoing basis. Any portion of these costs that is not borne by advisers would ultimately be passed on to clients and investors.

E. Effects on Efficiency, Competition, and Capital Formation

1. Efficiency

The proposed rules may affect the efficiency with which clients' and investors' capital is allocated in two ways.

First, the proposed rule would result in an increase in information about advisers outsourcing that clients would be able to access on Form ADV. To the extent that clients access this information and rely on it, that increased information could permit clients to make better informed decisions about allocating their capital. For example, clients may choose to diversify investments across multiple advisers who engage different service providers to perform certain covered functions, such as advisers who rely on different index providers or model providers, or advisers who rely on service providers offering different predictive data analytics methods. Therefore, to the extent that clients and investors access and make use of the additional Form ADV information generated by advisers as a result of this proposed rule, we would expect a more efficient allocation of client and investor capital among advisers.

Second, and alternatively, if some advisers were to elect to perform certain covered functions in-house to avoid the compliance costs associated with outsourcing the covered functions, or if the service provider terminates the relationship as a result of its own increased costs and the adviser cannot identify a suitable replacement, the function may be performed less efficiently as compared to the service provider. For example, such a loss of efficiency could occur for any functions that experience economies of scale, and which may be currently provided by a single service provider for a large number of advisers, to the extent those advisers would perform the function in-house in response to the proposed rules. As noted above, smaller advisers may be less able than larger advisers to provide a covered function in-house as efficiently and with equal quality as a service provider.[243]

2. Competition

The proposed rules may lead clients to make better-informed decisions when selecting an adviser by increasing information about advisers outsourcing that clients would be able to access on Form ADV.[244] As a result, competition among advisers could increase. An increase in competition could, presumably, manifest itself in terms of better service, better pricing, or some combination of the two, for clients, to the extent that clients and investors access and use the additional Form ADV information generated by advisers as a result of this proposed rule.

Alternatively, the proposed rule could have the opposite effect on competition. As an initial matter, the proposed rule would create new costs of providing advisory services, which could disproportionately impact small or newly emerging advisers who may be less able to absorb or pass on these new costs. New costs, especially fixed costs, could also disproportionately impact small or newly emerging advisers. To the extent these costs discourage entry of new advisers or cause certain advisers to exit the market, competition would be harmed.

It is also possible that the costs borne by advisers may be large enough to cause some advisers to stop outsourcing some or all of their covered functions.[245] If advisers were to stop outsourcing some or all of their covered functions, clients could experience a decrease in the quality of advisers' services. Alternatively, if advisers were to try to pass on the costs, or some component thereof, to clients, these

[239] As discussed in section III.B.2, if a large number of investment advisers used a common service provider, operational risks could be correspondingly concentrated. Increased concentration of operational risk could, lead to an increased risk of broader market effects during times of market instability. The ability to identify readily the advisers using such a service provider might allow the Commission to respond more quickly to such broader market effects.

[240] To the extent that the proposed rule would require information not currently contained in adviser accounting or financial reporting systems to be reported, advisers may bear one-time costs to update systems to adhere to the new filing requirements.

[241] *See infra* section IV. Calculated as 2.2 internal hours per adviser × 14,756 advisers at a blended hourly rate of $299.50. The total revised internal cost per adviser of $13,094.14 incorporates the increase in required hours and an inflation adjustment to the blended hourly rate, and the calculation here captures only the increase in required hours. Additionally, this aggregate cost reflects only the current investment advisory industry size, and does not incorporate the expected net addition of 552 RIAs per year.

[242] *See infra* section IV. Calculated as 1 hour of external legal services × 0.25 × 14,756 advisers × $531 per hour + 1 hour of external compliance consulting services × 0.5 × 14,756 advisers × $791 per hour = $7,794,857. The additional burden resulting from this rule is calculated using estimated additional hours and inflation-adjusted hourly costs of corresponding personnel. *See supra* footnote 241.

[243] *See supra* section III.C.

[244] *See supra* section III.E.1.

[245] *See supra* section III.E.1. If there are fixed costs associated with the proposed regulations, then smaller advisers would generally tend to bear a greater cost, relative to adviser size, than larger advisers. If there are material fixed costs associated with the proposed rule, then we would expect the possible negative effect on competition to be greater for smaller advisers who engage service providers because the proposed regulations would tend to increase their costs more (relative to adviser size) than for larger advisers that engage service providers.

costs may cause some clients to seek other advisers or alternatives to registered advisers. The decreased demand for advisory services could result in a decline in the number of registered advisers and, a decrease in competition among registered advisers, as a result. A decrease in competition among registered advisers could manifest itself in terms of poorer service, poorer pricing, or some combination of the two, for clients.

Finally, the proposed rules may affect competition among service providers or their subcontractors. The rules are designed to increase transparency into an adviser's outsourced covered functions for clients and investors, as well as for the Commission. One possible result of this increased transparency may be increased competition among service providers with respect to the quality of their services. Advisers may be able to scrutinize service providers more closely, and thus better select more effective service providers or service providers who better align with their needs, to the extent these relationships are not already appropriately aligned, and service providers overall may seek to adjust the quality of their services accordingly. On the other hand, the proposed rules may have the opposite effect, in the event that the increased costs of the rule cause certain service providers to exit the market, or choose not to contract with investment advisers, either to avoid incurring new costs or to avoid the costs of improving the quality of their services. The increased costs associated with the rule could also dissuade new entry of service providers. In this case, the number of service providers to investment advisers may shrink, which may in turn result in higher service provider prices, although any change in the average quality of remaining providers would depend on whether higher or lower quality service providers would be more likely to exit to avoid new costs.

3. Capital Formation

Lastly, the enhancements to client and investor protection as well as the additional information available to potential current clients and potential investors could result in current investors being willing to invest more and potential investors being more willing to invest for the first time. For example, potential investors may be more willing to invest for the first time knowing that outsourced covered functions would be subject to enhanced due diligence and monitoring, as well as knowing that any third-party service providers maintaining the records of their investment would be subject to enhanced oversight.[246] To the extent that the proposed rule leads to greater investment, we could expect greater demand for securities, which could, in turn, promote capital formation.

F. Reasonable Alternatives

1. Alternatives to the Proposed Scope

Scope of Covered Functions. As noted above, the proposed rule would generally apply to a registered adviser that outsources a covered function to a service provider.[247] A covered function is defined in the proposed rule as a function or service that is necessary for the adviser to provide its investment advisory services in compliance with the Federal securities laws, and if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services.[248] The Commission alternatively could define covered functions to include broader or narrower sets of outsourced functions. Changing the definition of covered functions could provide a benefit in terms of either (i) increased client protection and investor protection in the case of broadening the definition or (ii) a reduction in the cost of the compliance with the rule in the case of narrowing the definition.

We believe the definitions that we have included in the proposed rule will provide additional protections with respect to advisers outsourcing that we think are important for the protection of clients and investors. Additionally, the definition of covered functions, in combination with other requirements of the proposed rule, would provide efficiencies for our examination staff, as well as provide the public with additional information about advisers to make more informed decisions about the selection and retention of investment advisers. Narrowing the scope of the definitions could reduce the cost of the proposed rule's requirements, but could also result in a reduction in client and investor protections as a result of being under-inclusive. For instance, the rule could have alternatively limited the scope of the definition of a covered function to a pre-identified list of specific functions, but this could limit the rule's protections when there are material changes in the manner in which advisers operate that are outside the scope of the stated functions. This list could be either the same as those provided by service provider types listed in the proposed amendments to Form ADV, or more expansive, or more restrictive. For example, it could define covered function as those services pertaining to the selection, trading, valuation, management, monitoring, indexing, use of predictive data analytics, and modeling of investments.[249] The rule could also provide detailed guidance on variations of descriptions of functions that different service providers may use. For example, the rule could separately define ''trading'' and ''execution,'' and provide explicit instruction as to how they would be treated by the rule. As another example, the rule could provide separate explicit instruction for ''management and selection'' as separate from ''indexing and modeling.'' [250] The rule could also explicitly state that its application is limited to core investment advisory services, and provide an explicit definition for core investment advisory services. The rule could alternatively apply based on a percentage of either regulatory assets under management or clients directly affected by the service provider's performance. These limitations may broadly have the effect of lowering compliance costs of the proposed rule, but they may not reflect what is core to any particular investment adviser.

Alternatively, broadening the scope would have the opposite effect, increasing the cost of the proposed rule's requirements but potentially resulting in greater client and investor protections. For instance, the rule could scope in service providers such as public utilities or providers of commercially available word processing software. We believe that the proposed rule strikes an appropriate balance in terms of the scope of its definition of covered functions by requiring advisers to provide sufficient oversight in those specific circumstances where the function or service is one that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on clients and is necessary for the adviser to provide advisory services.[251]

Scope of Service Providers. The proposed rule excludes supervised persons of an adviser from the definition of a service provider.[252] The

[246] *See supra* sections II.B, II.C, II.E.

[247] *See* proposed rule 206(4)–11(a).

[248] Proposed rule 206(4)–11(b).

[249] *See supra* section II.A.

[250] *See supra* section II.A.3.

[251] The Commission requests comment on our analysis of the benefits and costs of both narrowing and expanding the scope. *See supra* section III.G.

[252] *See* proposed rule 206(4)–11(b).

proposed rule does not, however, make a distinction between third-party providers and affiliated service providers. The Commission alternatively could exclude affiliated service providers from the definition of a service provider. Arguably, the use of affiliated service providers may create less risk. For example, use of an affiliated service provider could mitigate the risk of limited information about conflicts of interests associated with the use of a third-party service provider.[253] Excluding affiliated service providers from the definition of a service provider, could benefit advisers by reducing the cost of compliance when using an affiliated service provider.

We believe, however, that while certain risks may be diminished, risks the proposed rule are designed to address still exist whether the service provider is affiliated or unaffiliated. For example, the ability to have direct control or full transparency may be limited when an adviser outsources a covered function, even to an affiliated service provider, which increases the risk for failed regulatory compliance. There may also still be risks of conflicts of interest when the affiliated service provider performs services to more than one adviser. We believe that including affiliated service providers in the definition of service providers strikes the right balance in terms of mitigation of risk and the cost of complying with the proposed rule.

Similarly, the proposed rule does not make an exception for sub-advisers that are registered as investment advisers with the Commission. This rulemaking alternatively could have excepted registered sub-advisers, which may have lowered the total cost of the rule. However, we believe that such an exception would diminish the effectiveness of the rule, as the fact that a sub-adviser is registered with the Commission does not negate the need for sufficient due diligence and monitoring to be undertaken for the benefit of the client. If an adviser allocates some or all of a client's portfolio to a sub-adviser, the adviser is still ultimately responsible for reasonably ensuring that the services rendered are consistent with the adviser's representation of the services to the client. We believe that reduced benefit from the resulting gap in adviser oversight would not be justified by the cost savings that could be obtained by providing an exception to registered sub-advisers.

The proposed rule could also have provided an exception for separately managed accounts and other wrap fee programs. As proposed, an adviser in such a program would be subject to the proposed rule if they retain a service provider for its provision of advisory services. As such, multiple advisers that retain the same service provider may need to conduct due diligence and monitoring on that service provider, depending on whether such services are covered function. As an alternative, the proposed rule could provide an exclusion for advisers that engage service providers to perform covered functions as part of a larger program or arrangement, such as the sponsor of a wrap fee program or other separately managed account program in which the sponsor is subject to the proposed rule with respect to the participation of the service providers in the program. One advantage of such an exception could be reducing the potential for redundancy in the due diligence and monitoring of service providers conducted in wrap fee programs. However, we believe that sub-advisers that retain service providers are best positioned to conduct appropriate due diligence and monitoring of a service provider in connection with its particular sub-advisory role. For instance, while a sub-adviser overseeing fixed-income portfolio strategies and a sub-adviser overseeing equity portfolio strategies may retain the same service provider, there may be different operational risks, conflicts of interest, or other problems discovered upon due diligence or monitoring with respect to each of these roles. Therefore, we do not believe that it would be appropriate to provide an exception for such cases.

2. Alternatives to the Proposed Due Diligence and Monitoring Requirements

One alternative to proposed new rule 206(4)–11 would be amendments to existing rules. For example, amendments to rule 204A–1 (which provides for minimum provisions to an investment adviser's code of ethics) could introduce requirements for protections of sensitive client information.[254] Amendments to Form ADV and/or rule 204–3 could introduce more requirements for advisers to disclose information about service providers to their clients in their brochures.[255] These requirements could include greater detail on the adviser's use of service providers, the adviser's understanding of the operational risks associated with those service providers, and the adviser's existing due diligence and monitoring practices. Further protections in the case of advisers engaging service providers on behalf of registered investment companies could be achieved by amending rule 38a–1 to require advisers to approve compliance policies and procedures associated with service providers.[256] We could also amend Advisers Act rule 206(4)–7 to require specific policy and procedure requirements for service provider oversight. However, these amendments would not create the same consistent framework requiring both due diligence and ongoing monitoring, as proposed rule 206(4)–11 would. We believe that a prophylactic rule that creates a consistent framework for advisers to use and continue to use a service provider is more likely to result in consistent client and investor protections than expanding the scope of rules that are not uniformly intended to address the risks associated with outsourcing. Moreover, amendments to existing rules would primarily address issues with dissemination of sensitive client information, and would not achieve the same benefits associated with broadly reducing risk of fraud or other harms associated with outsourced functions, advisers failing to secure regulatory oversight, or other benefits of proposed rule 206(4)–11.[257]

A second alternative to the proposed new rule 206(4)–11 would be a rule limited to requiring minimum consistent disclosures as to an adviser's existing due diligence and monitoring processes for outsourced covered functions. For example, amendments to existing rule 204–3 could enhance what an adviser must include in its brochures, and such amendments could require advisers to describe their due diligence and monitoring processes in greater detail. Advisers could also be required to make quarterly or annual statements to their clients on the status of their service providers and the outsourced covered functions, including any anticipated operational risks for the subsequent reporting period uncovered as part of the adviser's existing due diligence and monitoring processes. This alternative could potentially result in reduced costs relative to the proposal, but only insofar as it is less costly for an adviser to make appropriate disclosures than it is for an adviser to enhance its due diligence and monitoring processes. For example, for

[253] For example, an affiliated service provider who does not operate covered functions for multiple advisers would have no scope for benefiting one adviser's clients at the expense of another. *See supra* section III.B.2.

[254] *See* rule 204A–1, *see also supra* section III.B.3.

[255] *See* rule 204–3, *see also supra* footnote 62 and accompanying text.

[256] *See* rule 38a–1, *see also supra* section III.B.3; *see also infra* section V.E.

[257] *See supra* section III.C.

an adviser who already conducts substantial due diligence and monitoring and may already be in substantial compliance with the proposed rule but does not make regular disclosures regarding covered functions to clients or investors, an alternative disclosures-based framework would be more costly than the proposed rules. A disclosures-based framework would also have fewer direct risk-reduction benefits relative to a framework directly requiring minimum consistent due diligence and monitoring. Moreover, an adviser cannot waive its fiduciary duty and should be overseeing outsourced functions to ensure its obligations are met. It would be a breach of its fiduciary duty and deceptive for an adviser to outsource certain covered functions without conducting initial due diligence and ongoing oversight, particularly those related to its advisory services and compliance with the Federal securities laws. With respect to both of these alternatives, we believe proposed rule 206(4)–11 strikes the right balance in terms of mitigation of risk and the costs of complying with the proposed rule.

3. Alternatives to the Proposed Amendments to the Books and Records Rule

We propose to require advisers to make and retain certain books and records attendant to their obligations under the proposed oversight framework, such as lists or records of covered functions, records documenting due diligence and monitoring of a service provider, records of certain notifications, and copies of any written agreements that the adviser enters into with service providers.[258] The proposed recordkeeping requirements would assist our examination staff in monitoring compliance with the proposed rule. Alternatively, the proposed rule could require the retention of more, fewer, or no additional records. Requiring advisers to retain more records would aid our examination staff in monitoring compliance with the proposed rule, but increase the cost of compliance for advisers. Requiring advisers to retain fewer, or no, additional records would hamper the ability of our staff to monitor compliance with the proposed rule, but decrease the cost of compliance for advisers. We believe that limiting the scope of the required recordkeeping to the current proposal strikes the appropriate balance between minimizing costs and making information available that is important to the examination process.

The proposed rule contains provisions related to the adviser's responsibilities concerning third-party creation, storage and retention of records. Specifically, every investment adviser that relies on a third party for any recordkeeping function required by the recordkeeping rule must obtain reasonable assurances that the third party will meet certain standards intended to maintain the integrity of and access to records in providing the outsourced function.[259] For example, for electronic records, the third party must allow the investment adviser and staff of the Commission to access the records easily through computers or systems during the required retention period of the recordkeeping rule.[260] As an alternative, the proposed rule could require investment advisers to direct service providers (other than cloud service and other records providers) to transfer required records periodically to the adviser, but not impose any other requirement for reasonable assurances of other recordkeeping standards. By removing the more detailed standards currently proposed, this alternative could potentially lower the cost to advisers and service providers when records are created indirectly as a result of a service provider's contracted activity. For instance, a service provider that an adviser retains to calculate a fund's performance or rates of return creates new records that need to be stored and retained, even though the service provider is not retained for a recordkeeping purpose.[261] However, this approach could reduce the assurances to the adviser and its clients and investors of proper storage and retention of records. As such, we believe the current rule is better suited to ensure the adviser is able to comply with the Advisers Act recordkeeping and other relevant Federal securities laws.

Additionally, the proposed rule could require a written agreement between the adviser and its service providers of covered functions. Under this alternative, the proposed rule could incorporate the currently proposed due diligence requirements as requirements to be included in a contract between the adviser and service provider. The alternative could be required for only certain covered functions and not others, for example by defining a list of critical covered functions and requiring a written agreement for those functions, or could be required for all covered functions. Such a requirement could have the benefit of reducing the risk of ambiguity between advisers and service providers, as well as potentially increasing transparency to the Commission. As noted, the recordkeeping rule could be satisfied by such a written agreement.[262] However, we believe that requiring a written agreement between advisers and service providers of all covered functions could be overly burdensome, in instances where certain large service providers may be unwilling to modify their standard contracts for advisers to comply with regulation if advisers are a fraction of their client base. While we do not know how frequently that would occur, we nevertheless do not currently believe that the benefits of explicitly requiring written agreements between advisers and service providers would justify the costs. We request comment on whether a written agreement should be explicitly required.[263]

Finally, the proposed rule could require disclosure in Form ADV Part 1A of whether an adviser has a written agreement for each covered function, or could require disclosure in cases where an adviser does not have a written agreement for a particular covered function. Such a requirement could have the benefit of alerting investors and the Commission to instances in which ambiguity between advisers and service providers could be heightened by the lack of a written agreement. However, these benefits would be limited to the instances in which clients and investors would access and make use of the additional Form ADV information generated by advisers. Therefore, we do not currently believe the benefits of requiring disclosures of written agreements would justify the costs of preparing additional Form ADV disclosures, but we request comment above on whether the rule should require these additional disclosures.[264]

4. Alternatives to the Form ADV Requirements

We are proposing to amend Form ADV to require advisers to identify their service providers that perform covered functions, provide their location, the date they were first engaged to provide covered functions, and state whether they are related persons of the adviser. One alternative to the proposed amendments to a public Form ADV disclosure would be a nonpublic report to the Commission in a format other

[258] *See* proposed rule 204–2(a)(24).

[259] *See supra* section II.E.

[260] *Id.*

[261] *Id.*

[262] *See supra* section II.E.

[263] *See supra* section II.A.3.

[264] *See supra* section II.A.3.

than Form ADV. Absent the Form ADV disclosures, however, clients would no longer receive the direct benefit of less costly information gathering. Also, we believe that it is more efficient to compile information about advisers on Form ADV, which can enhance our staff's ability to effectively carry out its risk-based examination program and risk monitoring activities, and could improve client and investor protection by evaluating and forming regulatory policies and focusing examination activities, thereby creating a greater indirect benefit to clients as well.[265]

Another alternative to the proposed Form ADV disclosures would be to add additional required disclosures on fund registration statements, such as comparable information about service provider arrangements. For instance, fund registration documents could be required to directly disclose all of the information that is currently proposed to be required on Form ADV, such as the legal names of their service providers, whether the service provider is a related person, and which covered functions the service provider is engaged to provide, so that investors do not need to analyze Form ADV to obtain this information. A similar approach could also require private fund advisers to provide comparable information to private fund investors. This alternative would potentially improve access to information for fund investors in addition to direct advisory clients, to the extent that registered fund investors (unlike private fund investors) are unlikely to analyze Form ADV data.

However, we believe there are several downsides to this approach that are inconsistent with the intent of the proposed rule. First, funds are separate entities from advisers that are often capable of entering into agreements directly with a service provider. Therefore, this approach would capture data related to service providers to funds instead of service providers to advisers. Assuming the service provider's relationship was with the adviser as opposed to the fund, this approach would still only capture data for advisers to funds. It would not capture data for advisers to advisers that did not have fund clients, such as advisers to solely retail clients.

Another downside of this approach would be that it would involve the modification and collection of information from various registration documents depending on the type of fund under advisement of an RIA. For instance, open-end mutual funds register using Form N–1A, while closed-end mutual funds register using Form N–2. For these reasons, we believe that it is more efficient and effective to compile information about advisers on Form ADV. The proposed rule can enhance our staff's ability to effectively carry out its risk-based examination program and risk monitoring activities, and could improve client and investor protection by evaluating and forming regulatory policies and focusing examination activities, thereby creating a greater indirect benefit to clients as well. Further, clients and investors may find such information more readily accessible when it is consolidated onto a single form, which may lower the costs of their information gathering. We therefore believe that Form ADV is the most appropriate medium for advisers to report their use of service providers for covered functions.

5. Alternatives to the Transition and Compliance Period

We are proposing that advisers registered or required to be registered with the Commission be required to comply with the rule applicable to it, if adopted, starting on the compliance date, which is proposed as ten months from the rule's effective date.[266] This would provide a transition period during which a registered investment adviser can prepare to comply with any final rule. The proposed rule, if adopted, would apply to any new engagement of service providers made on or after the compliance date of the proposed rules and amendments.[267] The ongoing monitoring requirements, if adopted, also would apply to existing engagements beginning on the compliance date.[268]

As one alternative, the Commission could only require advisers to comply with any final rule with respect to new funds or client relationships. Arguably, under the rule as proposed, clients who have already invested in funds or have an existing advisory relationship have agreed to negotiated economic terms. To the extent that these negotiations granted any economic terms to the client to compensate for operational risks, requiring an adviser to come into compliance with any final new rule without renegotiating all terms of a client's contract could represent a windfall to the client in the form of a reduction in its risk with no additional cost to the client.[269] Clients with established contractual terms may also face higher costs of coming into compliance with any final rule, to the extent that the parties do renegotiate the broader economic terms of the contract. These considerations potentially motivate the alternative that would only require advisers to comply with any final rule with respect to new funds or client relationships. However, many client contractual relationships may be evergreen, or allow for a multiple extensions to the life of the contractual relationship, and so allowing for advisers' existing client relationships to forego compliance could substantially reduce the benefits of any final rule. We believe that providing no exemptions for existing clients strikes the right balance in terms of mitigation of risk and the cost of complying with any final rule.

As another alternative, the Commission could provide for a longer transition and compliance period, which would increase the amount of time advisers have to comply with any final rule. This alternative would reduce the benefits of the proposed rule by foregoing the benefits of any rule during the extended compliance period. However, to the extent it is less costly for advisers to come into compliance over a longer time period, this alternative could reduce the costs of any final rule. We believe that the proposed transition and compliance period strikes the right balance in terms of the costs of coming into compliance with any final rule, but we request comment on whether proposed transition period following any final rule's effective date is appropriate.[270]

G. Request for Comment

The Commission requests comment on all aspects of this initial economic analysis, including whether the analysis has: (i) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (ii) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (iii) identified and considered reasonable alternatives to the proposed rule. We request and encourage any interested person to submit comments regarding the proposed rule, our analysis of the potential effects of the proposed rule, and other matters that may have an effect on the proposed rule. We request that commenters identify sources of data

[265] *See supra* section II.D.

[266] *See supra* section II.G.

[267] *Id.*

[268] *Id.*

[269] For a fund with a pass-through expense model, in which all expenses are passed through to the investors, there would be no such windfall. *See, e.g.,* Eli Hoffmann, *Welcome To Hedge Funds' Stunning Pass-Through Fees,* Seeking Alpha (Jan. 24, 2017), *available at https://seekingalpha.com/article/4038915-welcome-to-hedge-funds-stunning-pass-through-fees.*

[270] *See supra* section II.G.

and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed rule. We also are interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may not have discussed.

In addition to our general request for comment on the economic analysis associated with the proposed rule, we request specific comment on certain aspects of the proposal:

87. We request comment on our characterization of the risks associated with outsourcing. Are there other risks or potential harms to clients that our analysis has not identified?

88. We request comment on our characterization of market failures associated with outsourcing to service providers that may hinder reform in the absence of the proposed rules. Do commenters agree with the relevance of the described principal-agent and moral hazard problems?

89. The proposed rule would require an adviser to identify the potential risks to clients, or to the adviser's ability to perform its advisory services, resulting from outsourcing a covered function. To what extent do advisers currently have such, or similar, processes in place?

90. The proposed rule would require the adviser to determine that the service provider has the competence, capacity, and resources necessary to provide timely and effective services. To what extent do advisers currently have such, or similar, processes in place?

91. The proposed rule would require that the adviser determine whether the service provider has any subcontracting arrangements that would be material to the performance of the covered function, and would require the adviser to identify and determine how it will mitigate and manage potential risks to clients or its ability to perform advisory services in light of any such subcontracting arrangement. To what extent do advisers currently have such, or similar, processes in place?

92. The proposed rule would require an adviser to obtain reasonable assurance from a service provider that it is able to, and will, coordinate with the adviser for purposes of the adviser's compliance with the Federal securities laws, as applicable to the covered function. To what extent do advisers currently have such, or similar, processes in place?

93. The proposed rule would require an investment adviser to obtain reasonable assurance from the Service Provider is able to, and will, provide a process for orderly termination of its performance of the covered function. To what extent do advisers currently have such, or similar, processes in place?

94. The proposal would require advisers to monitor the service provider's performance of the covered function and reassess the due diligence requirements of the proposed rule with such a frequency that the adviser can reasonably determine that it is appropriate to continue to outsource the covered function and that it remains appropriate to outsource it to the service provider. To what extent do advisers currently have such, or similar, processes in place?

95. The proposal would provide for certain new books and recordkeeping requirements. To what extent do advisers currently have such, or similar, processes in place?

96. We request comment on all aspects of the quantified estimates of costs of the rule. In particular:

a. To what extent would the required minimum staffing from personnel and third parties differ from the estimates provided here, for each of the proposed rules?

b. To what extent would the required minimum number of hours from those staff differ from the estimates provided here, for each of the proposed rules?

c. What additional data should the Commission consider in its estimation of the minimum costs an adviser would face in conjunction with the proposed rules?

d. Do commenters agree that only certain advisers would frequently transfer regulatory records from their service providers? Are there other voluntary actions that only certain advisers would undertake in pursuit of coming into compliance with the proposed rules?

e. What additional sources of variation are there that would result in an adviser facing more than the minimum costs of coming into compliance with the proposed rules? What additional information should the Commission consider when quantifying those additional costs?

f. To what extent would the upper bound of average costs faced by any particular adviser differ from the estimates provided here, for each of the proposed rules?

g. What are the likely highest costs any single adviser would be likely to face in coming into compliance with the proposed rules? What information should the Commission consider when quantifying those highest costs?

h. To what extent would the estimated costs be impacted by advisers electing, in response to the proposed rules, to provide covered functions themselves that are currently outsourced? What would the costs of this transition be? To what extent would those costs differ from other expected costs of complying with the proposed rules?

i. If possible, for commenters who already undertake similar processes to those described in the proposed rules, please provide estimates of the cost of undertaking those processes. What additional considerations can the Commission use to extrapolate such figures in order to estimate costs to other advisers?

j. What additional considerations can the Commission use to estimate the costs and benefits of the proposed amendments?

97. We request comment on the anticipated costs to service providers as a result of the proposed regulations. Are there significant direct or indirect costs to service providers beyond those stated in section III.D? To what extent do commenters believe that the costs to service providers would be proportional to, and thus can be extrapolated from, the costs that would be imposed on advisers? We additionally request any data which could aid in the calculation of the costs of the proposed rule to service providers.

98. How do commenters anticipate that the costs of complying with the proposed rule will be shared between advisers' and their clients?

99. How do commenters believe the proposed regulations will affect efficiency, competition, and capital formation in the industry? Please explain.

100. Do commenters believe that the alternatives the Commission considered are appropriate? Are there other reasonable alternatives that the Commission should consider? If so, please provide additional alternatives and how their benefits and costs would compare to the proposal. Specifically, we request comment on the following:

a. Do commenters agree with our assertion that broadening the definitions of covered functions would enhance client and investors protections, but increase the costs of compliance? Do commenters agree with our belief that the proposed rule strikes the right balance in terms of the scope of its definitions of covered functions? Why or why not?

b. Do commenters believe that limiting the scope of the required recordkeeping to that required by the proposed rule strikes the appropriate balance between minimizing costs and making information available for the examination process? Why or why not? Should the Commission increase or

decrease the scope of the required recordkeeping? Why or why not?

101. Are there alternatives to required Form ADV disclosure in addition to targeted examinations that we should implement?

IV. Paperwork Reduction Act Analysis

A. Introduction

Certain provisions of the proposed rule and proposed amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[271] We are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[272] The proposed amendments to rule 204–2 under the Advisers Act (other than new rule 204–2(l)) and Form ADV would have an effect on currently approved collection of information burdens. Proposed rule 206(4)–11 and proposed rule 204–2(l) would not require new collections of information. Proposed Rule 206(4)–11 would require an adviser to conduct due diligence and monitoring of covered functions performed by a service provider, and proposed rule 204–2(l) would affect the manner in which an adviser can rely on a third-party to store required books and records. Any documentation required by proposed rule 206(4)–11's due diligence and monitoring requirements is captured in the collection of information burden for Rule 204–2.

The titles for the existing collections of information are: (1) ''Rule 204–2 under the Investment Advisers Act of 1940'' (OMB control number 3235–0278); and (2) ''Form ADV'' (OMB control number 3235–0049).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Each requirement to disclose information, offer to provide information, or adopt policies and procedures constitutes a collection of information requirement under the PRA. These collections of information would help increase the likelihood that advisers have a reasonable basis for determining that it would be appropriate to outsource particular functions or services to a service provider, and collectively would serve the Commission's interest in protecting clients and investors by reducing the risk that a service provider could significantly affect a firm's operations and directly or indirectly harm clients. The Commission staff would also use the collection of information in its examination and oversight program to prepare better for, and more efficiently conduct, their on-site examinations. We discuss below the collection of information burdens associated with the proposed rule amendments.

B. Rule 204–2

Under section 204 of the Advisers Act, investment advisers registered or required to register with the Commission under section 203 of the Advisers Act must make and keep for prescribed periods such records (as defined in section 3(a)(37) of the Exchange Act), furnish copies thereof, and make and disseminate such reports as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of clients and investors. Rule 204–2, the books and records rule, sets forth the requirements for maintaining and preserving specified books and records. This collection of information is found at 17 CFR 275.204–2 and is mandatory. The Commission staff uses the collection of information in its examination and oversight program. Responses provided to the Commission in the context of its examination and oversight program concerning the proposed amendments to rule 204–2 would be kept confidential subject to the provisions of applicable law.

Concurrent with proposed rule 206(4)–11, we are proposing corresponding amendments to rule 204–2. The proposed amendments would require advisers to make and retain: (1) a list or other record of covered functions that the adviser has outsourced to a service provider, along with a record of the factors that led the adviser to list each function; (2) records documenting the due diligence assessment conducted pursuant to proposed rule 206(4)–11, including any policies and procedures or other documentation as to how the adviser will mitigate and manage the risks of outsourcing a covered function; (3) a copy of any written agreement, including amendments, appendices, exhibits, and attachments, entered into pursuant to proposed rule 206(4)–11; and (4) records documenting the periodic monitoring of a service provider of a covered function. Each of these records would be maintained and preserved consistent with proposed Advisers Act Rule 204–2(e)(4) in an easily accessible place throughout the time period during which the adviser has outsourced a covered function to a service provider and for a period of five years thereafter. These proposed amendments would help facilitate the Commission's inspection and enforcement capabilities.

The respondents to this collection of information are investment advisers registered or required to be registered with the Commission. All such advisers will be subject to the proposed amendments to rule 204–2. As of December 31, 2021, there were 14,756 advisers registered with the Commission. We estimate that all of them would use a service provider for a covered function and be subject to these books and records requirements. In our most recent Paperwork Reduction Act submission for rule 204–2, we estimated for rule 204–2 a total annual aggregate hour burden of 2,764,563 hours, and a total annual aggregate external cost burden of $175,980,426.[273] The table below summarizes the initial and ongoing annual burden estimates associated with the proposed amendments to rule 204–2. We have made certain estimates of the burdens associated with the proposed amendments solely for the purpose of this PRA analysis. Based on staff experience, most advisers already conduct some level of oversight of service providers so as to fulfill the adviser's fiduciary duty, comply with the Federal securities laws, and protect clients from potential harm. Our burden estimates therefore presume that advisers are already making some records of due diligence and monitoring.

[271] 44 U.S.C. 3501 through 3521.

[272] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[273] Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Revisions to Rule 204–2, OMB Report, OMB 3235–0278 (Aug. 2021).

TABLE 1—RULE 204–2 PRA ESTIMATES

	Internal initial hour burden	Internal annual hour burden	Wage rate [2]	Annual internal time costs	Annual external cost burden
PROPOSED ESTIMATES					
Make and Retain list of outsourced Covered Functions and factors [5].	6 hours [1]	2 hours	$292.75 (blended rate for compliance manager, attorney, and senior business analyst).	$585.50 (Internal Annual Hour Burden of 2 hours × Wage rate of 292.75).	$0
Total burden per adviser	6 hours	2 hours		$585.50	0
Total number of affected advisers	× 14,756 advisers	× 14,756 advisers		× 14,756	0
Sub-total burden for aggregated advisers.	88,536 hours	29,512 hours		$8,639,638	0
Make and retain records documenting due diligence assessment [3].	0	6 hours	$292.75 (blended rate for compliance manager, attorney, and senior business analyst).	$1,756.50	0
Total annual burden per adviser	0	6 hours		$1,756.50	0
Total number of affected advisers	0	× 14,756		× 14,756	0
Sub-total burden	0	88,536 hours		$25,918,914	0
Retention of written agreement with service provider [4].	0	1	$72.50 (blended rate for general clerk and compliance clerk).	$72.50	0
Total annual burden per adviser	0	1		$72.50	0
Total number of affected advisers	0	× 14,756		× 14,756	0
Sub-total burden	0	14,756 hours		$1,069,810	0
Make and retain records documenting monitoring of service providers of covered functions [6].	8 hours	6	$292.75 (blended rate for general clerk and compliance clerk).	$1,756.50	0
Total annual burden per adviser	8 hours	6		$1,756.50	0
Total number of affected advisers	14,756	× 14,756		× 14,756	0
Sub-total burden	118,048 hours	88,536 hours		$25,918,914	0
Total annual aggregate burden of rule 204–2 amendments.	206,584 hours (initial burden hours).	221,340 hours		$61,547,276	0
Current annual estimated aggregate burden of rule 204–2.	NA	2,764,563 hours		$175,980,426	0
Total annual aggregate burden of rule 204–2.	NA	2,985,903 hours		$237,527,702	0

[1] We believe that the estimated internal hour burdens associated with the proposed amendment would include one-time initial burdens, and we then amortize these initial burdens over three years to determine the ongoing annual burden. Our estimate assumes that there would be required annual maintenance and review of the list of covered functions and factors. Taking into account the various sizes of SEC registered advisers with varying operational complexities, we estimate that each adviser would outsource an average of six covered functions.

[2] The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. The rates used to create the blended rates are as follows: compliance manager—$339; attorney—$455; senior business analyst—$300; compliance clerk—$77; general clerk—$68. See Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013 (''SIFMA Report'').

[3] The proposed rule's due diligence requirements would apply before a service provider is retained to perform a covered function (note that monitoring would apply to existing engagements). For new advisers, we believe that the time, effort, and financial resources would be incurred in the normal course of activities and therefore there is no additional burden. Based on staff experience, most advisers already conduct some level of oversight of service providers so as to fulfill the adviser's fiduciary duty, comply with the Federal securities laws, and protect clients from potential harm. Our burden estimates therefore presume that advisers are already making some records of due diligence and monitoring. Our burden estimate addresses the making and retention of the due diligence records only. It is not an estimate of the time needed to conduct due diligence. This estimate also presumes that an adviser initiates the outsourcing, or amends an existing outsourcing agreement, for an average of two covered functions per year. In reaching our estimate, we considered that larger advisers, or advisers with more complex operations and strategies, may exceed this average, while smaller advisers or advisers with comparatively streamlined operations may outsource fewer covered functions than this average.

[4] Because the proposed rule would not apply until a new covered function is outsourced, or existing outsourced covered function is amended, there should be no initial burden that differs from the annual burden. The proposed amendments would require the retention of a written agreement only if such agreement is made. Based on staff experience, it is customary business practice for advisers to enter into written agreements with service providers that are performing a covered function. We therefore estimate that the additional burden of retaining written agreements, if applicable, will be minimal.

[5] Based on staff experience, and considering the varying sizes and complexities of advisers, we estimate that advisers will outsource an average of six covered functions. We anticipate that larger advisers, or advisers with more complex operations and strategies, may exceed this average, while smaller advisers or advisers with comparatively streamlined operations may outsource fewer covered functions than this average.

[6] Because the monitoring obligations would apply to existing agreements as of the compliance date, we believe there would be an initial monitoring burden that differs from the annual burden in the first year that the rule becomes effective. This is because advisers may need to alter their existing monitoring practices resulting in collections of information that they did not previously develop. Our burden estimate addresses the making and retention of the monitoring records only. It is not an estimate of the time needed to conduct monitoring. This estimate assumes advisers monitor an average of six outsourced covered functions each year (this is in addition to our estimate of two new or amended outsourced functions that would be subject to initial due diligence each year). In reaching our estimate, we considered that larger advisers, or advisers with more complex operations and strategies, may exceed this average, while smaller advisers or advisers with comparatively streamlined operations may outsource fewer covered functions than this average.

C. Form ADV

Form ADV is the investment adviser registration form under the Advisers Act. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2A is the client brochure. Part 2B requires advisers to create brochure supplements containing information about certain supervised persons. Part 3: Form CRS (relationship summary) requires certain registered investment advisers to prepare and file a relationship summary for retail investors. We use the information on Form ADV to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients and investors use certain of the information to determine whether to hire or retain an investment adviser, as well as what types of accounts and services are appropriate for their needs. The collection of information is necessary to provide advisory clients, prospective clients, other market participants and the Commission with information about the investment adviser and its business, conflicts of interest and personnel. Rule 203–1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–4 under the Advisers Act requires certain investment advisers exempt from registration with the Commission (''exempt reporting advisers'' or ''ERAs'') to file reports with the

Commission by completing a limited number of items on Form ADV. Rule 204–1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through IARD. The paperwork burdens associated with rules 203–1, 204–1, and 204–4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information. These collections of information are found at 17 CFR 275.203–1, 275.204–1, 275.204–4 and 279.1 (Form ADV itself) and are mandatory. Responses are not kept confidential.

We are proposing amendments to Form ADV Part 1 to enhance client and investor disclosure and our ability to oversee investment advisers. Specifically, the proposed amendments would amend Item 7 of Part 1A to require an adviser to disclose whether it outsources any covered function, and if so, to provide additional information on Schedule D. The proposed amendments would add Section 7.C. to Schedule D of Part 1A to require advisers to disclose the following for each service provider to which a covered function is outsourced: legal name, primary business name, legal entity identifier (if applicable), whether the service provider is a related person of the adviser, date the service provider was first engaged, location of the service provider's office primarily responsible for the covered function, and the covered function(s) that the service provider is engaged to perform. The collection of this information is necessary to improve information available to us and to the general public about advisers' use of service providers to perform covered functions. Our staff would also use this information to help prepare for examinations of investment advisers. We are not proposing amendments to Parts 2 or 3 of Form ADV.

The amount of time that a registered adviser will incur to complete Item 7.C. and Section 7.C. of Schedule D will vary depending on the number of service providers the advisers engages. Nevertheless, we believe that the proposed revisions to Part 1A would impose few additional burdens on advisers in collecting information as advisers should have ready access to all the information necessary to respond to the proposed items in their normal course of operations. We anticipate, moreover, that the responses to many of the questions are unlikely to change from year to year, minimizing the ongoing reporting burden associated with these questions.

The respondents to current Form ADV are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers.[274] Based on the IARD system data as of December 31, 2021, approximately 14,756 investment advisers were registered with the Commission, and 4,813 exempt reporting advisers file reports with the Commission. The amendments we are proposing would increase the information requested in Part 1 of Form ADV for registered investment advisers that engage a service provider to perform a covered function.[275] We estimate that all registered investment advisers will engage at least one service provider to perform a covered function. The burdens associated with completing Parts 2 and 3 also are included in the PRA for purposes of updating the overall Form ADV information collection.[276] Based on the prior revision of Form ADV, we estimated the annual compliance burden to comply with the collection of information requirement of Form ADV is 433,004 burden hours and an external cost burden estimate of $14,125,083.[277] We propose the following changes to our PRA methodology for Form ADV:

- *Form ADV Parts 1 and 2.* Form ADV PRA has historically calculated an hourly burden per adviser per year for Form ADV Parts 1 and 2 for each of (1) the initial burden and (2) the ongoing burden, which reflects advisers' filings of annual and other-than-annual updating amendments. We noted in previous PRA amendments that most of the paperwork burden for Form ADV Parts 1 and 2 would be incurred in the initial submissions of Form ADV. However, recent PRA amendments have continued to apply the total initial hourly burden for Parts 1 and 2 to all currently registered or reporting RIAs and ERAs, respectively, in addition to the estimated number of new advisers expected to be registering or reporting with the Commission annually. We believe that the total initial hourly burden for Form ADV Parts 1 and 2 going forward should be applied only to the estimated number of expected new advisers annually. This is because currently registered or reporting advisers have generally already incurred the total initial burden for filing Form ADV for the first time. On the other hand, the estimated expected new advisers will incur the full total burden of initial filing of Form ADV, and we believe it is appropriate to apply this total initial burden to these advisers. We propose to continue to apply any new initial burdens resulting from proposed amendments to Form ADV Part 1, as applicable, to all currently registered investment advisers.

Table 2 below summarizes the burden estimates associated with the proposed amendments to Form ADV Part 1. The proposed new burdens also take into account changes in the numbers of advisers since the last approved PRA for Form ADV, and the increased wage rates due to inflation.

[274] An exempt reporting adviser is an investment adviser that relies on the exemption from investment adviser registration provided in either section 203(*l*) of the Advisers Act because it is an adviser solely to one or more venture capital funds or section 203(m) of the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million.

[275] Exempt reporting advisers are required to complete a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.B., 3, 6, 7, 10, 11, and corresponding schedules). The proposal does not include any requirement for exempt reporting advisers to respond to proposed new Item 7.C.

[276] *See* Updated Supporting Statement for PRA Submission for Amendments to Form ADV under the Investment Advisers Act of 1940 (''Approved Form ADV PRA'').

[277] *See* Investment Adviser Marketing, Final Rule, Investment Advisers Act Release No. 5653 (Dec. 22, 2020) [81 FR 60418 (Mar. 5, 2021)] (''IA Marketing Release'') and corresponding submission to the Office of Information and Regulatory Affairs at *reginfo.gov* (''2021 Form ADV PRA'').

TABLE 2—FORM ADV PRA ESTIMATES

	Internal initial burden hours	Internal annual amendment burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden [3]
PROPOSED AMENDMENTS TO FORM ADV					
RIAs (burden for Parts 1 and 2, not including private fund reporting) [4]					
Proposed addition (per adviser) to Part 1 (Item 7.C and Section 7.C of Schedule D).	1.5 hours (reflects estimate of 18 minutes per outsourced covered function x estimated average of 5 covered functions per adviser).	0.7 hours [1]	$299.50 per hour (blended revised rate for senior compliance examiner and compliance manager) [5].	2.2 hours × $299.50 = $658.90.	1 hour of external legal services ($531) for ¼ of advisers that prepare Part 1; 1 hour of external compliance consulting services ($791) for ½ of advisers that prepare Part 1.[6]
Current burden per adviser [7].	29.72 hours [8]	11.8 hours [9]	$273 per hour (blended current rate for senior compliance examiner and compliance manager).	(29.72 + 11.8) × $273 = $11,334.96.	$2,069,250 aggregated (previously presented only in the aggregate).[10]
Revised burden per adviser.	29.72 hours + 1.5 hours = 31.22 hours.	0.7 hours + 11.8 hours = 12.5 hours.	$299.50 (blended revised rate for senior compliance examiner and compliance manager).	(31.22 + 12.5) × $299.50 = $13,094.14.	$5,019.75.[11]
Total revised aggregate burden estimate.	39,367.44 hours [12]	190,975 hours [13]	Same as above	(39,367.44 + 190,975) × $299.5 = $68,987,560.80.	$10,565,759.[14]
RIAs (burden for Part 3) [15]					
No proposed changes					
Current burden per RIA	20 hours, amortized over three years = 6.67 hours [16].	1.58 hours[17]	$273 (blended current rate for senior compliance examiner and compliance manager).	$273 × (6.67 + 1.71) = $2,287.74.	$2,433.74 per adviser.[18]
Total updated aggregate burden estimate.	66,149.59 hours [19]	14,573.92 hours [20]	$299.50 (blended revised rate for senior compliance examiner and compliance manager).	$24,176,691.20 (($299.50 × (66,149.59 hours + 14,573.92 hours)).	$8,732,193.75.[21]
ERAs (burden for Part 1A, not including private fund reporting) [22]					
No proposed changes					
Current burden per ERA	3.60 hours [23]	1.5 hours + final filings [24]	$273 (blended current rate for senior compliance examiner and compliance manager).	Wage rate × total hours (see below).	$0.
Total updated aggregate burden estimate.	1,245.6 [25]	7,775.6 hours [26]	$299.50 (blended revised rate for senior compliance examiner and compliance manager).	$2,701,849.40 ($299.50 × (1,245.6 + 7,775.6 hours)).	$0.
Private Fund Reporting [27]					
No proposed changes					
Current burden per adviser to private fund.	1 hour per private fund [28].	N/A–included in the existing annual amendment reporting burden for ERAs.	$273 (blended current rate for senior compliance examiner and compliance manager).		Cost of $46,865.74 per fund, applied to 6% of RIAs that report private funds.[29]
Total updated aggregate burden estimate.	1,150 hours [30]	N/A	$299.50 (blended revised rate for senior compliance examiner and compliance manager).	$3,978,123.50 ($279.5 × 14,233 hours)).	$15,090,768.30.[31]
TOTAL ESTIMATED BURDENS, INCLUDING AMENDMENTS					
Current per adviser burden/external cost per adviser.	23.82 hours [32]			23.82 hours × $273 = $6,502.86 per adviser cost of the burden hour.	$777.[33]
Revised per adviser burden/external cost per adviser.	15.70 hours [34]			15.70 hours × $299.50 = $4,702.15 per adviser cost of the burden hour.	$1,678.59.[35]
Current aggregate burden estimates.	433,004 initial and amendment hours annually [36]			433,004 × $273 = $118,210,092 aggregate cost of the burden hour.	$14,125,083.[37]

TABLE 2—FORM ADV PRA ESTIMATES—Continued

	Internal initial burden hours	Internal annual amendment burden hours [1]	Wage rate [2]	Internal time costs	Annual external cost burden [3]
Revised aggregate burden estimates.	321,237.15 [38] Initial and amendment hours annually			321,237.15 × $299.50 = $96,210,526.40 aggregate cost of the burden hour.	$34,355,721.05.[39]

Notes:

[1] This column estimates the hourly burden attributable to annual and other-than-annual updating amendments to Form ADV, plus RIAs' ongoing obligations to deliver codes of ethics to clients. The internal annual amendment burden hours estimate for the proposed Part 1 Item 7.C. is the sum of the internal initial burden estimate annualized over a three-year period (1.5 initial hour/3 = 0.5 hours), plus 0.2 hours of ongoing annual burden hours, and it assumes annual reassessment and execution: ((1.5 initial hours/3 years) + 0.2 hours of additional ongoing burden hours) = 0.7 hour.

[2] As with Form ADV generally, and pursuant to the currently approved PRA (*see* 2021 Form ADV PRA), we expect that for most RIAs, the performance of these functions would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the SIFMA Wage Report. The estimated figures are modified by firm size, employee benefits, overhead, and adjusted to account for the effects of inflation. For RIAs that do not already have a senior compliance or a compliance manager, we expect that a person performing a similar function would have similar hourly costs. The estimated wage rates in connection with the proposed PRA estimates are adjusted for inflation from the wage rates used in the currently approved PRA analysis.

[3] External fees are in addition to the projected hour per adviser burden. Form ADV has a one-time initial cost for outside legal and compliance consulting fees in connection with the initial preparation of Parts 2 and 3 of the form. In addition to the estimated legal and compliance consulting fees, investment advisers of private funds incur one-time costs with respect to the requirement for investment advisers to report the fair value of private fund assets.

[4] Based on Form ADV data as of December 31, 2021, we estimate that there are 14,756 RIAs (''current RIAs'') and 552 net new advisers that are expected to become RIAs annually (''newly expected RIAs''). We obtain the newly expected RIAs number by taking the average number of new RIAs over the past three years (1,287) and subtracting the average RIA deregistrations over the past three years (735), for a total of 552 net new advisers on average.

[5] The $299.50 wage rate reflects current estimates from the SIFMA Wage Report of the blended hourly rate for a senior compliance examiner ($260) and a compliance manager ($339). ($260 + $339)/2 = $299.50.

[6] We estimate that a quarter of RIAs would seek the help of outside legal services and half would seek the help of compliance consulting services in connection with the proposed amendments to Form ADV Part 1. This is based on previous estimates and ratios we have used for advisers we expect to use external services for initially preparing various parts of Form ADV. *See* 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not change that estimate). Because the SIFMA Wage Report does not include a specific rate for an outside compliance consultant, we are proposing to use the rates in the SIFMA Wage Report for an outside management consultant, as we have done in the past when estimating the rate of an outside compliance counsel. We are adjusting these external costs for inflation, using the currently estimated costs for outside legal counsel and outside management consultants in the SIFMA Wage Report: $531 per hour for outside counsel, and $791 per hour for outside management consultant (compliance consultants).

[7] Per above, we are proposing to revise the PRA calculation methodology to apply the full initial burden only to expected RIAs, as we believe that current RIAs have generally already incurred the burden of initially preparing Form ADV.

[8] *See* 2020 Form ADV PRA Renewal (stating that the estimate average collection of information burden per adviser for Parts 1 and 2 is 29.22 hours, prior to the most recent amendment to Form ADV). *See also* 2021 Form ADV PRA (adding 0.5 hours to the estimated initial burden for Part 1A in connection with the most recent amendment to Form ADV). Therefore, the current estimated average initial collection of information hourly burden per adviser for Parts 1 and 2 is 29.72 hours (29.22 + 0.5 = 29.72).

[9] The currently approved average total annual burden for RIAs attributable to annual and other-than-annual updating amendments to Form ADV Parts 1 and 2 is 10.5 hours per RIA, plus 1.3 hours per year for each RIA to meet its obligation to deliver codes of ethics to clients (10.5 + 1.3 = 11.8 hours per adviser). *See* 2020 Form ADV PRA Renewal (these 2020 hourly estimates were not affected by the 2021 amendments to Form ADV). As we explained in previous PRAs, we estimate that each RIA filing Form ADV Part 1 will amend its form 2 times per year, which consists of one interim updating amendment (at an estimated 0.5 hours per amendment), and one annual updating amendment (at an estimated 8 hours per amendment), each year. We also explained that we estimate that each RIA will, on average, spend 1 hour per year making interim amendments to brochure supplements, and an additional 1 hour per year to prepare brochure supplements as required by Form ADV Part 2. *See id.*

[10] *See* 2020 Form ADV PRA Renewal (the subsequent amendment to Form ADV described in the 2021 Form ADV PRA did not affect that estimate).

[11] External cost per RIA includes the external cost for initially preparing Part 2, which we have previously estimated to be approximately 10 hours of outside legal counsel for a quarter of RIAs, and 8 hours of outside management consulting services for half of RIAs. *See* 2020 Form ADV Renewal (these estimates were not affected by subsequent amendments to Form ADV). We add to this burden the estimated external cost associated with the proposed amendment (an additional hour of each, bringing the total to 11 hours and 9 hours, respectively, for ¼ and ½ of RIAs, respectively). We therefore calculate the revised burden per adviser as follows: (((.25 × 14,756 RIAs) × ($531 × 11 hours)) + ((0.50 × 14,756 RIAs) × ($791 × 9 hours)))/14,756 RIAs = $5019.75 per adviser.

[12] Per above, we are proposing to revise the PRA calculation methodology for current RIAs to not apply the full initial burden to current RIAs, as we believe that current RIAs have generally already incurred the initial burden of preparing Form ADV. Therefore, we calculate the initial burden associated with complying with the proposed amendment of 1.5 initial hour × 14,756 current RIAs = 22,134 initial hours in the first year aggregated for current RIAs. We are not amortizing this burden because we believe current advisers will incur it in the first year. For expected new RIAs, we estimate that they will incur the full revised initial burden, which is 31.22 hours per RIA. Therefore, 31.22hours × 552 expected RIAs = 17,233.44 aggregate hours for expected new RIAs. We do not amortize this burden for expected new RIAs because we expect a similar number of new RIAs to incur this initial burden each year. Therefore, the total revised aggregate initial burden for current and expected new RIAs is 22,134 hours + 17,233.44 hours = 39,367.44 aggregate initial hours.

[13] 12.5 amendment hours × (14,756 current RIAs + 552 expected new RIAs) = 190,975 aggregate amendment hours.

[14] Per above, for current RIAs, we are proposing to not apply the currently approved external cost for initially preparing Part 2, because we believe that current RIAs have already incurred that initial external cost. For current RIAs, therefore, we are applying only the external cost we estimate they will incur in complying with the proposed amendment. Therefore, the revised total burden for current RIAs is (((.25 × 14,756 RIAs) × ($531 × 1 hour)) + ((0.50 × 14,756 RIAs) × ($791 × 1 hour))) = $7,794,857 aggregated for current RIAs. We do not amortize this cost for current RIAs because we expect current RIAs will incur this initial cost in the first year. For expected new RIAs, we apply the currently approved external cost for initially preparing Part 2 plus the estimated external cost for complying with the proposed amendment. Therefore, $5,019.75 per expected new RIA × 552 = $2,770,902 aggregated for expected new RIAs. We do not amortize this cost for expected new RIAs because we expect a similar number of new RIAs to incur this external cost each year. $7,794,857 aggregated for current RIAs + $2,770,902 aggregated for expected RIAs = $10,565,759 aggregated external cost for RIAs.

[15] Even though we are not proposing amendments to Form ADV Part 3 (''Form CRS''), the burdens associated with completing Part 3 are included in the PRA for purposes of updating the overall Form ADV information collection. Based on Form ADV data as of October 31, 2021, we estimate that 8,877 current RIAs provide advice to retail investors and are therefore required to complete Form CRS, and we estimate an average of 347 expected new RIAs to be advising retail advisers and completing Form CRS for the first time annually.

[16] *See* Form CRS Relationship Summary; Amendments to Form ADV, Investment Advisers Act Release No. 5247 (Jun. 5, 2019) [84 FR 33492 (Sep. 10, 2019)] (''2019 Form ADV PRA''). Subsequent PRA amendments for Form ADV have not adjusted the burdens or costs associated with Form CRS. Because advisers have been required to comply with the Form CRS requirements for less than three years, we have, and are continuing to, apply the total initial amendment burden to all current and expected new RIAs that are required to file Form CRS, and amortize that initial burden over three years for current RIAs.

[17] As reflected in the currently approved PRA burden estimate, we stated that we expect advisers required to prepare and file the relationship summary on Form ADV Part 3 will spend an average 1 hour per year making amendments to those relationship summaries and will likely amend the disclosure an average of 1.71 times per year, for approximately 1.58 hours per adviser. *See* 2019 Form ADV PRA (these estimates were not amended by the 2021 amendments to Form ADV),

[18] *See* 2020 Form ADV PRA Amendment (this cost was not affected by the subsequent amendment to Form ADV and was not updated in connection with that amendment; while this amendment did not break out a per adviser cost, we calculated this cost from the aggregate total and the number of advisers we estimated prepared Form CRS). Note, however, that in our 2020 Form ADV PRA Renewal, we applied the external cost only to expected new retail RIAs, whereas we had previously applied the external cost to current and expected retail RIAs. Because advisers have been required to comply with the Form CRS requirements for less than three years, we believe that we should continue to apply the cost to both current and expected new retail RIAs. *See* 2019 Form ADV PRA.

[19] 8,877 current RIAs × 6.67 hours each for initially preparing Form CRS = 59,209.59 aggregate hours for current RIAs initially filing Form CRS. For expected new RIAs initially filing Form CRS each year, we are not proposing to use the amortized initial burden estimate, because we expect a similar number of new RIAs to incur the burden of initially preparing Form CRS each year. Therefore, 347 expected new RIAs × 20 initial hours for preparing Form CRS = 6,940 aggregate initial hours for expected RIAs. 59,209.59 hours + 6,940 hours = 66,149.59 aggregate hours for current and expected RIAs to initially prepare Form CRS.

[20] 1.58 hours × (8,877 current RIAs updating Form CRS + 347 expected new RIAs updating Form CRS) = 14,573.92 aggregate amendment hours per year for RIAs updating Form CRS.

[21] We have previously estimated the initial preparation of Form CRS would require 5 hours of external legal services for an estimated quarter of advisers that prepare Part 3, and 5 hours of external compliance consulting services for an estimated half of advisers that prepare Part 3. *See* 2020 PRA Renewal (these estimates were not amended by the most recent amendment to Form ADV). The hourly cost estimate of $531 and $791 for outside legal services and management consulting services, respectively, are based on an inflation-adjusted figure in the SIFMA Wage Report. Therefore, (((.25 × 8,877 current RIAs preparing Form CRS) × ($531 × 5 hours)) + ((0.50 × 8,877 current RIAs preparing Form CRS) × ($791 × 5 hours))) = $23,447,040. For current RIAs, since this is still a new requirement, we amortize this cost over three years for a per year initial external aggregated cost of $7,815,680. For expected RIAs that we expect would prepare Form CRS each year, we use the following formula: (((.25 × 347 expected RIAs preparing Form CRS) × ($531 × 5 hours)) + ((0.50 × 347 expected RIAs preparing Form CRS) × ($791 × 5 hours))) = $916,513.75 aggregated cost for expected RIAs. We are not amortizing this initial cost because we estimate a similar number of new RIAs would incur this initial cost in preparing Form CRS each year, $7,815,680 + $916,513.75 = $8,732,193.75 aggregate external cost for current and expected RIAs to initially prepare Form CRS.

[22] Based on Form ADV data as of Dec. 31, 2021, we estimate that there are 4,813 currently reporting ERAs (''current ERAs''), and an average of 346 expected new ERAs annually (''expected ERAs'').

[23] *See* 2021 Form ADV PRA.

[24] The previously approved average per adviser annual burden for ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2021 Form ADV PRA. As we have done in the past, we add to this burden the burden for ERAs making final filings, which we have previously estimated to be 0.1 hour per applicable adviser, and we estimate that an expected 371 current ERAs will prepare final filings annually, based on Form ADV data as of Dec. 2020.

[25] For current ERAs, we are proposing to not apply the currently approved burden for initially preparing Form ADV, because we believe that current ERAs have already incurred this burden. For expected ERAs, we are applying the initial burden of preparing Form ADV of 3.6 hours. Therefore, 3.6 hours × 346 expected new ERAs per year = 1,245.6 aggregate initial hours for expected ERAs. For these expected ERAs, we are not proposing to amortize this burden, because we expect a similar number of new ERAs to incur this burden each year. Therefore, we estimate 1,245.6 aggregate initial annual hours for expected ERAs.

[26] The previously approved average total annual burden of ERAs attributable to annual and updating amendments to Form ADV is 1.5 hours. *See* 2020 Form ADV Renewal (this estimate was not affected by the subsequent amendment to Form ADV). As we have done in the past, we added to this burden the currently approved burden for ERAs making final filings of 0.1 hour, and multiplied that by the number of final filings we are estimating ERAs would file per year (371 final filings based on Form ADV data as of Dec. 2020). (1.5 hours × 4,813 currently reporting ERAs) + (0.1 hour × 371 final filings) = 7,256.6 updated aggregated hours for currently reporting ERAs. For expected ERAs, the aggregate burden is 1.5 hours for each ERA attributable to annual and other-than-annual updating amendments to Form ADV x 346 expected new ERAs = 519 annual aggregated hours for expected new ERAs updating Form ADV (other than for private fund reporting). The total aggregate amendment burden for ERAs (other than for private fund reporting) is 7,265.6 + 519 = 7,775.6 hours.

[27] Based on Form ADV data as of Oct. 31, 2021, we estimate that 5,232 current RIAs advise 43,501 private funds, and expect an estimated 136 new RIAs will advise 407 reported private funds per year. We estimate that 4,959 current ERAs advise 23,476 private funds, and estimate an expected 372 new ERAs will advise 743 reported private funds per year. Therefore, we estimate that there are 66,977 currently reported private funds reported by current private fund advisers (43,501 + 23,476), and there will be annually 1,150 new private funds reported by expected private fund advisers (407 + 743). The total number of current and expected new RIAs that report or are expected to report private funds is 5,368 (5,232 current RIAs that report private funds + 136 expected RIAs that would report private funds).

[28] *See* 2020 Form ADV PRA Renewal (this per adviser burden was not affected by subsequent amendments to Form ADV).

[29] We previously estimated that an adviser without the internal capacity to value specific illiquid assets would obtain pricing or valuation services at an estimated cost of $37,625 each on an annual basis. *See* Rules Implementing Release, *supra* footnote82. However, because we estimated that external cost in 2011, we are proposing to use an inflation-adjusted cost of $46,865.74, based on the CPI calculator published by the Bureau of Labor Statistics at https://www.bls.gov/data/inflation_calculator.htm. As with previously approved PRA methodologies, we continue to estimate that 6% of RIAs have at least one private fund client that may not be audited. *See* 2020 Form ADV PRA Renewal.

[30] Per above, for currently reported private funds, we are proposing to not apply the currently approved burden for initially reporting private funds on Form ADV, because we believe that current private fund advisers have already incurred this burden. For the estimated 1,150 new private funds annually of expected private fund advisers, we calculate the initial burden of 1 hour per private fund. 1 hour per expected new private fund × 1,150 expected new private funds = 1,150 aggregate hours for expected new private funds. For these expected new private funds, we are not proposing to amortize this burden, because we expect new private fund advisers to incur this burden with respect to new private funds each year. Therefore, we estimate 1,150 aggregate initial hours for expected private fund advisers.

[31] As with previously approved PRA methodologies, we continue to estimate that 6% of registered advisers have at least one private fund client that may not be audited, therefore we estimate that the total number of audits for current and expected RIAs is 6% × 5,368 current and expected RIAs reporting private funds or expected to report private funds = 322.08 audits. We therefore estimate that approximately 322 registered advisers incur costs of $46,865.74 each on an annual basis (see note 29 describing the cost per audit), for an aggregate annual total cost of $15,090,768.30.

[32] 433,004 currently approved burden hours/18,179 advisers (current and expected annually) = 23.82 hours per adviser. *See* 2021 Form ADV PRA.

[33] $14,125,083 currently approved aggregate external cost/18,179 advisers (current and expected annually) = $777 blended average external cost per adviser.

[34] 321,237.15 aggregate annual hours for current and expected new advisers (see infra note 38)/(14,756 current RIAs + 552 expected RIAs + 4,813 current ERAs +346 expected ERAs) = 15.70 blended average hours per adviser.

[35] $34,355,721.05 aggregate external cost for current and expected new advisers (see infra note 39)/(20,467 advisers current and expected annually (see supra footnote 34) = $1,678.59 blended average hours per adviser.

[36] See 2021 Form ADV PRA.

[37] See 2021 Form ADV PRA.

[38] 39,367.44. hours (internal initial burden for Parts 1 and 2) + 190,975 4 hours (internal annual amendment burden for Parts 1 and 2) + 66,149.59 hours (internal initial burden for Part 3) + 14,573.92 hours (internal annual amendment burden for Part 3) + 1,245.6 hours (internal initial burden for ERAs) + 7,775.6 hours (internal annual amendment burden for ERAs) + 1,150 hours (Internal initial burden for private funds) = 321,237.15 aggregate annual hours for current and expected new advisers.

[39] $10,565,759 + $8,732,193.75 + $15,090,768.30 = $34,355,721.05.

D. Request for Comment

We request comment on whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information; (3) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (4) determine whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the OMB Desk Officer for the Securities and Exchange Commission, *MBX.OMB.OIRA.SEC_desk_officer@omb.eop.gov,* and should send a copy to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–25–22. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–25–22, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Act Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act (''RFA'').[278] It relates to proposed rule 206(4)–11 under the Advisers Act and proposed amendments to Form ADV and rule 204–2 under the Advisers Act.

A. Reason For and Objectives of the Proposed Action

The reasons for, and objectives of, the proposed rule and amendments are discussed in more detail in sections I and II, above. The burdens of these

[278] 5 U.S.C. 603(a).

requirements on small advisers are discussed below as well as above in sections III and IV, which discuss the burdens on all advisers.

We are proposing rule 206(4)–11 under the Advisers Act to require all advisers registered with the Commission to conduct due diligence and monitoring of its service providers. We believe advisers are increasingly relying on service providers to outsource certain functions without appropriate oversight, and there may be heightened risks because of it such as compliance gaps, poor operational management or risk measurement, or loss of sensitive client information and data. The proposed rule would therefore require a minimum and consistent oversight framework for all investment advisers outsourcing functions or services that are necessary to provide their advisory services in compliance with the Federal securities laws, and that if not performed or performed negligently, would be reasonably likely to cause a material negative impact on an adviser's clients or an adviser's ability to perform its services.[279]

We are also proposing related amendments to rule 204–2, the Advisers Act books and records rule, which set forth requirements for making and keeping records related to the due diligence and monitoring requirements.[280] We are proposing these amendments to: (1) conform the books and records rule to the proposed service provider oversight rule; (2) help ensure that an investment adviser retains records of all of its documents related to its service provider oversight; and (3) facilitate the Commission's inspection and enforcement capabilities. In addition, we are proposing to add a new provision to rule 204–2 requiring advisers that rely on a third party for any recordkeeping function required by that rule to perform due diligence and monitoring of that third party consistent with the requirements under proposed rule 206(4)–11 as though the recordkeeping function were a ''covered function'' and the third party were a ''service provider,'' each as defined in proposed rule 206(4)–11(b), and obtain reasonable assurances that the third party will meet certain standards.[281] The standards are intended to protect required records from loss, alteration or destruction and to require that such records be accessible to the investment adviser and the Commission staff while maintaining appropriate freedom for investments advisers to contract with service providers to assist with recordkeeping functions.

Lastly, we are proposing amendments to Form ADV for advisers registered or required to be registered with the Commission to disclose information about certain service providers. We believe this requirement would help the Commission and its staff in their efforts to oversee registered investment advisers and enhance client and investor disclosures. More information about service providers that perform covered functions would provide the Commission with a better understanding of the material services and functions that advisers outsource and permit us to enhance our assessment of advisers' reliance on service providers for purposes of targeting examinations. The information would also help us identify particular service providers that may pose a risk to clients and investors and provide us with the ability to conduct a more comprehensive assessment of advisers.

We believe that the proposed rule and amendments discussed above would, together, improve the ability of advisers as well as their clients and prospective clients to evaluate and understand relevant risks and incidents related to the use of service providers that they face and the potential effect on the advisers' services and operations.

1. Proposed Rule 206(4)–11

Proposed rule 206(4)–11 would require an adviser to conduct due diligence before engaging a service provider to perform a covered function.[282] In conducting its due diligence, the adviser would be required to, among other things, identify the nature and scope of the covered function the service provider is to perform, identify and determine how it will mitigate and manage potential risks, determine that the service provider has the competence, capacity, and resources necessary to perform the covered function, determine whether the service provider has any material subcontracting arrangements, and obtain certain reasonable assurances from the service provider.[283] The proposed rule would also require the adviser periodically to monitor the service provider's performance of the covered function and reassess the due diligence required under the proposed rule.[284]

2. Proposed Amendments to Rule 204–2

We are proposing related amendments to rule 204–2, the books and records rule, under the Advisers Act, which sets forth requirements for maintaining, making, and retaining specified books and records. We are proposing to amend the current rule to require advisers to make and keep: (1) a list or other record of covered functions that the adviser has outsourced to a service provider, along with a record of the factors that led the adviser to list it as a covered function; (2) records documenting the due diligence assessment; (3) a copy of any written agreement; and (4) records documenting the periodic monitoring of a service provider.[285] These records would be required to be maintained throughout the time period during which the adviser has outsourced a covered function to a service provider and for a period of five years thereafter.[286]

We are also proposing an amendment to the rule 204–2 to require every investment adviser registered or required to be registered that relies on a third party to make and/or keep required by rule 204–2, to perform due diligence and monitoring of that third party as prescribed in proposed rule 206(4)–11 as though the recordkeeping function were a ''covered function'' and the third party were a ''service provider'', each as defined in proposed rule 206(4)–11(b), and obtain reasonable assurances that the third party will meet four standards: (i) adopt and implement internal processes and/or systems for making and keeping records on behalf of the investment adviser that meet all of the requirements of the recordkeeping rule applicable to the adviser in providing services to the adviser; (ii) make and/or keep records that meet all of the requirements of the recordkeeping rule applicable to the adviser; (iii) for electronic records, allow the investment adviser and staff of the Commission to access the records easily through computers or systems; and (iv) have arrangements in place to ensure the continued availability of records in the event that the third party's operations cease or the relationship with the investment adviser is terminated.[287]

3. Proposed Amendments to Form ADV

We are proposing related amendments to Form ADV. The amendments would require advisers registered or required to be registered with the Commission to identify their service providers that

[279] *See* proposed rule 206(4)–11(a).

[280] *See* proposed rule 204–2 (recordkeeping); proposed rule 204–6, and amendments to rule 204–3 and Form ADV (reporting); and amendments to Forms N–1A, N–2, N–3, N–4, N–6, N–8B–2, and S–6 (disclosure).

[281] *See* proposed rule 204–2(l).

[282] *See* proposed rule 206(4)–11(a)(1).

[283] *See* proposed rule 206(4)–11(a)(1).

[284] *See* proposed rule 206(4)–11(a)(2).

[285] *See* proposed rule 204–2(a)(24).

[286] *See* proposed rule 204–2(e)(4).

[287] *See* proposed rule 204–2(l).

perform covered functions, provide their location, the date they were first engaged to provide covered functions, and state whether they are related persons of the adviser. For each of these service providers, the amendments would require specific information that would clarify the services or functions they provide. The new reporting item would appear in Item 7 of Form ADV, which currently requires advisers to disclose information about financial industry affiliations. More detailed information would be required to be filled in Schedule D of Part 1A under the revised Item 7.

B. Legal Basis

The Commission is proposing rule 206(4)–11 under the Advisers Act under the authority set forth in sections 203(d), 206(4), and 211(a) and (h) of the Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a) and (h)]. The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Exchange Act [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) and (h) of the Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a) and (h)].

C. Small Entities Subject to the Rules and Rule Amendments

In developing these proposals, we have considered their potential effect on small entities that would be subject to the proposed rule and amendments. The proposed rule and amendments would affect many, but not all, investment advisers registered with the Commission, including some small entities.

1. Small Entities Subject to Proposed Rule 206(4)–11 and Proposed Amendments to Rule 204–2 and Form ADV

Under Commission rules, for the purposes of the Advisers Act and the RFA, an investment adviser generally is a small entity if it: (1) has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[288] Our proposed rule and amendments would not affect most investment advisers that are small entities (''small advisers'') because they are generally registered with one or more state securities authorities and not with the Commission. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of December 31, 2021, approximately 471 SEC-registered advisers are small entities under the RFA.[289]

The Commission estimates that based on IARD data as of December 31, 2021, approximately 14,756 investment advisers would be subject to proposed rule 206(4)–11 and the related proposed amendments to rule 204–2 under the Advisers Act and Form ADV.[290]

All of the approximately 471 SEC-registered advisers that are small entities under the RFA would be subject to proposed rule 206(4)–11 and the related proposed amendments to rule 204–2 under the Advisers Act and Form ADV.

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

1. Proposed Rule 206(4)–11

Proposed rule 206(4)–11 would impose certain compliance requirements on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the proposed rule's due diligence and monitoring requirements. The proposed requirements, including compliance and recordkeeping requirements, are summarized in this IRFA (section V.A. above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in section III (the Economic Analysis) and below. The professional skills required to meet these specific burdens are also discussed in sections III and IV.

There are different factors that would affect whether a smaller adviser incurs costs relating to these requirements that are higher or lower relative to other firms and likely to vary depending on the adviser's current practices. The specifics of these burdens are discussed in the Economic Analysis, which also discusses the burdens on all registered investment advisers.[291] For example, although a smaller adviser's use of service providers should include sufficient oversight by the adviser so as to fulfill the adviser's fiduciary duty, comply with the Federal securities laws, and protect clients from potential harm, those current practices may not meet the specific requirements of the proposal. In addition, smaller advisers who may not enjoy economies of scale or scope or may have less valuable brands than larger advisers, could be expected to be more prone to underinvestment in service provider oversight than larger advisers.[292]

Also, while we would expect larger advisers to incur higher costs related to this proposed rule in absolute terms relative to a smaller adviser, we would expect a smaller adviser to find it more costly, per dollar managed, to comply with the proposed requirements because it would not be able to benefit from a larger adviser's economies of scale. For example, if there are fixed costs associated with the proposed regulations, then smaller advisers would generally tend to bear a greater cost, relative to adviser size, than larger advisers. To the extent there are material fixed costs associated with the proposed rule, then we would expect the possible negative effect on competition to be greater for smaller advisers who engage service providers because the proposed regulations would tend to increase their costs more (relative to adviser size) than for larger advisers that engage service providers.[293]

Of the approximately 471 small advisers currently registered with us, we estimate that 100 percent of those advisers would be subject to the proposed rule 206(4)–11. The proposed rule 206(4)–11 under the Advisers Act, which would require advisers to conduct due diligence and monitoring of their service providers, would create new annual costs for advisers.[294] We estimate that the due diligence and monitoring requirements would create an ongoing annual burden of

[288] Advisers Act rule 0–7(a) [17 CFR 275.0–7].

[289] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

[290] *See supra* section III.B.1.

[291] *See supra* section III.D.

[292] *See supra* section III.D at footnote 121 and accompanying text.

[293] *See also supra* footnote 192 and accompanying text. The division of the service provider's direct costs between the service provider and the adviser would depend primarily on the relative bargaining power of the two parties.

[294] *See supra* sections III.D.1, III.D.2, and IV.

approximately 195.56 hours per small adviser, or 92,108.76 hours in aggregate for small advisers.[295] We therefore expect the annual monetized aggregate cost to small advisers associated with our proposed amendments would be approximately $27,698,987.[296]

2. Proposed Amendments to Rule 204–2

The proposed amendments to rule 204–2 would impose certain requirements related to the creation and maintenance of records on investment advisers, including those that are small entities. All registered investment advisers, including small entity advisers, would be required to comply with the recordkeeping amendments, which are summarized in this IRFA (section V.C. above). The proposed amendments are also discussed in detail, above, in sections I and II, and the requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections III and IV.

Of the approximately 471 small advisers currently registered with us, we estimate that 100 percent of those advisers would be subject to the proposed amendments to rule 204–2. The proposed amendments to rule 204–2 under the Advisers Act, which would require advisers to make and keep certain documents required under proposed rule 206(4)–11 and 204–2(l), would create a new annual burden of approximately 15 hours per small adviser, or 7,065 hours in aggregate for small advisers.[297] We therefore expect the annual monetized aggregate cost to small advisers associated with recordkeeping required by the proposed amendments would be $1,964,541.[298] The proposed amendments to rule 204–2 also would require advisers that rely on third parties to make and/or keep records required by rule 204–2 to perform certain due diligence and monitoring of such third parties.[299] We estimate that these due diligence and monitoring requirements would create an ongoing annual burden of approximately 29 hours per small adviser, or 13,659 hours in aggregate for small advisers.[300] We therefore expect the annual monetized aggregate cost to small advisers associated with the due diligence and monitoring requirements required by the proposed amendments would be approximately $4,154,849.[301]

3. Proposed Amendments to Form ADV

The proposed amendments to Form ADV would impose certain reporting and compliance requirements on investment advisers, including those that are small entities. Specifically, new Item 7.C. of Form ADV would require advisers to disclose whether they outsource any covered functions to a service provider and report more detailed information about such service providers in new Section 7.C. of Schedule D. All SEC-registered investment advisers, including small entity advisers, would be required to comply with the proposed rule's reporting requirement by completing this portion of Form ADV.[302] The proposed requirements, including reporting and compliance requirements, are summarized in this IRFA (section V.C. above). All of these proposed requirements are also discussed in detail, above, in sections I and II, and these requirements and the burdens on respondents, including those that are small entities, are discussed above in sections III and IV (the Economic Analysis and Paperwork Reduction Act Analysis, respectively) and below. The professional skills required to meet these specific burdens are also discussed in sections III through IV.

Of the approximately 471 small advisers currently registered with us, we estimate that 100 percent of those advisers would be subject to the Form ADV amendments. New Item 7.C. of Form ADV, which would require advisers to report to the Commission information about certain of their service providers, would create a new annual burden of approximately 0.7 hours per adviser, or 329.7 hours in aggregate for small advisers.[303] We therefore expect the annual monetized aggregate internal cost to small advisers associated with our proposed amendments would be $98,745.15.[304]

E. Duplicative, Overlapping, or Conflicting Federal Rules

1. Proposed Rule 206(4)–11

In proposing this rule 206(4)–11, we recognize that investment advisers today are subject to a number of rules and regulations which indirectly address the oversight of an adviser's service providers. However, investment advisers do not have explicit due diligence and monitoring obligations under the Advisers Act specifically for service providers. The proposed rule would provide a comprehensive oversight framework, consisting of specific due diligence and monitoring elements, which we believe would be complementary to existing obligations and practices rather than duplicative or conflicting.

In addition, rule 206(4)–7 under the Advisers Act requires advisers to consider, among other things, their regulatory obligations and formalize policies and procedures reasonably designed to prevent violation of the Advisers Act. While rule 206(4)–7 does not enumerate specific elements that an adviser must include in its compliance program, advisers may already be assessing the various risks created by their particular circumstances in hiring service providers when developing their compliance policies and procedures to address such risks. To the extent there may be overlap between existing practices employed by firms in implementing their written policies and procedures under rule 206(4)–7 and the proposal, these practices may not meet all the specific requirements of the proposal as existing rules do not provide a comprehensive oversight framework when outsourcing covered functions. Therefore, these practices would be complementary to the requirements of the proposed rule, rather than duplicative or conflicting.

Advisers may also consider the risks associated with the use of service providers when service providers are engaged on behalf of registered investment companies, which may be subject to other oversight rules under the Federal securities laws. For example, rule 38a–1 under the Investment Company Act requires certain compliance procedures and practices by registered investment

[295] *See supra* sections III.D.1 and III.D.2. We estimate that the ongoing annual burden for the required due diligence and monitoring of service providers would be on the minimum-cost estimates as described in sections III.D.1 and III.D.2 because we expect smaller advisers to be represented in these lower bound estimates.

[296] *See supra* sections III.D.1, III.D.2. $867,783,964 total cost × (471 small advisers/14,756 advisers) = $27,698,986.70.

[297] *See supra* section IV.B.

[298] $61,547,276 total cost × (471 small advisers/14,756 advisers) = $1,964,541.

[299] *See* proposed rule 204–2(l).

[300] *See supra* section III.D.3. We estimate that the ongoing annual burden for the required due diligence and monitoring of third-party recordkeepers would be on the minimum-cost estimates as described in section III.D.3 because we expect smaller advisers to be represented in this lower bound estimate.

[301] $130,167,595 total cost × (471 small advisers/14,756 advisers) = $4,154,848.01.

[302] The proposal would not require exempt reporting advisers to respond to Item 7.C. *See* proposed General Instruction 3 (not requiring exempt reporting advisers to complete Form ADV, Part IA, Item 7.C.

[303] *See supra* section IV.C.

[304] $3,093,595.40 total cost × (471 small advisers/14,756 advisers) = $98,745.15.

companies including board approval of the policies and procedures of each adviser, principal underwriter, administrator, and transfer agent of the fund.[305] The board approval must be based on a finding by the board that the policies and procedures are reasonably designed to prevent violation of the Federal securities laws by the fund and the adviser.[306] If these same service providers (*i.e.,* principal underwriter, administrator, and transfer agent) are engaged by the adviser to service their mutual fund clients, then there may be potential for overlap between the proposed rule and rule 38a–1. However, we believe that the two rules are complementary, and that the adviser should separately conduct its own due diligence and monitoring to the extent that it engages a service provider for its fund clients because unlike 38a–1, the proposed rule is not limited to reviewing solely a service provider's policies and procedures.[307]

Advisers to registered investment companies might also consider the risks of service providers when valuation agents or pricing services are engaged for purposes of complying with rule 2a–5, also known as the valuation rule, under the Investment Company Act.[308] The valuation rule requires that funds assess periodically any material risks associated with determining the fair value of the fund's investments, including material conflicts of interest, and managing those identified valuation risks.[309] As part of the rule, the fund's board might designate a fund's investment adviser as the ''valuation designee,'' which would be subject to the board's oversight. As the valuation designee, the adviser may choose to outsource certain functions to a service provider such as a third-party pricing agent or valuation company. In the event that it does, there would have to be fund board oversight, which includes periodic reporting to the board of any reports or materials related to the fair value of investments or process for fair valuing fund investments as well as prompt board notification and reporting of any occurrence of matters that materially affect the fair value of the designated portfolio of investments.[310] An adviser's engagement of a valuation agent or pricing services might involve some oversight such as due diligence and monitoring, but it would be focused on the fair valuation of investments, and not a comprehensive oversight of the service provider that engages in other covered functions, which our proposed rule is designed to strengthen.

Some advisers may also consider the risks associated with the use of service providers when complying with certain obligations under the Advisers Act. For example, advisers registered or required to be registered with the Commission are subject to section 204A of the Advisers Act, which requires an adviser to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the misuse of material, nonpublic information by the adviser or any person associated with the adviser.[311] In addition, rule 204A–1 under the Advisers Act requires, among other things, that an adviser's code of ethics sets forth requirements that certain advisory personnel report personal securities trading to provide a mechanism for the adviser to identify improper trades or patterns of trading and its supervised persons comply with the Federal securities laws.[312] As part of an adviser's compliance with these obligations and implementation of its code of ethics, an adviser may conduct some oversight of third party arrangements which relate to certain obligations under its code of ethics, such as the use and protection of material non-public information. While such oversight may include some due diligence and monitoring, it would be focused on the requirements of the adviser's code of ethics, and not a comprehensive oversight of the service provider that engages in other covered functions.

Other rules also include requirements for protecting an investment adviser's client information, including the provision of that information to third parties, which could include service providers covered by the proposed rule. Regulation S–P and Regulation S–ID require, among other things, investment advisers registered with the Commission to adopt policies and procedures to protect various records and information of customers. Regulation S–P provides requirements to adopt written policies and procedures reasonably designed to: (i) insure the security and confidentiality of records and information of an adviser's client; (ii) protect against any anticipated threats or hazards to the security or integrity of such records and information; and (iii) protect against unauthorized access to or use of such records or information that could result in substantial harm or inconvenience to an adviser's client.[313] Regulation S–ID provides requirements to develop and implement a written identity theft program that includes policies and procedures to identify relevant types of identity theft red flags, detect the occurrence of those red flags, and to respond appropriately to the detected red flags.[314] If the adviser is a financial institution or creditor with covered accounts, Reg. S–ID, at 17 CFR 248.201(e)(4), requires it to ''Exercise appropriate and effective oversight of service provider arrangements,'' and section VI(c) of the Interagency Guidelines on Identity Theft Detection, Prevention, and Mitigation in Appendix A to Reg. S–ID provides:[315]

> Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.

Where an adviser outsources certain cybersecurity functions, the adviser may already conduct due diligence and monitoring of service providers pursuant to policies and procedures to address Regulation S–P or Regulation S–ID. For example, advisers may already have policies and procedures to address the handling of non-public trading information or PII when service providers have access to such information under Regulation S–P and S–ID. As another example, if a nonaffiliated trading services provider were to receive nonpublic personal information from the adviser under an exception from Reg. S–P's notice and opt out requirements, its reuse and re-disclosure of the information would be limited to performing trading services for the adviser's clients by Reg. S–P, at 17 CFR 248.11(a), or the corresponding requirement of another Gramm-Leach-Bliley Act regulatory agency if the service provider is not regulated by the SEC.

While some advisers may conduct proper due diligence and monitoring of their valuation agents or pricing services, third-party recordkeepers, and certain service providers such as those arrangements that raise privacy or cybersecurity risks under the existing regulatory framework, there are no Commission rules that explicitly require firms to conduct the comprehensive due diligence and monitoring of their service providers, as proposed under the

[305] *See* rule 38a–1(a)(1) and (2).

[306] *See id.*

[307] *See id.*

[308] *See* rule 2a–5.

[309] *See id.*

[310] *See* rule 2a–5(b)(1).

[311] *See* 15 U.S.C. 80b–4a.

[312] *See* 17 CFR 275.204A–1.

[313] *See* 17 CFR 248.30.

[314] *See* 17 CFR 248.201.

[315] 17 CFR 248 Appendix A to Subpart C.

proposed rule. As stated above, we believe that the proposed rule would be complementary, rather than duplicative of, the current and other proposed rules.

2. Proposed Amendments to Rule 204–2

Together with proposed rule 206(4)–11, we are proposing corresponding amendments to rule 204–2, the Advisers Act books and records rule. Rule 204–2 prescribes the type, manner, location and duration of records to be maintained by registered investment advisers registered or required to be registered with the Commission, but does not currently prescribe requirements for when an adviser outsources one or more required recordkeeping functions to a third party. Under the proposed amendments to rule 204–2, when an adviser relies on a third party to make and keep records of the adviser required under the rule, an adviser would be required to comply with the requirements of proposed rule 204–2(l), including performing the same due diligence and monitoring prescribed by proposed rule 206(4)–11 as though the recordkeeping function were a ''covered function'' and the third party were a ''service provider'', each as defined in proposed rule 206(4)–11(b). An adviser may currently conduct certain due diligence and monitoring of these types of third-party recordkeepers as part of the adviser's efforts to ensure its compliance with its existing recordkeeping obligations. However, these practices may not meet all the specific requirements of the proposal as rule 204–2 does not currently prescribe specific due diligence and monitoring requirements nor does the existing rule framework provide a comprehensive oversight of such service providers. Additionally, under rule 204–2(f), an investment adviser, before discontinuing its investment advisory business or otherwise terminating its advisory activities, is required to arrange and be responsible for the preservation of books and records required by the rule for the remainder of the required retention period. While an adviser may currently seek to coordinate with a third-party recordkeeper to ensure records required under the recordkeeping rule will be preserved for the required retention period, that adviser may not have obtained reasonable assurance that the third party will make arrangements to ensure the continued availability of records should the third party cease its business operations. Proposed rule 204–2(l) is intended to complement existing rule 204–2(f) and ensure the continued availability of the records in the event that a third-party recordkeeper ceases operations or the relationship with the adviser is terminated.

The amendments to rule 204–2 are complementary to the existing recordkeeping framework because the changes would conform rule 204–2 to the proposed service provider oversight rule and provide express requirements for when an adviser outsources recordkeeping functions. There are no duplicative, overlapping, or conflicting Federal rules with respect to the proposed amendments to rule 204–2.

3. Proposed Amendments to Form ADV

Our proposed new Item 7.C in Form ADV Part 1A would require SEC-registered advisers to: (1) indicate whether they outsource any covered functions to a service provider; (2) disclose information of each such service provider including legal and primary business names of the service provider, legal entity identifier, and address of service provider; (3) indicate whether identified service provider is a related person of the adviser; (4) date the service provider was first engaged, and (5) the covered function(s) that the service provider is engaged to perform. Currently, Item 7 in Form ADV Part 1A requires an adviser to disclose information about financial industry affiliations and activities, and to state whether the adviser advises any private funds, and if so, provide certain information related to those private funds. The proposed requirements would not be duplicative of, overlap, or conflict with, other information advisers are required to provide on Form ADV.

F. Significant Alternatives

The Regulatory Flexibility Act (''RFA'') directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic effect on small entities.[316] We considered the following alternatives for small entities in relation to our proposal: (1) exempting advisers that are small entities from the proposed due diligence and monitoring requirements under proposed rule 206(4)–11 and related provisions under the proposed amendments to rule 204–2, to account for resources available to small entities; (2) establishing different requirements or frequency, to account for resources available to small entities; (3) clarifying, consolidating, or simplifying the compliance requirements under the proposal for small entities; and (4) using design rather than performance standards.

1. Proposed Rules 206(4)–11 and 204–2

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. We considered the following alternatives for small entities in relation to the proposed rules 206(4)–11 and 204–2: (1) differing compliance or reporting requirements that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed rule for such small entities; (3) the use of design rather than performance standards; and (4) an exemption from coverage of the proposed rule, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the proposed rule, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the proposed rule 206(4)–11 and corresponding changes to rule 204–2. We believe that the proposed rule would result in multiple benefits to clients.[317] For example, having appropriate due diligence and monitoring measures in place would help address any potential risks and incidents that occur at the service provider and help protect advisers and their clients from greater risk of harm. We believe that these benefits should apply to clients of smaller firms as well as larger firms. Establishing different conditions for large and small advisers even though advisers of every type and size rely on various service providers for performing covered functions and thus face increasing compliance gap and other risks would negate these benefits. The corresponding changes to rule 204–2 are tailored to address proposed rule 206(4)–11 and the requirements for outsourcing recordkeeping functions.

Regarding the second alternative, we believe the current proposal is clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. The proposed rule would require advisers to:

[316] *See* 5 U.S.C. 603(c).

[317] *See supra* section III.D.

(1) conduct certain due diligence before engaging a service provider to perform a covered function; and (2) periodically monitor the service provider's performance of the covered function and reassess the retention of the service provider in accordance with the due diligence requirements.[318] The proposed rule would provide a minimum, consistent oversight framework regarding an adviser outsourcing functions or services that are necessary to provide advisory services in compliance with the Federal securities laws, and that if not performed or if performed negligently would be reasonably likely to cause a material negative impact on an adviser's clients or an adviser's ability to perform its services. The proposed rule would serve as an explicit requirement for advisers to oversee service providers covered by the rule appropriately and is designed to address our concern that outsourcing covered functions in particular, without further action by the investment adviser, can undermine the adviser's provision of services, and can otherwise harm clients.

Regarding the third alternative, we determined to use performance standards rather than design standards. Although the proposed rule requires due diligence and monitoring that are reasonably designed to address a certain number of elements, we do not place certain conditions or restrictions on how to adopt and implement such requirements. The general elements are designed to enumerate core areas that firms must address when conducting due diligence and monitoring of a service provider. Given the number and varying characteristics of advisers, we believe firms need the ability to tailor their measure or method in conducting due diligence and monitoring based on their individual facts and circumstances.[319] Similarly, rather than requiring a written agreement with specific language provisions, the proposed rule would afford advisers the flexibility to customize and tailor their processes to the proposed requirements.[320] Proposed rule 206(4)–11 therefore allows advisers to address the general elements based on the particular risks posed by each adviser's operations and business practices as well as the types of covered functions that are outsourced and the types of service providers engaged. The proposed rule would also provide flexibility for the adviser to determine the personnel who would implement and oversee the effectiveness of its due diligence and monitoring.

2. Proposed Amendments to Form ADV

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objectives, while minimizing any significant adverse effect on small entities. We considered the following alternatives for small entities in relation to the proposed amendments to Form ADV: (1) differing compliance or reporting requirements that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed amendments for such small entities; (3) the use of design rather than performance standards; and (4) an exemption from coverage of the proposed amendments, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, the Commission believes that establishing different compliance or reporting requirements for small advisers, or exempting small advisers from the proposed amendments, or any part thereof, would be inappropriate under these circumstances. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small firms, it would be inconsistent with the purposes of the Advisers Act to specify differences for small entities under the proposed amendments to Form ADV. We believe that the proposed amendments would result in multiple benefits to clients.[321] For example, the proposed amendments to Form ADV would improve the ability of clients and prospective clients to evaluate and conduct a more comprehensive due diligence of an adviser, addressing any potential concerns related to an adviser's use of a particular service provider. We believe that these benefits should apply to clients of smaller firms as well as larger firms. Establishing different conditions for large and small advisers even though all advisers, regardless of type and size, engage service providers to outsource certain covered functions, would negate these benefits.

Regarding the second alternative, we believe the current proposed amendments are clear and that further clarification, consolidation, or simplification of the compliance requirements is not necessary. The proposed amendments to Form ADV would require advisers to disclose information regarding the service providers that perform covered functions.[322] The proposed amendments to Form ADV would provide for advisers to present clear and meaningful disclosure regarding such service providers to their clients and prospective clients.

Regarding the third alternative, we determined that for the Commission and its staff to better identify and address risks related to outsourcing by advisers and oversee advisers' use of service providers and to enable clients to make better informed decisions about the retention of an adviser, advisers must provide certain baseline information about their service providers. The proposed amendments to Form ADV do not contain any specific limitations or restrictions on the disclosure of service providers. Given the number and varying types of advisers, as well as the types of covered functions and service providers that may be engaged at a particular adviser, respectively, we believe firms need the ability to tailor their disclosures according to their own circumstances.[323]

G. Solicitation of Comments

We encourage written comments on the matters discussed in this IRFA. We solicit comment on the number of small entities subject to the proposed rule 206(4)–11 and proposed amendments to rule 204–2 and Form ADV. We also solicit comment on the potential effects discussed in this analysis; and whether this proposal could have an effect on small entities that has not been considered. We request that commenters describe the nature of any effect on small entities and provide empirical data to support the extent of such effect.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [324] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation. We request comment on whether the proposal would be a ''major rule'' for purposes of SBREFA. We request comment on the potential effect of the

[318] *See* proposed rule 206(4)–11. *See also supra* section II.B and C.

[319] *See supra* section II.B and C.

[320] *See* proposed rule 206(4)–11(a).

[321] *See supra* section III.D.

[322] *See supra* section II.D.

[323] *See supra* section II.B.

[324] 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).

proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority

The Commission is proposing rule 206(4)–11 under the Advisers Act under the authority set forth in sections 203(d), 206(4), and 211(a) and (h) of the Advisers Act of 1940 [15 U.S.C. 80b–3(d), 10b–6(4) and 80b–11(a) and (h)]. The Commission is proposing amendments to rule 204–2 under the Advisers Act under the authority set forth in sections 204 and 211 of the Advisers Act of 1940 [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Exchange Act [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) and (h) of the Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a) and (h)].

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read, in part, as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

Section 275.204–2 is also issued under 15 U.S.C. 80b–6.

* * * * *

Amend § 275.204–2 by adding reserved paragraphs (a)(20) through (23) and paragraphs (a)(24), (e)(4), and (l) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(20)–(23) [Reserved]

(24)(i) A list or other record of Covered Functions that the adviser has outsourced to a Service Provider, as defined in § 275.206(4)–11, including the name of each Service Provider, along with a record of the factors, corresponding to each listed function, that led the adviser to list it as a Covered Function;

(ii) Records documenting the due diligence assessment conducted pursuant to § 275.206(4)–11, including any policies and procedures or other documentation as to how the adviser will comply with § 275.206(4)–11(a)(1)(ii);

(iii) A copy of any written agreement, including any amendments, appendices, exhibits, and attachments, entered into with a Service Provider regarding Covered Functions, each as defined in § 275.206(4)–11; and

(iv) Records documenting the periodic monitoring of a Service Provider pursuant to § 275.206(4)–11.

* * * * *

(e) * * *

(4) Books and records required to be made under paragraph (a)(24) of this rule shall be maintained in an easily accessible place throughout the time period during which the adviser has outsourced a Covered Function to a Service Provider and for a period of five years thereafter.

* * * * *

(l) Every investment adviser subject to paragraph (a) of this section that relies on a third party to make and/or keep any books and records required by this section (the recordkeeping function) must:

(1) *Due diligence and monitoring.* Perform due diligence and monitoring as prescribed in § 275.206(4)–11(a)(1) and (a)(2) with respect to the recordkeeping function, and make and keep such records as prescribed in paragraph (a)(24) of this section, in each case as though the recordkeeping function were a Covered Function as defined in § 275.206(4)–11(b) and the third party were a Service Provider as defined in § 275.206(4)–11(b); and

(2) Obtain reasonable assurances that the third party will:

(i) Adopt and implement internal processes and/or systems for making and/or keeping records on behalf of the investment adviser that meet all of the requirements of this section as applicable to the investment adviser;

(ii) Make and/or keep records of the investment adviser that meet all of the requirements of this section as applicable to the investment adviser;

(iii) For electronic records of the investment adviser that are made and/or kept by the third party under this subparagraph, allow the investment adviser and staff of the Commission to access the records easily through computers or systems during the required retention period pursuant to this section; and

(iv) Make arrangements to ensure the continued availability of records of the investment adviser that are made and/or kept under this subparagraph by the third party that will meet all of the requirements of this section as applicable to the investment adviser in the event that the third party ceases operations or the relationship with the investment adviser is terminated.

■ 3. Section 275.206(4)–11 is added to read as follows:

§ 275.206(4)–11 Service Providers.

(a) As a means reasonably designed to prevent fraudulent, deceptive, or manipulative acts, practices, or courses of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)), it shall be unlawful for an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3) to retain a Service Provider to perform a Covered Function unless:

(1) *Due diligence.* Before engaging such Service Provider, the adviser reasonably identifies, and determines that it would be appropriate to outsource the Covered Function and that it would be appropriate to select that Service Provider, by:

(i) Identifying the nature and scope of the Covered Function the Service Provider is to perform;

(ii) Identifying, and determining how it will mitigate and manage, the potential risks to clients or to the adviser's ability to perform its advisory services resulting from engaging a Service Provider to perform the Covered Function and engaging that Service Provider to perform the Covered Function;

(iii) Determining that the Service Provider has the competence, capacity, and resources necessary to perform the Covered Function in a timely and effective manner;

(iv) Determining whether the Service Provider has any subcontracting arrangements that would be material to the Service Provider's performance of the Covered Function, and identifying and determining how the investment adviser will mitigate and manage potential risks to clients or to the investment adviser's ability to perform its advisory services in light of any such subcontracting arrangement;

(v) Obtaining reasonable assurance from the Service Provider that it is able

to, and will, coordinate with the investment adviser for purposes of the adviser's compliance with the Federal securities laws, as applicable to the Covered Function; and

(vi) Obtaining reasonable assurance from the Service Provider that it is able to, and will, provide a process for orderly termination of its performance of the Covered Function.

(2) *Monitoring.* The adviser periodically monitors the Service Provider's performance of the Covered Function and reassesses the retention of the Service Provider in accordance with the due diligence requirements of paragraph (a)(1) of this section and with a manner and frequency such that the investment adviser reasonably determines that it is appropriate to continue to outsource the Covered Function and that it remains appropriate to outsource it to the Service Provider.

(b) *Definitions.* For the purposes of this section:

Covered Function means a function or service that is necessary for the investment adviser to provide its investment advisory services in compliance with the Federal securities laws, and that, if not performed or performed negligently, would be reasonably likely to cause a material negative impact on the adviser's clients or on the adviser's ability to provide investment advisory services. A covered function does not include clerical, ministerial, utility, or general office functions or services.

Service Provider means a person or entity that:

(i) Performs one or more Covered Functions; and

(ii) Is not a supervised person, as defined in 15 U.S.C. 80b–2(a)(25), of the investment adviser.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 4. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1 *et seq.,* Pub. L. 111–203, 124 Stat. 1376.

■ 5. Amend Form ADV (referenced in § 279.1) by:

■ a. In General Instructions, revising the second sub-bullet point paragraph to the first bullet point paragraph under Instruction 3;

■ b. In Instructions for Part 1A, revising the heading and introductory text of 6. Item 7;''

■ c. In Glossary of Terms, redesignating items 11 through 53 as 12 through 54, and items 55 through 65 as 57 through 67;

■ d. In Glossary of Terms, adding new items 11 and 57;

■ e. In Part 1A, revising Item 7 heading and introductory text, and adding C; and

■ f. In Schedule D, adding Section 7.C.

The additions and revisions read as follows:

Note: The text of Form ADV does not, and this amendment will not, appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

FORM ADV (Paper Version)

UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION

AND

REPORT BY EXEMPT REPORTING ADVISERS

Form ADV General Instructions

* * * * *

3. How is Form ADV organized?

Form ADV contains five parts:

- Part 1A asks a number of questions about you, your business practices, the *persons* who own and *control* you, and the *persons* who provide investment advice on your behalf.
    - All advisers registering with the SEC or any of the *state securities authorities* must complete Part 1A.
    - *Exempt reporting advisers* (that are not also registering with any *state securities authority*) must complete only the following Items of Part 1A: 1, 2, 3, 6, 7A, 7B, 10, and 11, as well as corresponding schedules. Exempt reporting advisers that are registering with any state securities authority must complete all of Form ADV.

* * * * *

Form ADV: Instructions for Part 1A

* * * * *

<u>6. Item 7: Financial Industry Affiliations, Private Fund, and Service Provider Reporting</u>

Item 7.A. and Section 7.A. of Schedule D ask questions about you and your *related persons'* financial industry affiliations. If you are filing an *umbrella registration*, you should not check Item 7.A.(2) with respect to your *relying advisers*, and you do not have to complete Section 7.A. in Schedule D for your *relying advisers*. You should complete Schedule R for each *relying adviser*. Item 7.B. and Section 7.B. of Schedule D ask questions about the *private funds* that you advise. You are required to complete a Section 7.B.(1) of Schedule D for each *private fund* that you advise, except in certain circumstances described under Item 7.B. and below. Item 7.C and Section 7.C of Schedule D asks questions about the *service providers* you engage to perform *covered functions*. If either the function or the provider performing the function does not meet the definition of *covered function* or *service provider*, respectively, you should not complete Item 7.C and Section 7.C of Schedule for that function or provider. You are required to complete Section 7.C of Schedule D for each *service provider* that performs a *covered function.*

* * * * *

GLOSSARY OF TERMS

* * * * *

11. Covered Function: A service or function that satisfies the definition of covered function in rule 206(4)-11(b).

* * * * *

57. Service Provider: Means a person or entity that meets the definition of provider in rule 206(4)-11(b).

* * * * *

PART 1A

* * * * *

Item 7. Financial Industry Affiliations, *Private Fund*, and *Service Provider* Reporting

In this Item, we request information about your financial industry affiliations, activities, and *service providers*. This information identifies areas in which conflicts of interest may occur between you and your *clients* and provides information about the *covered functions* you outsource to *service providers*.

* * *

C. Do you outsource any *covered function(s)* to a *service provider*? □ Yes □ No

If "yes," then for each *service provider*, you must complete a Section 7.C of Schedule D.

* * * * *

Schedule D

* * * * *

Section 7.C

Check only one box: □ Add □ Delete □ Amend

(1) Legal name of *service provider*: _____

(2) Primary Business Name of *service provider*: _____

(3) Legal Entity Identifier (if applicable): _____

(4) Is the *service provider* a *related person*: □ Yes □ No

(5) Date *service provider* first engaged to provide a *covered function*: _____

(6) The location of the *service provider's* office principally responsible for the *covered function(s)*:

_____

(number and street)

(city) (state/country) (zip +4/postal code)

(7) The *service provider* is engaged to provide the following *covered function(s) (check all that apply):*

- ☐ Adviser / Subadviser
- ☐ Client Servicing
- ☐ Cybersecurity
- ☐ Investment Guideline / Restriction Compliance
- ☐ Investment Risk
- ☐ Portfolio Management (excluding Adviser / Subadviser)
- ☐ Portfolio Accounting
- ☐ Pricing
- ☐ Reconciliation
- ☐ Regulatory Compliance
- ☐ Trading Desk
- ☐ Trade Communication and Allocation
- ☐ Valuation
- ☐ Other: _____

* * * * *

By the Commission.

Dated: October 26, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–23694 Filed 11–15–22; 8:45 am]

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